

Tab 1	CS/SB 86 by GO, Negron (CO-INTRODUCERS) Gaetz, Braynon, Margolis, Soto; (Similar to H 0527) Scrutinized Companies
Tab 2	SB 92 by Evers; (Identical to H 0351) Contaminated Sites
Tab 3	SB 100 by Simpson; (Similar to CS/H 0697) Petroleum Restoration Program
Tab 4	CS/SB 148 by CM, Ring; Consumer Protection

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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON GENERAL
GOVERNMENT
Senator Hays, Chair
Senator Braynon, Vice Chair

MEETING DATE: Tuesday, October 20, 2015
TIME: 3:00—5:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Hays, Chair; Senator Braynon, Vice Chair; Senators Altman, Dean, Lee, Margolis, and Simpson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 86 Governmental Oversight and Accountability / Negrón (Compare H 199)	Scrutinized Companies; Requiring the State Board of Administration to identify all companies that are boycotting Israel or are engaged in a boycott of Israel in which the public fund owns direct or indirect holdings in; requiring the public fund to create and maintain a scrutinized companies list that names all such companies; prohibiting a state agency or local governmental entity from contracting for goods and services that exceed a specified amount if the company has been placed on the Scrutinized Companies that Boycott Israel List, etc. GO 10/06/2015 Fav/CS AGG 10/20/2015 Favorable AP	Favorable Yeas 6 Nays 0
2	SB 92 Evers (Identical H 351)	Contaminated Sites; Defining the terms “background concentration” and “long-term natural attenuation”; requiring the Department of Environmental Protection to include protocols for the use of long-term natural attenuation where site conditions warrant; providing that institutional controls are not required under certain circumstances if alternative cleanup target levels are used; providing additional contamination cleanup criteria for brownfield sites and brownfield areas, etc. EP 10/07/2015 Favorable AGG 10/20/2015 Favorable AP	Favorable Yeas 6 Nays 0
3	SB 100 Simpson	Petroleum Restoration Program; Revising the eligibility requirements of the Abandoned Tank Restoration Program; deleting provisions prohibiting the relief of liability for persons who acquired title after a certain date; revising the conditions for eligibility and methods for payment of costs for the low-risk site initiative; revising the eligibility requirements for receiving rehabilitation funding; reducing the number of sites that may be proposed for certain advanced cleanup applications, etc. EP 10/07/2015 Favorable AGG 10/20/2015 Favorable AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on General Government
Tuesday, October 20, 2015, 3:00—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 148 Commerce and Tourism / Ring	Consumer Protection; Citing this act as "Terry's Law"; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements, etc. CM 10/05/2015 Fav/CS AGG 10/20/2015 Fav/CS FP	Fav/CS Yeas 6 Nays 0
5	Presentations by the Department of Agriculture and Consumer Services - Florida Forest Service - Animal, Pest and Disease Control - Plant, Pest and Disease Control		Presented
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 Appropriations Subcommittee on General Government

BILL: CS/SB 86

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Negron and others

SUBJECT: Scrutinized Companies

DATE: October 19, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 86 requires the State Board of Administration (SBA) to identify and assemble a list of companies that boycott Israel. The bill requires the SBA to update and make publicly available on a quarterly basis a Scrutinized Companies that Boycott Israel List (List). The List must be distributed to the trustees of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives.

The SBA must provide written notice to the companies that may be placed on the List and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the List.

In terms of its investment responsibilities relating to the Florida Retirement System (FRS) pension plan, the SBA is not permitted to acquire securities, as direct holdings, of companies that appear on the List. The bill provides an exception for securities that are not subject to this prohibition. The bill requires the investment policy statement for the FRS pension plan to be updated to include the limitations set forth in this bill.

CS/SB 86 limits governmental entities from contracting with scrutinized companies on the List. Specifically, the bill prohibits a state agency or local governmental entity from contracting for goods and services of \$1 million or more with a company that has been placed on the List. In addition, the bill requires certain governmental contracts to contain provisions allowing the awarding body to terminate the contract if a company is placed on the List. Additionally, the bill

requires certification by a company that the company is not on the List upon submission of bid or renewal of existing contract. A case-by-case exception is provided to state agencies and local governmental entities for contracting with companies on the List under specified circumstances.

The fiscal impact on state and local governments is indeterminate.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) was created by Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution and ch. 215, F.S.

The SBA has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan, which represent approximately \$157.14 billion, or 87.3 percent, of the \$180 billion in assets managed by the SBA, as of June 30, 2015.¹ The pension plan is a defined benefit plan and the investment plan is a defined contribution plan, that employees may choose in lieu of the pension plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22.86 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.²

State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.³ The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act⁴; the Arms Export Control Act⁵; and the Foreign Assistance Act⁶. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.⁷

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.⁸ The chart on the following page shows the date each country was designated a terrorist nation.

¹ State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.

² *Id.*

³ U.S. Department of State, Diplomacy in Action can be found online at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Sept. 9, 2015).

⁴ 50 U.S.C. App 2405(j)

⁵ 22 U.S.C. s. 2780

⁶ 22 U.S.C. s. 2371

⁷ *See* <http://www.state.gov/s/ct/c14151.htm>.

⁸ *Id.*

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regard to Cuba's support for international terrorism.⁹ On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.¹⁰

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.¹¹

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.¹²

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).¹³ The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities¹⁴ and are required to divest those securities if the companies¹⁵ do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

⁹ U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm> (last visited on Sept. 15, 2015).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).

¹⁴ Section 215.473(3)(c), F.S.

¹⁵ Section 215.473(3)(b), F.S.

The term “public fund” is defined as “all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.”¹⁶ This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website¹⁷, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.¹⁸ Such correspondence continues semiannually.¹⁹
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.²⁰ The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.²¹
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.²²
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to

¹⁶ Section 215.473(1)(r), F.S.

¹⁷ The quarterly reports are available at

<http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf>

¹⁸ Section 215.473(3)(a)2., F.S.

¹⁹ *Id.*

²⁰ Section 215.473(3)(a)3., F.S.

²¹ *Id.*

²² Section 215.473(4)(a), F.S.

Sudan, and the United States Presidential Special Envoy to Iran.²³ The report must include the following:²⁴

- A summary of correspondence with engaged companies;
- A listing of all investments sold, redeemed, divested, or withdrawn;
- A listing of all prohibited investments;
- A description of any progress related to external managers offering PFIA compliant funds; and
- A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;²⁵
 - Sanctions imposed against the Government of Sudan are revoked;²⁶
 - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;²⁷
 - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;²⁸
 - Sanctions imposed against the government of Iran are revoked;²⁹ or
 - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.³⁰
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.³¹ If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.³² Such condition is required to be updated semiannually.³³

²³ Section 215.473(4)(b), F.S.

²⁴ Section 215.473(4)(b)1.-5., F.S.

²⁵ Section 215.473(5)(a)1., F.S.

²⁶ Section 215.473(5)(a)2., F.S.

²⁷ Section 215.473(5)(a)3., F.S.

²⁸ Section 215.473(5)(b)1., F.S.

²⁹ Section 215.473(5)(b)2., F.S.

³⁰ Section 215.473(5)(b)3., F.S.

³¹ Section 215.473(7), F.S.

³² *Id.*

³³ *Id.*

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency³⁴ procurement of personal property and services.³⁵ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³⁶

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.³⁷ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.³⁸

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.³⁹

The DMS is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;⁴⁰ creating uniform agency procurement rules;⁴¹ implementing the online procurement program;⁴² and establishing state term contracts.⁴³ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure

³⁴ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

³⁵ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

³⁶ See ss. 287.012(6) and 287.057, F.S.

³⁷ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

³⁸ See s. 287.057(3)(e), F.S.

³⁹ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁴⁰ Sections 287.032 and 287.042, F.S.

⁴¹ Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

⁴² Section 287.057(22), F.S.

⁴³ Sections 287.042(2) and 287.056, F.S.

goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba⁴⁴ or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency⁴⁵ or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

- The scrutinized business operations⁴⁶ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

⁴⁴ See *Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp.*, 715 F.3d 1268 (11th Cir. 2013). The Eleventh Circuit Court of Appeals affirmed an injunction against enforcement of the “Cuba Amendment,” a 2012 Florida law (s. 287.135, F.S.) that banned companies with subsidiaries doing business with Cuba, from bidding on state or local contracts in Florida. The Court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President’s discretionary authority concerning federal policy with Cuba.

⁴⁵ Agency is defined in s. 287.012(1), F.S., as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.

⁴⁶ Section 215.473(1)(t), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.⁴⁷

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.⁴⁸ If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.⁴⁹ If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).⁵⁰ Also, a

⁴⁷ Section 287.135(5), F.S.

⁴⁸ Section 287.135(5)(a), F.S.

⁴⁹ *Id.*

⁵⁰ *Id.*

civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.⁵¹ The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false certification.⁵² A civil action to collect the penalties must commence within three years after the date the false certification is made.⁵³

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

III. Effect of Proposed Changes:

Section 1 creates s. 215.4725, F.S., entitled “Prohibited Investments by the State Board of Administration; companies that boycott Israel,” and defines certain terms. This section is effective upon becoming a law.

The section defines “boycott Israel” or “boycott of Israel” as refusing to deal, terminating business activities, or taking other actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than a business, investment or commercial reason. This definition does not apply to:

- Decisions made during course of a company’s ordinary business; or
- For other business, investment or commercial reasons.

Also, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of calls for a boycott of Israel, may be considered by the State Board of Administration (SBA) as evidence that a company is participating in a boycott of Israel.

The term “company” is defined as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, that exists for the purpose of making profit.

⁵¹ Section 287.135(5)(a)1., F.S.

⁵² Section 287.135(5)(a)2., F.S.

⁵³ Section 287.135(5)(b), F.S.

“Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

“Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the public fund owns shares or interests together with other investors not subject to this section or which are held in an index fund.

"Public fund" is defined as all funds, assets, trustee; and other designates under the State Board of Administration pursuant to Part I of ch. 121, F.S. This means only those assets of the Florida Retirement System (FRS) pension plan are impacted.

The term “scrutinized companies” is defined as companies that boycott Israel or engage in a boycott of Israel.

By August 1, 2016, the SBA is required to use its best efforts to identify all scrutinized companies that boycott Israel in which the SBA has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify scrutinized companies:

- Reviewing and relying, as appropriate in the SBA’s judgment, on publicly available information regarding companies that boycott Israel, such as nonprofit organizations, research firms, international organizations, and government entities;
- Contacting asset managers contracted by the SBA for information regarding companies that boycott Israel; and
- Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

By its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List (List). The SBA is required to update and make publicly available quarterly the List based on unfolding information from other sources, including publicly available information, asset managers contracted by SBA and other institutional investors.

The SBA must immediately determine companies on the List in which the SBA owns direct or indirect holdings.

This section requires the SBA to send written notice informing a company when it is identified as a scrutinized company and advising the company that it may become subject to investment prohibition by the SBA. Such notice must inform the company of the opportunity to clarify activities, evidence of boycott of Israel and encourage the company, within 90 days, to cease the boycott of Israel in order to avoid qualifying for investment prohibition by the SBA.

If, within 90 days after notification by the SBA, a company ceases a boycott of Israel, that company will be removed from the List, and the provisions of this bill shall cease to apply to that company unless such company resumes a boycott of Israel.

Further, this section prohibits the SBA from acquiring securities of companies on the List as direct holdings. Certain securities, however, are excluded from the prohibition of acquiring securities of companies on the List. These securities include the following:

- Indirect holdings;
- Securities that are not publicly traded. These are deemed to be indirect holdings;
- Alternative investment as defined by s. 215.4401, F.S.⁵⁴ These are deemed to be indirect holdings; and
- Exchange-traded funds.

For indirect holdings of the SBA, the SBA is required to submit letters to managers of investment funds which contain companies that boycott Israel requesting that such companies be removed from the fund or create a similar fund having indirect holdings devoid of companies that boycott Israel. If the investment manager creates a similar fund, the SBA is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The SBA is required to file a report with each member of the SBA, the President of the Florida Senate, and the Speaker of the Florida House of Representatives within 30 days after the List is created. Such report shall be made available to the public.

At each quarterly meeting, the SBA must file a report, which shall be made available to the public and to each member of the SBA, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- A description of any progress related to external managers of investment funds offering holdings devoid of companies that boycott Israel; and
- A list of all publicly traded securities held directly by the SBA.

The SBA is required to adopt and incorporate the obligations of this act into the SBA's investment policy statement as set forth in s. 215.475, F.S.⁵⁵

Notwithstanding any other provisions of the bill to the contrary, the SBA may cease the investment prohibitions contained in the bill in certain scrutinized companies if clear and

⁵⁴ Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

⁵⁵ Section 215.475, F.S., entitled 'Investment policy statement' provides:

(1) In making investments for the System Trust Fund pursuant to ss. [215.44-215.53](#), the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

convincing evidence shows the value of the assets under management of the SBA becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management of the SBA assuming no investment prohibitions for any company had occurred under the section. For cessation of these investment prohibitions, the SBA must submit a written report to the Board of Trustees, the President of the Florida Senate and the Speaker of the Florida House of Representatives in advance of the new investment, setting forth its justification supported by clear and convincing evidence. Such condition is required to be updated semiannually.

Section 2 amends and reenacts s. 287.135, F.S., regarding prohibition against contracting with scrutinized companies. This section is effective October 1, 2016.

Each state agency or local governmental entity is prohibited from contracting for goods and services of \$1 million or more if the company has been placed on the List.

Any contract with a state agency or local governmental entity for goods and services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that authorizes the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification regarding non-placement on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria;
- Has been placed on the Scrutinized Companies that Boycott Israel List;
- Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- Has been engaged in business operations in Cuba or Syria.

A state agency or local governmental entity is permitted to make a case-by-case exception to the prohibition for a company on the List if all of the following occur:

- The business operations were made before October 1, 2016;
- The business operations have not been expanded or renewed after October 1, 2016;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of \$1 million or more, the bill requires the company to certify that the company is not on the List.

Section 3 provides that the bill takes effect upon becoming a law except as expressly provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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:

CS/SB 86 has an indeterminate fiscal impact. Companies that choose to boycott Israel may not be eligible to contract with state and local governmental entities in Florida which may have an adverse effect. In addition, any investment instruments of those companies may not be held by the State Board of Administration (SBA) as an asset of the Florida Retirement System (FRS) pension plan which may also have an adverse effect.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. State agencies and local governments will not be permitted to contract with certain companies that boycott Israel in certain instances. This may eliminate companies that would otherwise have been the least expensive source for certain goods and services.

The SBA will not be permitted to hold certain investments relating to companies that boycott Israel. The financial impact of this limitation is indeterminate. In addition, according to the SBA, compliance to the requirement to identify those scrutinized

companies is estimated to be less than \$25,000 per year, which can be handled within existing resources.⁵⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.4725 of the Florida Statutes.

This bill amends section 287.135 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on October 6, 2015

CS/SB 86 differs from SB 86 in the following ways:

- Limits the newly scrutinized companies to those that boycott Israel rather than companies that boycott any member of the World Trade Organization or other nation with a trade agreement with the United States.
- Limits the State Board of Administration's obligations to new acquisitions of securities related to the scrutinized companies rather than divesting in current holdings relating those companies.
- Limits the application of the investment limitations to the assets of the Florida Retirement System pension plan rather than the pension plan and the investment plan.
- Limits the contractual restrictions to contracts worth \$1 million or more rather than a total potential value of less than \$10,000 or to contracts in which a business agrees to provide the goods or services at a cost at least 20 percent less than the next lowest bidder.

B. Amendments:

None.

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

⁵⁶ Based on telephone conversation with the SBA staff on October 14, 2015.

By the Committee on Governmental Oversight and Accountability;
and Senators Negron and Gaetz

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1 A bill to be entitled
2 An act relating to scrutinized companies; creating s.
3 215.4725, F.S.; providing definitions; requiring the
4 State Board of Administration to identify all
5 companies that are boycotting Israel or are engaged in
6 a boycott of Israel in which the public fund owns
7 direct or indirect holdings in; requiring the public
8 fund to create and maintain a scrutinized companies
9 list that names all such companies; requiring the
10 public fund to provide written notice to a company
11 that is identified as a scrutinized company;
12 specifying contents of the notice; specifying
13 circumstances under which a company may be removed
14 from the list; prohibiting the acquisition of certain
15 securities of scrutinized companies; prescribing
16 reporting requirements; requiring certain information
17 to be included in the investment policy statement;
18 authorizing the public fund to invest in certain
19 scrutinized companies if the value of all assets under
20 management by the public fund becomes equal to or less
21 than a specified amount; requiring the public fund to
22 provide a written report to the Board of Trustees of
23 the state board and the Legislature before such
24 investment occurs; specifying required contents of the
25 report; reenacting and amending s. 287.135, F.S.,
26 relating to the prohibition against contracting with
27 scrutinized companies; prohibiting a state agency or
28 local governmental entity from contracting for goods
29 and services that exceed a specified amount if the

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30 company has been placed on the Scrutinized Companies
31 that Boycott Israel List; requiring inclusion of a
32 contract provision that authorizes termination of a
33 contract if a company has been placed on the
34 Scrutinized Companies that Boycott Israel List;
35 providing exceptions; requiring certification upon
36 submission of a bid or proposal for a contract, or
37 before a company enters into or renews a contract,
38 with an agency or governmental entity that the
39 company; providing procedures upon determination that
40 a company has submitted a false certification;
41 providing for civil action; providing penalties;
42 providing attorney fees and costs; providing a statute
43 of repose; prohibiting a private right of action;
44 providing for preemption of conflicting ordinances and
45 rules; revising provisions relating to federal
46 preemption; providing effective dates.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 215.4725, Florida Statutes, is created
51 to read:

52 215.4725 Prohibited investments by the State Board of
53 Administration; companies that boycott Israel.—

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

55 (a) "Boycott Israel" or "boycott of Israel" means refusing
56 to deal, terminating business activities, or taking other
57 actions that are intended to penalize, inflict economic harm, or
58 otherwise limit commercial relations with Israel, or persons or

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59 entities doing business in Israel or in Israeli-controlled
 60 territories for reasons other than a business, investment, or
 61 commercial reason. The term does not apply to decisions made
 62 during the course of a company's ordinary business or for other
 63 business, investment or commercial reasons. A statement by a
 64 company that it is participating in a boycott of Israel, or that
 65 it has initiated a boycott in response to a request for a
 66 boycott of Israel or in compliance with, or in furtherance of,
 67 calls for a boycott of Israel, may be considered by the State
 68 Board of Administration to be evidence that a company is
 69 participating in a boycott of Israel.

70 (b) "Company" means a sole proprietorship, organization,
 71 association, corporation, partnership, joint venture, limited
 72 partnership, limited liability partnership, limited liability
 73 company, or other entity or business association, including all
 74 wholly owned subsidiaries, majority-owned subsidiaries, and
 75 parent companies, that exists for the purpose of making profit.

76 (c) "Direct holdings" in a company means all securities of
 77 that company that are held directly by the public fund or in an
 78 account or fund in which the public fund owns all shares or
 79 interests.

80 (d) "Indirect holdings" in a company means all securities
 81 of that company that are held in a commingled fund or other
 82 collective investment, such as a mutual fund, in which the
 83 public fund owns shares or interests, together with other
 84 investors not subject to this section or which are held in an
 85 index fund.

86 (e) "Public fund" means all funds, assets, trustee, and
 87 other designates under the State Board of Administration

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88 pursuant to part I of chapter 121.

89 (f) "Scrutinized companies" means companies that boycott
 90 Israel or engage in a boycott of Israel.

91 (2) IDENTIFICATION OF COMPANIES.—

92 (a) By August 1, 2016, the public fund shall make its best
 93 efforts to identify all scrutinized companies in which the
 94 public fund has direct or indirect holdings or could possibly
 95 have such holdings in the future. Such efforts include:

96 1. To the extent that the public fund finds it appropriate,
 97 reviewing and relying on publicly available information
 98 regarding companies that boycott Israel, including information
 99 provided by nonprofit organizations, research firms,
 100 international organizations, and government entities;

101 2. Contacting asset managers contracted by the public fund
 102 for information regarding companies that boycott Israel; or

103 3. Contacting other institutional investors that prohibit
 104 such investments or that have engaged with companies that
 105 boycott Israel.

106 (b) By the first meeting of the public fund following the
 107 identification of scrutinized companies in accordance with
 108 paragraph (a), the public fund shall compile and make available
 109 the "Scrutinized Companies that Boycott Israel List."

110 (c) The public fund shall update and make publicly
 111 available quarterly the Scrutinized Companies that Boycott
 112 Israel List based on evolving information from, among other
 113 sources, those listed in paragraph (a).

114 (3) REQUIRED ACTIONS.—The public fund shall adhere to the
 115 following procedures for assembling companies on the Scrutinized
 116 Companies that Boycott Israel List.

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117 (a) Engagement.—
 118 1. The public fund shall immediately determine the
 119 companies on the Scrutinized Companies that Boycott Israel List
 120 in which the public fund owns direct or indirect holdings.
 121 2. For each company newly identified under this paragraph
 122 after August 1, 2016, the public fund shall send a written
 123 notice informing the company of its scrutinized company status
 124 and that it may become subject to investment prohibition by the
 125 public fund. The notice must inform the company of the
 126 opportunity to clarify its activities regarding the boycott of
 127 Israel and encourage the company to cease the boycott of Israel
 128 within 90 days in order to avoid qualifying for investment
 129 prohibition.
 130 3. If, within 90 days after the public fund's first
 131 engagement with a company pursuant to this paragraph, the
 132 company ceases a boycott of Israel, the company shall be removed
 133 from the Scrutinized Companies that Boycott Israel List, and the
 134 provisions of this section shall cease to apply to that company
 135 unless that company resumes a boycott of Israel.
 136 (b) Prohibition.—The public fund may not acquire securities
 137 of companies on the Scrutinized Companies that Boycott Israel
 138 List, except as provided in paragraph (c) and subsection (6).
 139 (c) Excluded securities.—Notwithstanding the provisions of
 140 this section, paragraph (b) does not apply to:
 141 1. Indirect holdings. However, the public fund shall submit
 142 letters to the managers of such investment funds containing
 143 companies that boycott Israel requesting that they consider
 144 removing such companies from the fund or create a similar fund
 145 having indirect holdings devoid of such companies. If the

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146 manager creates a similar fund, the public fund shall replace
 147 all applicable investments with investments in the similar fund
 148 in an expedited timeframe consistent with prudent investing
 149 standards. For the purposes of this section, an alternative
 150 investment, as the term is defined in s. 215.4401, and
 151 securities that are not publicly traded are deemed to be
 152 indirect holdings.
 153 2. Exchange-traded funds.
 154 (4) REPORTING.—
 155 (a) The public fund shall file a report with each member of
 156 the Board of Trustees of the State Board of Administration, the
 157 President of the Senate, and the Speaker of the House of
 158 Representatives which includes the Scrutinized Companies that
 159 Boycott Israel List within 30 days after the list is created.
 160 This report shall be made available to the public.
 161 (b) At each quarterly meeting of the Board of Trustees
 162 thereafter, the public fund shall file a report, which shall be
 163 made available to the public and to each member of the Board of
 164 Trustees of the State Board of Administration, the President of
 165 the Senate, and the Speaker of the House of Representatives,
 166 which includes:
 167 1. A summary of correspondence with companies engaged by
 168 the public fund under subparagraph (3) (a)2.;
 169 2. All prohibited investments under paragraph (3) (b);
 170 3. Any progress made under paragraph (3) (c); and
 171 4. A list of all publicly traded securities held directly
 172 by the public fund.
 173 (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public
 174 fund's actions taken in compliance with this section, including

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175 all good faith determinations regarding companies as required by
 176 this act, shall be adopted and incorporated into the public
 177 fund's investment policy statement as provided in s. 215.475.

178 (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—
 179 Notwithstanding any other provision of this section, the public
 180 fund may invest in certain scrutinized companies if clear and
 181 convincing evidence shows that the value of all assets under
 182 management by the public fund becomes equal to or less than
 183 99.50 percent, or 50 basis points, of the hypothetical value of
 184 all assets under management by the public fund assuming no
 185 investment prohibition for any company had occurred under
 186 paragraph (3) (b). Cessation of the investment prohibition and
 187 any new investment in a scrutinized company is limited to the
 188 minimum steps necessary to avoid the contingency described in
 189 this subsection. For any cessation of the investment prohibition
 190 and new investment authorized by this subsection, the public
 191 fund shall provide a written report to each member of the Board
 192 of Trustees of the State Board of Administration, the President
 193 of the Senate, and the Speaker of the House of Representatives
 194 in advance of the new investment, updated semiannually
 195 thereafter as applicable, setting forth the reasons and
 196 justification, supported by clear and convincing evidence, for
 197 its decisions to cease the investment prohibition in scrutinized
 198 companies.

199 Section 2. Effective October 1, 2016, section 287.135,
 200 Florida Statutes, is reenacted and amended to read:

201 287.135 Prohibition against contracting with scrutinized
 202 companies.—

203 (1) In addition to the terms defined in ss. 287.012 and

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204 215.473, as used in this section, the term:

205 (a) "Awarding body" means, for purposes of state contracts,
 206 an agency or the department, and for purposes of local
 207 contracts, the governing body of the local governmental entity.

208 (b) "Business operations" means, for purposes specifically
 209 related to Cuba or Syria, engaging in commerce in any form in
 210 Cuba or Syria, including, but not limited to, acquiring,
 211 developing, maintaining, owning, selling, possessing, leasing,
 212 or operating equipment, facilities, personnel, products,
 213 services, personal property, real property, military equipment,
 214 or any other apparatus of business or commerce.

215 (c) "Local governmental entity" means a county,
 216 municipality, special district, or other political subdivision
 217 of the state.

218 (2) A company is ineligible to, and may not, bid on, submit
 219 a proposal for, or enter into or renew a contract with an agency
 220 or local governmental entity for goods or services of \$1 million
 221 or more if ~~that~~, at the time of bidding or submitting a proposal
 222 for a new contract or renewal of an existing contract, ~~the~~
 223 company:

224 (a) Is on the Scrutinized Companies that Boycott Israel
 225 List, created pursuant to s. 215.4725;

226 (b) Is on the Scrutinized Companies with Activities in
 227 Sudan List or the Scrutinized Companies with Activities in the
 228 Iran Petroleum Energy Sector List, created pursuant to s.
 229 215.473;~~7~~ or

230 (c) Is engaged in business operations in Cuba or Syria,~~is~~
 231 ineligible for, and may not bid on, submit a proposal for, or
 232 enter into or renew a contract with an agency or local

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233 ~~governmental entity for goods or services of \$1 million or more.~~

234 (3) ~~(a)~~ Any contract with an agency or local governmental
235 entity for goods or services of \$1 million or more entered into
236 or renewed on or after:

237 (a) July 1, 2011, through June 30, 2012, must contain a
238 provision that allows for the termination of such contract at
239 the option of the awarding body if the company is found to have
240 submitted a false certification as provided under subsection (5)
241 or been placed on the Scrutinized Companies with Activities in
242 Sudan List or the Scrutinized Companies with Activities in the
243 Iran Petroleum Energy Sector List.

244 (b) ~~Any contract with an agency or local governmental~~
245 ~~entity for goods or services of \$1 million or more entered into~~
246 ~~or renewed on or after July 1, 2012, through September 30, 2016,~~
247 must contain a provision that allows for the termination of such
248 contract at the option of the awarding body if the company is
249 found to have submitted a false certification as provided under
250 subsection (5), been placed on the Scrutinized Companies with
251 Activities in Sudan List or the Scrutinized Companies with
252 Activities in the Iran Petroleum Energy Sector List, or been
253 engaged in business operations in Cuba or Syria.

254 (c) October 1, 2016, must contain a provision that allows
255 for the termination of such contract at the option of the
256 awarding body if the company:

257 1. Is found to have submitted a false certification as
258 provided under subsection (5);

259 2. Has been placed on the Scrutinized Companies that
260 Boycott Israel List;

261 3. Has been placed on the Scrutinized Companies with

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262 Activities in Sudan List or the Scrutinized Companies with

263 Activities in the Iran Petroleum Energy Sector List; or

264 4. Has been engaged in business operations in Cuba or
265 Syria.

266 (4) Notwithstanding subsection (2) or subsection (3), an
267 agency or local governmental entity, on a case-by-case basis,
268 may permit a company on the Scrutinized Companies that Boycott
269 Israel List, the Scrutinized Companies with Activities in Sudan
270 List or the Scrutinized Companies with Activities in the Iran
271 Petroleum Energy Sector List, or a company with business
272 operations in Cuba or Syria, to be eligible for, bid on, submit
273 a proposal for, or enter into or renew a contract for goods or
274 services of \$1 million or more under the conditions set forth in
275 paragraph (a) or the conditions set forth in paragraph (b):

276 (a)1. With respect to a company on the Scrutinized
277 Companies with Activities in Sudan List or the Scrutinized
278 Companies with Activities in the Iran Petroleum Energy Sector
279 List, all of the following occur:

280 a. The scrutinized business operations were made before
281 July 1, 2011.

282 b. The scrutinized business operations have not been
283 expanded or renewed after July 1, 2011.

284 c. The agency or local governmental entity determines that
285 it is in the best interest of the state or local community to
286 contract with the company.

287 d. The company has adopted, has publicized, and is
288 implementing a formal plan to cease scrutinized business
289 operations and to refrain from engaging in any new scrutinized
290 business operations.

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291 2. With respect to a company engaged in business operations
292 in Cuba or Syria, all of the following occur:

293 a. The business operations were made before July 1, 2012.

294 b. The business operations have not been expanded or
295 renewed after July 1, 2012.

296 c. The agency or local governmental entity determines that
297 it is in the best interest of the state or local community to
298 contract with the company.

299 d. The company has adopted, has publicized, and is
300 implementing a formal plan to cease business operations and to
301 refrain from engaging in any new business operations.

302 3. With respect to a company on the Scrutinized Companies
303 that Boycott Israel List, all of the following occur:

304 a. The scrutinized business operations were made before
305 October 1, 2016.

306 b. The scrutinized business operations have not been
307 expanded or renewed after October 1, 2016.

308 c. The agency or local governmental entity determines that
309 it is in the best interest of the state or local community to
310 contract with the company.

311 d. The company has adopted, has publicized, and is
312 implementing a formal plan to cease scrutinized business
313 operations and to refrain from engaging in any new scrutinized
314 business operations.

315 (b) One of the following occurs:

316 1. The local governmental entity makes a public finding
317 that, absent such an exemption, the local governmental entity
318 would be unable to obtain the goods or services for which the
319 contract is offered.

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320 2. For a contract with an executive agency, the Governor
321 makes a public finding that, absent such an exemption, the
322 agency would be unable to obtain the goods or services for which
323 the contract is offered.

324 3. For a contract with an office of a state constitutional
325 officer other than the Governor, the state constitutional
326 officer makes a public finding that, absent such an exemption,
327 the office would be unable to obtain the goods or services for
328 which the contract is offered.

329 (5) At the time a company submits a bid or proposal for a
330 contract or before the company enters into or renews a contract
331 with an agency or governmental entity for goods or services of
332 \$1 million or more, the company must certify that the company is
333 not on the Scrutinized Companies that Boycott Israel List, the
334 Scrutinized Companies with Activities in Sudan List or the
335 Scrutinized Companies with Activities in the Iran Petroleum
336 Energy Sector List, or that it does not have business operations
337 in Cuba or Syria.

338 (a) If, after the agency or the local governmental entity
339 determines, using credible information available to the public,
340 that the company has submitted a false certification, the agency
341 or local governmental entity shall provide the company with
342 written notice of its determination. The company shall have 90
343 days following receipt of the notice to respond in writing and
344 to demonstrate that the determination of false certification was
345 made in error. If the company does not make such demonstration
346 within 90 days after receipt of the notice, the agency or the
347 local governmental entity shall bring a civil action against the
348 company. If a civil action is brought and the court determines

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349 that the company submitted a false certification, the company
 350 shall pay the penalty described in subparagraph 1. and all
 351 reasonable attorney fees and costs, including any costs for
 352 investigations that led to the finding of false certification.

353 1. A civil penalty equal to the greater of \$2 million or
 354 twice the amount of the contract for which the false
 355 certification was submitted shall be imposed.

356 2. The company is ineligible to bid on any contract with an
 357 agency or local governmental entity for 3 years after the date
 358 the agency or local governmental entity determined that the
 359 company submitted a false certification.

360 (b) A civil action to collect the penalties described in
 361 paragraph (a) must commence within 3 years after the date the
 362 false certification is submitted.

363 (6) Only the agency or local governmental entity that is a
 364 party to the contract may cause a civil action to be brought
 365 under this section. This section does not create or authorize a
 366 private right of action or enforcement of the penalties provided
 367 in this section. An unsuccessful bidder, or any other person
 368 other than the agency or local governmental entity, may not
 369 protest the award of a contract or contract renewal on the basis
 370 of a false certification.

371 (7) This section preempts any ordinance or rule of any
 372 agency or local governmental entity involving public contracts
 373 for goods or services of \$1 million or more with a company
 374 engaged in scrutinized business operations.

375 (8) The contracting prohibitions in this section applicable
 376 to companies on the Scrutinized Companies with Activities in
 377 Sudan List or the Scrutinized Companies with Activities in the

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378 Iran Petroleum Energy Sector List or to companies engaged in
 379 business operations in Cuba or Syria become ~~This section becomes~~
 380 inoperative on the date that federal law ceases to authorize the
 381 states to adopt and enforce such ~~the~~ contracting prohibitions ~~of~~
 382 ~~the type provided for in this section.~~

383 Section 3. Except as otherwise expressly provided in this
 384 act, this act shall take effect upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

10-20-2015

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

86

Meeting Date

Bill Number (if applicable)

Topic Scrutinized Companies

Amendment Barcode (if applicable)

Name Derek Silver

Job Title Student

Address 750 A West St Augustine St.

Phone 407-866-1627

Street

Tallahassee FL 32304

City

State

Zip

Email DerekPjta@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-2015

Meeting Date

86

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yaho.com

Speaking: For Against Information

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

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.

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON
32nd District

October 6, 2015

Alan Hays, Chair
Appropriations Subcommittee on General Government
201 The Capitol
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 86

Dear Chairman Hays:

I would like to request Senate Bill 86 relating to scrutinized companies be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joe Negron".

Joe Negron
State Senator
District 32

JN/hd

c: Jamie DeLoach, Staff Director

REPLY TO:

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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations Subcommittee on General Government

BILL: SB 92

INTRODUCER: Senator Evers

SUBJECT: Contaminated Sites

DATE: October 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 92 amends ss. 376.30701 and 376.81, F.S., to provide clarifying language and allow for additional considerations in the use of risk-based corrective action (RBCA) in contamination cleanup and brownfield site rehabilitation. It authorizes the Department of Environmental Protection (department) to use alternative cleanup target levels without requiring institutional controls in remediating contaminated sites under s. 376.30701, F.S. The bill amends ss. 376.301, F.S. and 376.79, F.S., to provide definitions for “background concentration” and “long-term natural attenuation.” The bill also makes conforming changes to correct cross references related to RBCA.

The bill has a positive, indeterminate fiscal impact to the department based on the reduced costs to remediate contaminated sites and brownfields that are funded by a state cost-share agreement. The department will have nominal costs associated with rulemaking.

The bill is effective July 1, 2016.

II. Present Situation:

Risk-Based Corrective Action

Risk-based corrective action (RBCA) (pronounced “Rebecca”) is a decision-making process used to assess and respond to incidents of contamination. The American Society of Materials and Testing established RBCA in 1994 based on guidance from the U.S. Environmental Protection Agency (EPA), which directs states to consider the current and prospective use of groundwater and the relative risk to human health and the environment when remediating contaminated sites.¹

¹ EPA, Use of Risk-Based Decision-Making in UST Corrective Action Programs, OSWER Directive 9610.17 1 (1995) <http://www2.epa.gov/risk/human-health-risk-assessment> (last visited Oct 1, 2015).

The RBCA process uses a tiered approach that couples site assessment and response actions with human health, public safety, and environmental risk assessment to determine the extent and urgency of corrective action used in remediating contaminated sites. Alternative cleanup target levels,² institutional³ and engineering controls,⁴ and remediation by natural attenuation⁵ are RBCA strategies used by the department on a case-by-case basis that allows the use of cost-effective remediation measures in lieu of conventional cleanup technologies. RBCA is implemented in all 50 states for the remediation of contaminated sites.⁶

Section 376.30701, F.S., was created in 2003 to apply RBCA principles to all contaminated sites (referred to as “Global RBCA”) resulting from a discharge of pollutants when site rehabilitation is required.⁷ The department is required to develop a site rehabilitation program by rule that use RBCA concepts already developed for the petroleum cleanup, brownfield, and dry cleaning programs. Specifically, the law requires the department to:

- Consider current exposure and potential risk of exposure to humans and the environment;
- Establish the point of compliance at the source of the contamination;
- Ensure that site-specific cleanup goals are that all contaminated sites being cleaned ultimately achieve the applicable cleanup target levels;
- Allow the use of institutional or engineering controls at contaminated sites;
- Consider the additive effects of contaminants, including synergistic and antagonistic effects;
- Provide for the department to issue a “No Further Action” order;
- Establish appropriate cleanup target levels for soils;
- Allow for alternative cleanup target levels in conjunction with institutional and engineering controls; and
- Consider the additive effects of contaminants.

The department adopted Florida Administrative Code Rule 62-780, in 2005 to implement these provisions and provide the procedures necessary to implement site rehabilitation for all sites using RBCA criteria. RBCA criteria are administered in conjunction with Florida Administrative Code Rule 62-777, which provides the default groundwater, surface water, and soil cleanup target levels, as well as the natural attenuation default concentrations for groundwater, in order to determine the appropriate cleanup target levels for a contaminated site.

² Section 376.301(7), F.S., defines “cleanup target level” as “the concentration for each contaminant identified by an applicable analytical test method, in the medium of concern, at which a site rehabilitation program is deemed complete.”

³ Section 376.301(21), F.S., defines “institutional control” as “the restriction on use or access to a site to eliminate or minimize exposure to petroleum products’ chemicals of concern, dry cleaning solvents, or other contaminants. Such restrictions may include, but are not limited to, deed restrictions, restrictive covenants, or conservation easements.”

⁴ Section 376.301(16), F.S., defines “engineering controls” as “modifications to a site to reduce or eliminate the potential for exposure to petroleum products’ chemicals of concern, dry cleaning solvents, or other contaminants. Such modifications may include, but are not limited to, physical or hydraulic control measures, capping, point of use treatments, or slurry walls.”

⁵ Section 376.301(24), F.S., defines “natural attenuation” as a “verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.”

⁶ EPA, *supra* note 1, at 2-3.

⁷ Ch. 2003-173, s. 1, Laws of Fla.

No Further Action

RBCA principles provide a three-tiered approach to close contaminated sites and issue a No Further Action (NFA) order. The first tier is the Risk Management Option Level I, which grants an NFA without institutional controls or engineering controls if the following conditions are met:

- Free product is not present and there is no risk of fire or explosion;
- Contaminated soil is not present in the unsaturated zone;
- Contaminated groundwater is not present;
- Contaminated surface water is not present; and
- Soil data indicates the contaminants do not exceed the default cleanup target levels or background concentrations.⁸

The second tier is the Risk Management Option Level II, which grants an NFA with institutional controls and engineering controls, if appropriate, if the controls are protective of human health, public safety, and the environment and agreed to by the property owner and:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion;
- Alternative soil cleanup target levels have been established by the person responsible for the site rehabilitation and certain criteria are met for soil in the unsaturated zone; and
- Alternative groundwater cleanup target levels have been established by the person responsible for the site rehabilitation depending on current and projects use of groundwater near the site and certain criteria are met.⁹

The third tier is the Risk Management Option Level III, which grants an NFA with institutional controls and engineering controls if the controls are protective of human health, public safety, and the environment and agreed to by the property owner and:

- Free product is not present or free product removal is not feasible and there is no risk of fire or explosion;
- Alternative soil contamination levels have been established by the person responsible for the site rehabilitation and certain criteria are met for soil in the unsaturated zone; and
- Alternative groundwater contamination levels have been established by the person responsible for the site rehabilitation depending on the current and projected use of groundwater near the site and certain criteria are met.¹⁰

Alternative Cleanup Target Levels

Section 376.30701(2)(g)3., F.S., authorizes the department to approve alternative cleanup target levels in conjunction with institutional and engineering controls. Alternative cleanup target levels are established using site specific data, modeling results, risk assessment studies, toxicity assessments, exposure assessments, and any other relevant public health information. The department may approve alternative cleanup target levels once the responsible party has demonstrated that human health, public safety, and the environment are protected based on these

⁸ Fla. Admin. Code R. 62-780.680(1), (2014).

⁹ Fla. Admin. Code R. 62-780.680(2), (2014).

¹⁰ Fla. Admin. Codes R. 62-780.680(3) (2014) *See also* EPA, Human Health Risk Assessment (2015), <http://www2.epa.gov/risk/human-health-risk-assessment> (last visited Mar. 27, 2015).

factors. The law specifies that alternative cleanup target levels may only be established on a site specific basis under careful evaluation by the department.¹¹

Natural Attenuation

Florida Administrative Code Rule 62-780.690 provides for natural attenuation depending on the individual site characteristics if human health, public safety, and the environment are protected. “Natural attenuation” is defined as, “a verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. Natural attenuation processes may include the following: sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.”¹² The criteria to allow for natural attenuation monitoring are:

- Free product is not present or free product removal is not technology feasible and there is no risk of fire or explosion;
- Contaminated soil is not present in the unsaturated zone;
- Contaminants present in the groundwater above background concentrations or applicable cleanup target levels are not migrating beyond the temporary compliance point or vertically;
- The physical, chemical, and biological characteristics of each contaminant and its transformation product are conducive to natural attenuation;
- The available data shows an overall decrease in contamination; and
- One of the following are met:
 - The site is expected to achieve NFA criteria in five years or less, background concentrations or the applicable cleanup target levels are not exceeded at the temporary point of compliance, and contamination concentrations do not exceed certain criteria;¹³ or
 - Appropriateness of natural attenuation is demonstrated by:
 - A technical evaluation of groundwater and soil characteristics that confirms the contaminants have the capacity to degrade under site-specific conditions;
 - A scientific evaluation of the plume migration, the estimate of the annual reduction in contaminant concentrations in monitoring wells, and an estimate of the time required to achieve NFA status; and
 - A life-cycle cost analysis of remedial alternatives.

Brownfields Redevelopment Act

The term “brownfield” was originally coined in the 1970s and referred to any previously developed property, regardless of any contamination issues. The term as it is currently used is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”¹⁴ In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for

¹¹ Section 376.30701(2)(g)3., F.S.

¹² Section 376.301(24), F.S.

¹³ Fla. Admin. Codes R. 62-777

¹⁴ Robert A. Jones and William F. Welsh, Michigan Brownfield Redevelopment Innovation: Two Decades of Success 2 (Sept. 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited Oct. 1, 2015).

redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.¹⁵

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).¹⁶ The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.¹⁷ The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.¹⁸

III. Effect of Proposed Changes:

Sections 1 and 3 amend ss. 376.301 and 376.79, F.S., related to contaminated sites and the Brownfield Program, respectively, to define “background concentration” as “the concentration of contaminants naturally occurring or resulting from the anthropogenic [(manmade)] impacts unrelated to the discharge of pollutants or hazardous substances at a contaminated site undergoing site rehabilitation.” The department may not require site rehabilitation to achieve a cleanup level that is more stringent than the site-specific background concentration for that contaminant.

The bill defines “long-term natural attenuation” as “natural attenuation approved by the department as a site rehabilitation program task for a period of more than five years.” In current law, “natural attenuation” means a “verifiable approach to site rehabilitation that allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil. . . .”¹⁹ The department will be required to adopt rules that include using long-term natural attenuation as a technique for site rehabilitation.

Sections 2 and 4 amend ss. 376.30701 and 376.81 F.S., related to contaminated sites and the Brownfield Program, respectively, to require the department to establish rules for the use of long-term natural attenuation, which will allow contaminated sites that are currently in natural attenuation to remain in natural attenuation longer than five years.

The bill directs the department to consider interactive, rather than additive effects of contaminants, and clarifies that additive, synergistic, and antagonistic effects should be considered equally when determining what constitutes a rehabilitation program task or completion of a site rehabilitation program task or site rehabilitation program.

The bill allows the department to establish alternative cleanup target levels based on the site-specific background concentration for a particular contaminant.

¹⁵ The Florida Brownfields Association, *Brownfields 101 2*, available at <http://c.yimcdn.com/sites/www.floridabrownfields.org/resource/resmgr/imported/Brownfields101.pdf> (last visited Oct. 1, 2015).

¹⁶ Ch. 97-173, s. 1, Laws of Fla.

¹⁷ DEP, *Florida Brownfields Redevelopment Act-1998 Annual Report 1 (1998)*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited Oct. 1, 2015).

¹⁸ Section 376.82, F.S.

¹⁹ Sections 376.301(24) and 376.79(12), F.S.

The department is required to base cleanup target levels for contaminants on the more protective of the groundwater or surface water standards, as established by rule. The bill exempts cleanup target levels from being based on these standards if it is shown that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria.

In establishing alternative cleanup target levels for soil and groundwater, any relevant data and information, risk assessment modeling results, and results from probabilistic risk assessment modeling may be used. Probabilistic risk assessment is a risk assessment that yields a probability distribution for risk, generally by assigning a probability distribution to represent variability or uncertainty in one or more inputs to the risk equation.²⁰ The bill allows the department to consider alternative cleanup target levels based on comprehensive assessments and information.

Section 2 also amends s. 376.30701(2)(g)3., F.S., to allow the use of alternative cleanup target levels that do not require institutional controls if:

- The only cleanup target levels exceeded are the groundwater cleanup target levels derived from nuisance, organoleptic (meaning something that a person can sense, e.g., smell, taste, see), or aesthetic factors;
- Concentrations of all contaminants meet state water quality standards or minimum criteria, based on the protection of human health, public safety, and the environment;
- All of the established groundwater cleanup target levels are met at the property boundary;
- The responsible party has demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater cleanup target levels established as state water quality standards;
- The property has access to and is using an offsite water supply, and an unplugged private well is not used for domestic purposes; and
- The real property owner does not object to the NFA proposal submitted to the department or to the local pollution control program.

Sections 5, 6, and 7 amend ss. 196.1995, 287.0595, and 288.1175, F.S., respectively, to correct cross references related to the department's Brownfields program.

Section 8 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ EPA, Risk Assessment Guidance for Superfund (RAGS) Volume III - Part A: Process for Conducting Probabilistic Risk Assessment at 1-3 (December 2001), available at <http://www.epa.gov/oswer/riskassessment/rags3adt/> (last visited Oct. 4, 2015).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 92 provides an indeterminate positive fiscal impact to those financially responsible for the cleanup of contaminated site and brownfields.

C. Government Sector Impact:

The department will incur nominal, non-recurring costs associated with rulemaking to amend Florida Administrative Code Rule 62-780. These costs can be absorbed within existing resources.

The department will experience a positive, indeterminate fiscal impact as the costs to remediate contaminated sites and brownfields that are funded by a state cost-share agreement are reduced.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted by the department, except for some of the proposed definition changes in section 1 of the bill that are more broadly applicable, the proposed changes apply primarily to waste cleanup sites and brownfield cleanup sites. The proposed changes would not modify similar wording for petroleum discharges and dry cleaning facilities. The department recommends that proposed changes also be applied to other RBCA programs.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.301, 376.30701, 376.79, and 376.81.

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 Evers

2-00112-16

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1 A bill to be entitled
 2 An act relating to contaminated sites; amending s.
 3 376.301, F.S.; defining the terms "background
 4 concentration" and "long-term natural attenuation";
 5 amending s. 376.30701, F.S.; requiring the Department
 6 of Environmental Protection to include protocols for
 7 the use of long-term natural attenuation where site
 8 conditions warrant; requiring specified interactive
 9 effects of contaminants to be considered as cleanup
 10 criteria; revising how cleanup target levels are
 11 applied where surface waters are exposed to
 12 contaminated groundwater; authorizing the use of
 13 relevant data and information when assessing cleanup
 14 target levels; providing that institutional controls
 15 are not required under certain circumstances if
 16 alternative cleanup target levels are used; amending
 17 s. 376.79, F.S.; defining the terms "background
 18 concentration" and "long-term natural attenuation";
 19 amending s. 376.81, F.S.; providing additional
 20 contamination cleanup criteria for brownfield sites
 21 and brownfield areas; amending ss. 196.1995, 287.0595,
 22 and 288.1175, F.S.; conforming cross-references;
 23 providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Present subsections (4) through (22) of section
 28 376.301, Florida Statutes, are redesignated as subsections (5)
 29 through (23), respectively, present subsections (23) through

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30 (48) of that section are redesignated as subsections (25)
 31 through (50), respectively, and new subsections (4) and (24) are
 32 added to that section, to read:
 33 376.301 Definitions of terms used in ss. 376.30-376.317,
 34 376.70, and 376.75.—When used in ss. 376.30-376.317, 376.70, and
 35 376.75, unless the context clearly requires otherwise, the term:
 36 (4) "Background concentration" means the concentration of
 37 contaminants naturally occurring or resulting from anthropogenic
 38 impacts unrelated to the discharge of pollutants or hazardous
 39 substances at a contaminated site undergoing site
 40 rehabilitation.
 41 (24) "Long-term natural attenuation" means natural
 42 attenuation approved by the department as a site rehabilitation
 43 program task for a period of more than 5 years.
 44 Section 2. Subsection (2) of section 376.30701, Florida
 45 Statutes, is amended to read:
 46 376.30701 Application of risk-based corrective action
 47 principles to contaminated sites; applicability; legislative
 48 intent; rulemaking authority; contamination cleanup criteria;
 49 limitations; reopeners.—
 50 (2) INTENT; RULEMAKING AUTHORITY; CLEANUP CRITERIA.—It is
 51 the intent of the Legislature to protect the health of all
 52 people under actual circumstances of exposure. By July 1, 2004,
 53 the secretary of the department shall establish criteria by rule
 54 for the purpose of determining, on a site-specific basis, the
 55 rehabilitation program tasks that comprise a site rehabilitation
 56 program, including a voluntary site rehabilitation program, and
 57 the level at which a rehabilitation program task and a site
 58 rehabilitation program may be deemed completed. In establishing

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59 these rules, the department shall apply, to the maximum extent
 60 feasible, a risk-based corrective action process to achieve
 61 protection of human health and safety and the environment in a
 62 cost-effective manner based on the principles set forth in this
 63 subsection. These rules shall prescribe a phased risk-based
 64 corrective action process that is iterative and that tailors
 65 site rehabilitation tasks to site-specific conditions and risks.
 66 The department and the person responsible for site
 67 rehabilitation are encouraged to establish decision points at
 68 which risk management decisions will be made. The department
 69 shall provide an early decision, when requested, regarding
 70 applicable exposure factors and a risk management approach based
 71 on the current and future land use at the site. These rules must
 72 ~~shall also~~ include protocols for the use of natural attenuation,
 73 including long-term natural attenuation where site conditions
 74 warrant, the use of institutional and engineering controls, and
 75 the issuance of "No Further Action" orders. The criteria for
 76 determining what constitutes a rehabilitation program task or
 77 completion of a site rehabilitation program task or site
 78 rehabilitation program, including a voluntary site
 79 rehabilitation program, must:

80 (a) Consider the current exposure and potential risk of
 81 exposure to humans and the environment, including multiple
 82 pathways of exposure. The physical, chemical, and biological
 83 characteristics of each contaminant must be considered in order
 84 to determine the feasibility of a risk-based corrective action
 85 assessment.

86 (b) Establish the point of compliance at the source of the
 87 contamination. However, the department may ~~is authorized to~~

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88 temporarily move the point of compliance to the boundary of the
 89 property, or to the edge of the plume when the plume is within
 90 the property boundary, while cleanup, including cleanup through
 91 natural attenuation processes in conjunction with appropriate
 92 monitoring, is proceeding. The department ~~may also be~~
 93 ~~authorized~~, pursuant to criteria provided in this section, ~~to~~
 94 temporarily extend the point of compliance beyond the property
 95 boundary with appropriate monitoring, if such extension is
 96 needed to facilitate natural attenuation or to address the
 97 current conditions of the plume, provided human health, public
 98 safety, and the environment are protected. When temporarily
 99 extending the point of compliance beyond the property boundary,
 100 it cannot be extended further than the lateral extent of the
 101 plume, if known, at the time of execution of a cleanup
 102 agreement, if required, or the lateral extent of the plume as
 103 defined at the time of site assessment. Temporary extension of
 104 the point of compliance beyond the property boundary, as
 105 provided in this paragraph, must include actual notice by the
 106 person responsible for site rehabilitation to local governments
 107 and the owners of any property into which the point of
 108 compliance is allowed to extend and constructive notice to
 109 residents and business tenants of the property into which the
 110 point of compliance is allowed to extend. Persons receiving
 111 notice pursuant to this paragraph shall have the opportunity to
 112 comment within 30 days after receipt of the notice. Additional
 113 notice concerning the status of natural attenuation processes
 114 shall be similarly provided to persons receiving notice pursuant
 115 to this paragraph every 5 years.

116 (c) Ensure that the site-specific cleanup goal is that all

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117 contaminated sites being cleaned up pursuant to this section
 118 ultimately achieve the applicable cleanup target levels provided
 119 in this subsection. In the circumstances provided in this
 120 subsection, and after constructive notice and opportunity to
 121 comment within 30 days after receipt of the notice to local
 122 government, owners of any property into which the point of
 123 compliance is allowed to extend, and residents of any property
 124 into which the point of compliance is allowed to extend, the
 125 department may allow concentrations of contaminants to
 126 temporarily exceed the applicable cleanup target levels while
 127 cleanup, including cleanup through natural attenuation processes
 128 in conjunction with appropriate monitoring, is proceeding, if
 129 human health, public safety, and the environment are protected.

130 (d) Allow the use of institutional or engineering controls
 131 at contaminated sites being cleaned up pursuant to this section,
 132 where appropriate, to eliminate or control the potential
 133 exposure to contaminants of humans or the environment. The use
 134 of controls must be preapproved by the department and only after
 135 constructive notice and opportunity to comment within 30 days
 136 after receipt of notice is provided to local governments, owners
 137 of any property into which the point of compliance is allowed to
 138 extend, and residents on any property into which the point of
 139 compliance is allowed to extend. When institutional or
 140 engineering controls are implemented to control exposure, the
 141 removal of the controls must have prior department approval and
 142 must be accompanied by the resumption of active cleanup, or
 143 other approved controls, unless cleanup target levels under this
 144 section have been achieved.

145 (e) Consider the interactive additive effects of

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146 contaminants, including additive, synergistic, and antagonistic
 147 effects. ~~The synergistic and antagonistic effects shall also be~~
 148 ~~considered when the scientific data become available.~~

149 (f) Take into consideration individual site
 150 characteristics, which shall include, but not be limited to, the
 151 current and projected use of the affected groundwater and
 152 surface water in the vicinity of the site, current and projected
 153 land uses of the area affected by the contamination, the exposed
 154 population, the degree and extent of contamination, the rate of
 155 contaminant migration, the apparent or potential rate of
 156 contaminant degradation through natural attenuation processes,
 157 the location of the plume, and the potential for further
 158 migration in relation to site property boundaries.

159 (g) Apply state water quality standards as follows:

160 1. Cleanup target levels for each contaminant found in
 161 groundwater shall be the applicable state water quality
 162 standards. Where such standards do not exist, the cleanup target
 163 levels for groundwater shall be based on the minimum criteria
 164 specified in department rule. The department shall apply the
 165 following, as appropriate, in establishing the applicable
 166 cleanup target levels: calculations using a lifetime cancer risk
 167 level of 1.0E-6; a hazard index of 1 or less; the best
 168 achievable detection limit; and nuisance, organoleptic, and
 169 aesthetic considerations. However, the department ~~may shall~~ not
 170 require site rehabilitation to achieve a cleanup target level
 171 for any individual contaminant that is more stringent than the
 172 site-specific, ~~naturally-occurring~~ background concentration for
 173 that contaminant.

174 2. Where surface waters are exposed to contaminated

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175 groundwater, the cleanup target levels for the contaminants must
 176 ~~shall~~ be based on the more protective of the groundwater or
 177 surface water standards as established by department rule,
 178 unless it has been demonstrated that the contaminants do not
 179 cause or contribute to the exceedance of applicable surface
 180 water quality criteria. In such circumstance, the point of
 181 measuring compliance with the surface water standards shall be
 182 in the groundwater immediately adjacent to the surface water
 183 body.

184 3. Using risk-based corrective action principles, the
 185 department shall approve alternative cleanup target levels in
 186 conjunction with institutional and engineering controls, if
 187 needed, based upon an applicant's demonstration, using site-
 188 specific or other relevant data and information, risk assessment
 189 modeling results, including results from probabilistic risk
 190 assessment modeling, risk assessment studies, risk reduction
 191 techniques, or a combination thereof, that human health, public
 192 safety, and the environment are protected to the same degree as
 193 provided in subparagraphs 1. and 2. Where a state water quality
 194 standard is applicable, a deviation may not result in the
 195 application of cleanup target levels more stringent than the
 196 standard. In determining whether it is appropriate to establish
 197 alternative cleanup target levels at a site, the department must
 198 consider the effectiveness of source removal, if any, that has
 199 been completed at the site and the practical likelihood of the
 200 use of low yield or poor quality groundwater, the use of
 201 groundwater near marine surface water bodies, the current and
 202 projected use of the affected groundwater in the vicinity of the
 203 site, or the use of groundwater in the immediate vicinity of the

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204 contaminated area, where it has been demonstrated that the
 205 groundwater contamination is not migrating away from such
 206 localized source, provided human health, public safety, and the
 207 environment are protected. Groundwater resource protection
 208 remains the ultimate goal of cleanup, particularly in light of
 209 the state's continued growth and consequent demands for drinking
 210 water resources. The Legislature recognizes the need for a
 211 protective yet flexible cleanup approach that risk-based
 212 corrective action provides. Only where it is appropriate on a
 213 site-specific basis, using the criteria in this paragraph and
 214 careful evaluation by the department, shall proposed alternative
 215 cleanup target levels be approved. If alternative cleanup target
 216 levels are used, institutional controls are not required if:

217 a. The only cleanup target levels exceeded are the
 218 groundwater cleanup target levels derived from nuisance,
 219 organoleptic, or aesthetic considerations;

220 b. Concentrations of all contaminants meet the state water
 221 quality standards or the minimum criteria, based on the
 222 protection of human health, public safety, and the environment,
 223 as provided in subparagraph 1.;

224 c. All of the groundwater cleanup target levels established
 225 pursuant to subparagraph 1. are met at the property boundary;

226 d. The person responsible for site rehabilitation has
 227 demonstrated that the contaminants will not migrate beyond the
 228 property boundary at concentrations that exceed the groundwater
 229 cleanup target levels established pursuant to subparagraph 1.;

230 e. The property has access to and is using an offsite water
 231 supply, and an unplugged private well is not used for domestic
 232 purposes; and

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233 f. The real property owner does not object to the "No
 234 Further Action" proposal to the department or the local
 235 pollution control program.

236 (h) Provide for the department to issue a "No Further
 237 Action" order, with conditions, including, but not limited to,
 238 the use of institutional or engineering controls where
 239 appropriate, when alternative cleanup target levels established
 240 pursuant to subparagraph (g)3. have been achieved or when the
 241 person responsible for site rehabilitation can demonstrate that
 242 the cleanup target level is unachievable with the use of
 243 available technologies. Before ~~Prior to~~ issuing such an order,
 244 the department shall consider the feasibility of an alternative
 245 site rehabilitation technology at the contaminated site.

246 (i) Establish appropriate cleanup target levels for soils.
 247 Although there are existing state water quality standards, there
 248 are no existing state soil quality standards. The Legislature
 249 does not intend, through the adoption of this section, to create
 250 such soil quality standards. The specific rulemaking authority
 251 granted pursuant to this section merely authorizes the
 252 department to establish appropriate soil cleanup target levels.
 253 These soil cleanup target levels shall be applicable at sites
 254 only after a determination as to legal responsibility for site
 255 rehabilitation has been made pursuant to other provisions of
 256 this chapter or chapter 403.

257 1. In establishing soil cleanup target levels for human
 258 exposure to each contaminant found in soils from the land
 259 surface to 2 feet below land surface, the department shall apply
 260 the following, as appropriate: calculations using a lifetime
 261 cancer risk level of 1.0E-6; a hazard index of 1 or less; and

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262 the best achievable detection limit. However, the department may
 263 ~~shall~~ not require site rehabilitation to achieve a cleanup
 264 target level for an individual contaminant that is more
 265 stringent than the site-specific, ~~naturally occurring~~ background
 266 concentration for that contaminant. Institutional controls or
 267 other methods shall be used to prevent human exposure to
 268 contaminated soils more than 2 feet below the land surface. Any
 269 removal of such institutional controls shall require such
 270 contaminated soils to be remediated.

271 2. Leachability-based soil cleanup target levels shall be
 272 based on protection of the groundwater cleanup target levels or
 273 the alternate cleanup target levels for groundwater established
 274 pursuant to this paragraph, as appropriate. Source removal and
 275 other cost-effective alternatives that are technologically
 276 feasible shall be considered in achieving the leachability soil
 277 cleanup target levels established by the department. The
 278 leachability goals are ~~shall~~ not be applicable if the department
 279 determines, based upon individual site characteristics, and in
 280 conjunction with institutional and engineering controls, if
 281 needed, that contaminants will not leach into the groundwater at
 282 levels that pose a threat to human health, public safety, and
 283 the environment.

284 3. Using risk-based corrective action principles, the
 285 department shall approve alternative cleanup target levels in
 286 conjunction with institutional and engineering controls, if
 287 needed, based upon an applicant's demonstration, using site-
 288 specific or other relevant data and information, risk assessment
 289 modeling results, including results from probabilistic risk
 290 assessment modeling, risk assessment studies, risk reduction

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291 techniques, or a combination thereof, that human health, public
292 safety, and the environment are protected to the same degree as
293 provided in subparagraphs 1. and 2.

294

295 The department shall require source removal as a risk reduction
296 measure if warranted and cost-effective. Once source removal at
297 a site is complete, the department shall reevaluate the site to
298 determine the degree of active cleanup needed to continue.
299 Further, the department shall determine if the reevaluated site
300 qualifies for monitoring only or if no further action is
301 required to rehabilitate the site. If additional site
302 rehabilitation is necessary to reach "No Further Action" status,
303 the department is encouraged to utilize natural attenuation
304 monitoring, including long-term natural attenuation and
305 monitoring, where site conditions warrant.

306 Section 3. Present subsections (3) through (11) of section
307 376.79, Florida Statutes, are redesignated as subsections (4)
308 through (12), respectively, present subsections (12) through
309 (19) are redesignated as subsections (14) through (21),
310 respectively, and new subsections (3) and (13) are added to that
311 section, to read:

312 376.79 Definitions relating to Brownfields Redevelopment
313 Act.—As used in ss. 376.77-376.85, the term:

314 (3) "Background concentration" means the concentration of
315 contaminants naturally occurring or resulting from anthropogenic
316 impacts unrelated to the discharge of pollutants or hazardous
317 substances at a contaminated site undergoing site
318 rehabilitation.

319 (13) "Long-term natural attenuation" means natural

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320 attenuation approved by the department as a site rehabilitation
321 program task for a period of more than 5 years.

322 Section 4. Section 376.81, Florida Statutes, is amended to
323 read:

324 376.81 Brownfield site and brownfield areas contamination
325 cleanup criteria.—

326 (1) It is the intent of the Legislature to protect the
327 health of all people under actual circumstances of exposure. By
328 July 1, 2001, the secretary of the department shall establish
329 criteria by rule for the purpose of determining, on a site-
330 specific basis, the rehabilitation program tasks that comprise a
331 site rehabilitation program and the level at which a
332 rehabilitation program task and a site rehabilitation program
333 may be deemed completed. In establishing the rule, the
334 department shall apply, to the maximum extent feasible, a risk-
335 based corrective action process to achieve protection of human
336 health and safety and the environment in a cost-effective manner
337 based on the principles set forth in this subsection. The rule
338 must prescribe a phased risk-based corrective action process
339 that is iterative and that tailors site rehabilitation tasks to
340 site-specific conditions and risks. The department and the
341 person responsible for brownfield site rehabilitation are
342 encouraged to establish decision points at which risk management
343 decisions will be made. The department shall provide an early
344 decision, when requested, regarding applicable exposure factors
345 and a risk management approach based on the current and future
346 land use at the site. The rule ~~must shall also~~ include protocols
347 for the use of natural attenuation, including long-term natural
348 attenuation where site conditions warrant, the use of

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349 institutional and engineering controls, and the issuance of "no
350 further action" letters. The criteria for determining what
351 constitutes a rehabilitation program task or completion of a
352 site rehabilitation program task or site rehabilitation program
353 must:

354 (a) Consider the current exposure and potential risk of
355 exposure to humans and the environment, including multiple
356 pathways of exposure. The physical, chemical, and biological
357 characteristics of each contaminant must be considered in order
358 to determine the feasibility of risk-based corrective action
359 assessment.

360 (b) Establish the point of compliance at the source of the
361 contamination. However, the department may ~~is authorized to~~
362 temporarily move the point of compliance to the boundary of the
363 property, or to the edge of the plume when the plume is within
364 the property boundary, while cleanup, including cleanup through
365 natural attenuation processes in conjunction with appropriate
366 monitoring, is proceeding. The department may also ~~is~~
367 ~~authorized~~, pursuant to criteria provided for in this section,
368 ~~to~~ temporarily extend the point of compliance beyond the
369 property boundary with appropriate monitoring, if such extension
370 is needed to facilitate natural attenuation or to address the
371 current conditions of the plume, provided human health, public
372 safety, and the environment are protected. When temporarily
373 extending the point of compliance beyond the property boundary,
374 it cannot be extended further than the lateral extent of the
375 plume at the time of execution of the brownfield site
376 rehabilitation agreement, if known, or the lateral extent of the
377 plume as defined at the time of site assessment. Temporary

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378 extension of the point of compliance beyond the property
379 boundary, as provided in this paragraph, must include actual
380 notice by the person responsible for brownfield site
381 rehabilitation to local governments and the owners of any
382 property into which the point of compliance is allowed to extend
383 and constructive notice to residents and business tenants of the
384 property into which the point of compliance is allowed to
385 extend. Persons receiving notice pursuant to this paragraph
386 shall have the opportunity to comment within 30 days of receipt
387 of the notice.

388 (c) Ensure that the site-specific cleanup goal is that all
389 contaminated brownfield sites and brownfield areas ultimately
390 achieve the applicable cleanup target levels provided in this
391 section. In the circumstances provided below, and after
392 constructive notice and opportunity to comment within 30 days
393 from receipt of the notice to local government, to owners of any
394 property into which the point of compliance is allowed to
395 extend, and to residents on any property into which the point of
396 compliance is allowed to extend, the department may allow
397 concentrations of contaminants to temporarily exceed the
398 applicable cleanup target levels while cleanup, including
399 cleanup through natural attenuation processes in conjunction
400 with appropriate monitoring, is proceeding, if human health,
401 public safety, and the environment are protected.

402 (d) Allow brownfield site and brownfield area
403 rehabilitation programs to include the use of institutional or
404 engineering controls, where appropriate, to eliminate or control
405 the potential exposure to contaminants of humans or the
406 environment. The use of controls must be preapproved by the

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407 department and only after constructive notice and opportunity to
 408 comment within 30 days from receipt of notice is provided to
 409 local governments, to owners of any property into which the
 410 point of compliance is allowed to extend, and to residents on
 411 any property into which the point of compliance is allowed to
 412 extend. When institutional or engineering controls are
 413 implemented to control exposure, the removal of the controls
 414 must have prior department approval and must be accompanied by
 415 the resumption of active cleanup, or other approved controls,
 416 unless cleanup target levels under this section have been
 417 achieved.

418 (e) Consider the interactive additive effects of
 419 contaminants, including additive, synergistic, and antagonistic
 420 effects. ~~The synergistic and antagonistic effects shall also be~~
 421 ~~considered when the scientific data become available.~~

422 (f) Take into consideration individual site
 423 characteristics, which shall include, but not be limited to, the
 424 current and projected use of the affected groundwater and
 425 surface water in the vicinity of the site, current and projected
 426 land uses of the area affected by the contamination, the exposed
 427 population, the degree and extent of contamination, the rate of
 428 contaminant migration, the apparent or potential rate of
 429 contaminant degradation through natural attenuation processes,
 430 the location of the plume, and the potential for further
 431 migration in relation to site property boundaries.

432 (g) Apply state water quality standards as follows:

433 1. Cleanup target levels for each contaminant found in
 434 groundwater shall be the applicable state water quality
 435 standards. Where such standards do not exist, the cleanup target

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436 levels for groundwater shall be based on the minimum criteria
 437 specified in department rule. The department shall apply the
 438 following, as appropriate, in establishing the applicable
 439 cleanup target levels: calculations using a lifetime cancer risk
 440 level of 1.0E-6; a hazard index of 1 or less; the best
 441 achievable detection limit; and nuisance, organoleptic, and
 442 aesthetic considerations. However, the department ~~may shall~~ not
 443 require site rehabilitation to achieve a cleanup target level
 444 for any individual contaminant which is more stringent than the
 445 site-specific, ~~naturally occurring~~ background concentration for
 446 that contaminant.

447 2. Where surface waters are exposed to contaminated
 448 groundwater, the cleanup target levels for the contaminants must
 449 shall be based on the more protective of the groundwater or
 450 surface water standards as established by department rule,
 451 unless it has been demonstrated that the contaminants do not
 452 cause or contribute to the exceedance of applicable surface
 453 water quality criteria. In such circumstances, the point of
 454 measuring compliance with the surface water standards shall be
 455 in the groundwater immediately adjacent to the surface water
 456 body.

457 3. Using risk-based corrective action principles, the
 458 department shall approve alternative cleanup target levels in
 459 conjunction with institutional and engineering controls, if
 460 needed, based upon an applicant's demonstration, using site-
 461 specific or other relevant data and information, risk assessment
 462 modeling results, including results from probabilistic risk
 463 assessment modeling, risk assessment studies, risk reduction
 464 techniques, or a combination thereof, that human health, public

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465 safety, and the environment are protected to the same degree as
 466 provided in subparagraphs 1. and 2. Where a state water quality
 467 standard is applicable, a deviation may not result in the
 468 application of cleanup target levels more stringent than the
 469 standard. In determining whether it is appropriate to establish
 470 alternative cleanup target levels at a site, the department must
 471 consider the effectiveness of source removal, if any, which has
 472 been completed at the site and the practical likelihood of the
 473 use of low yield or poor quality groundwater, the use of
 474 groundwater near marine surface water bodies, the current and
 475 projected use of the affected groundwater in the vicinity of the
 476 site, or the use of groundwater in the immediate vicinity of the
 477 contaminated area, where it has been demonstrated that the
 478 groundwater contamination is not migrating away from such
 479 localized source, provided human health, public safety, and the
 480 environment are protected. When using alternative cleanup target
 481 levels at a brownfield site, institutional controls are shall
 482 not ~~be~~ required if:

- 483 a. The only cleanup target levels exceeded are the
 484 groundwater cleanup target levels derived from nuisance,
 485 organoleptic, or aesthetic considerations;
- 486 b. Concentrations of all contaminants meet the state water
 487 quality standards or the minimum criteria, based on the
 488 protection of human health, provided in subparagraph 1.;
- 489 c. All of the groundwater cleanup target levels established
 490 pursuant to subparagraph 1. are met at the property boundary;
- 491 d. The person responsible for brownfield site
 492 rehabilitation has demonstrated that the contaminants will not
 493 migrate beyond the property boundary at concentrations exceeding

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- 494 the groundwater cleanup target levels established pursuant to
 495 subparagraph 1.;
- 496 e. The property has access to and is using an offsite water
 497 supply and no unplugged private wells are used for domestic
 498 purposes; and
- 499 f. The real property owner provides written acceptance of
 500 the "no further action" proposal to the department or the local
 501 pollution control program.
- 502 (h) Provide for the department to issue a "no further
 503 action order," with conditions, including, but not limited to,
 504 the use of institutional or engineering controls where
 505 appropriate, when alternative cleanup target levels established
 506 pursuant to subparagraph (g)3. have been achieved, or when the
 507 person responsible for brownfield site rehabilitation can
 508 demonstrate that the cleanup target level is unachievable within
 509 available technologies. Before ~~Prior to~~ issuing such an order,
 510 the department shall consider the feasibility of an alternative
 511 site rehabilitation technology at ~~in~~ the brownfield site area.
- 512 (i) Establish appropriate cleanup target levels for soils.
- 513 1. In establishing soil cleanup target levels for human
 514 exposure to each contaminant found in soils from the land
 515 surface to 2 feet below land surface, the department shall apply
 516 the following, as appropriate: calculations using a lifetime
 517 cancer risk level of 1.0E-6; a hazard index of 1 or less; and
 518 the best achievable detection limit. However, the department may
 519 ~~shall~~ not require site rehabilitation to achieve a cleanup
 520 target level for an individual contaminant which is more
 521 stringent than the site-specific, ~~naturally-occurring~~ background
 522 concentration for that contaminant. Institutional controls or

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523 other methods shall be used to prevent human exposure to
 524 contaminated soils more than 2 feet below the land surface. Any
 525 removal of such institutional controls shall require such
 526 contaminated soils to be remediated.

527 2. Leachability-based soil cleanup target levels shall be
 528 based on protection of the groundwater cleanup target levels or
 529 the alternate cleanup target levels for groundwater established
 530 pursuant to this paragraph, as appropriate. Source removal and
 531 other cost-effective alternatives that are technologically
 532 feasible shall be considered in achieving the leachability soil
 533 cleanup target levels established by the department. The
 534 leachability goals are ~~shall not be~~ applicable if the department
 535 determines, based upon individual site characteristics, and in
 536 conjunction with institutional and engineering controls, if
 537 needed, that contaminants will not leach into the groundwater at
 538 levels that pose a threat to human health, public safety, and
 539 the environment.

540 3. Using risk-based corrective action principles, the
 541 department shall approve alternative cleanup target levels in
 542 conjunction with institutional and engineering controls, if
 543 needed, based upon an applicant's demonstration, using site-
 544 specific or other relevant data and information, risk assessment
 545 modeling results, including results from probabilistic risk
 546 assessment modeling, risk assessment studies, risk reduction
 547 techniques, or a combination thereof, that human health, public
 548 safety, and the environment are protected to the same degree as
 549 provided in subparagraphs 1. and 2.

550 (2) The department shall require source removal, as a risk
 551 reduction measure, if warranted and cost-effective. Once source

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552 removal at a site is complete, the department shall reevaluate
 553 the site to determine the degree of active cleanup needed to
 554 continue. Further, the department shall determine if the
 555 reevaluated site qualifies for monitoring only or if no further
 556 action is required to rehabilitate the site. If additional site
 557 rehabilitation is necessary to reach "no further action" status,
 558 the department is encouraged to utilize natural attenuation
 559 monitoring, including long-term natural attenuation and
 560 monitoring, where site conditions warrant.

561 (3) The cleanup criteria described in this section govern
 562 only site rehabilitation activities occurring at the
 563 contaminated site. Removal of contaminated media from a site for
 564 offsite relocation or treatment must be in accordance with all
 565 applicable federal, state, and local laws and regulations.

566 Section 5. Subsection (3) of section 196.1995, Florida
 567 Statutes, is amended to read:

568 196.1995 Economic development ad valorem tax exemption.—

569 (3) The board of county commissioners or the governing
 570 authority of the municipality that calls a referendum within its
 571 total jurisdiction to determine whether its respective
 572 jurisdiction may grant economic development ad valorem tax
 573 exemptions may vote to limit the effect of the referendum to
 574 authority to grant economic development tax exemptions for new
 575 businesses and expansions of existing businesses located in an
 576 enterprise zone or a brownfield area, as defined in s. 376.79(5)
 577 ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone
 578 pursuant to s. 290.0055 has not yet been designated pursuant to
 579 s. 290.0065, the board of county commissioners or the governing
 580 authority of the municipality may call such referendum prior to

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581 such designation; however, the authority to grant economic
 582 development ad valorem tax exemptions does not apply until such
 583 area is designated pursuant to s. 290.0065. The ballot question
 584 in such referendum shall be in substantially the following form
 585 and shall be used in lieu of the ballot question prescribed in
 586 subsection (2):

587
 588 Shall the board of county commissioners of this county (or the
 589 governing authority of this municipality, or both) be authorized
 590 to grant, pursuant to s. 3, Art. VII of the State Constitution,
 591 property tax exemptions for new businesses and expansions of
 592 existing businesses that are located in an enterprise zone or a
 593 brownfield area and that are expected to create new, full-time
 594 jobs in the county (or municipality, or both)?

595
 596Yes-For authority to grant exemptions.

597No-Against authority to grant exemptions.

598 Section 6. Paragraph (a) of subsection (1) of section
 599 287.0595, Florida Statutes, is amended to read:

600 287.0595 Pollution response action contracts; department
 601 rules.-

602 (1) The Department of Environmental Protection shall
 603 establish, by adopting administrative rules as provided in
 604 chapter 120:

605 (a) Procedures for determining the qualifications of
 606 responsible potential vendors prior to advertisement for and
 607 receipt of bids, proposals, or replies for pollution response
 608 action contracts, including procedures for the rejection of
 609 unqualified vendors. Response actions are those activities

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610 described in s. 376.301(39) ~~s. 376.301(37)~~.

611 Section 7. Paragraph (c) of subsection (5) of section
 612 288.1175, Florida Statutes, is amended to read:

613 288.1175 Agriculture education and promotion facility.-

614 (5) The Department of Agriculture and Consumer Services
 615 shall competitively evaluate applications for funding of an
 616 agriculture education and promotion facility. If the number of
 617 applicants exceeds three, the Department of Agriculture and
 618 Consumer Services shall rank the applications based upon
 619 criteria developed by the Department of Agriculture and Consumer
 620 Services, with priority given in descending order to the
 621 following items:

622 (c) The location of the facility in a brownfield site as
 623 defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as
 624 defined in s. 290.004, an agriculturally depressed area as
 625 defined in s. 570.74, or a county that has lost its agricultural
 626 land to environmental restoration projects.

627 Section 8. This act shall take effect July 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Hays
Chair, Appropriations Subcommittee on General Government

Subject: Committee Agenda Request

October 8, 2015

Dear Senator Hays,

I respectfully request that **Senate Bill 0092**, regarding **Contaminated Sites**, be placed on the:

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

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2

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 Appropriations Subcommittee on General Government

BILL: SB 100

INTRODUCER: Senator Simpson

SUBJECT: Petroleum Restoration Program

DATE: October 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 100 revises certain provisions of the Petroleum Restoration Program. Specifically, the bill:

- Expands the eligibility requirements of the Abandoned Tanks Restoration Program (ATRP);
- Specifies that sites participating in the Petroleum Cleanup Participation Program (PCPP) are not eligible for the ATRP;
- Removes the provision that a property owner must provide evidence that he or she had a complete understanding of the previous ownership and use of the property prior to acquiring the property;
- Removes the exclusion eligibility for sites which are owned by a person who had knowledge of the polluting condition when title was acquired;
- Changes the name of the “low-scored site initiative” (LSSI) to the “low-risk site initiative” (LRSI) and revises the criteria that must be met to participate in the LRSI;
- Increases the amount of money that may be encumbered from the Inland Protection Trust Fund each year to fund the LRSI from \$10 million to \$15 million, increasing the funding limit per site from \$30,000 to \$35,000, and allowing for an additional \$35,000 for limited remediation activities needed to achieve a “No Further Action” order;
- Removes the reporting deadline for sites to participate in the PCPP;
- Decreases the number of sites that may be bundled and eligible to compete for performance based contracts under the Advanced Cleanup Program (ACP) from 20 to 10;
- Increases the annual funding cap from \$15 million to \$25 million for the ACP; and
- Allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and specifies the sites are not subject to the agency term contractor assignment pursuant to rule.

While the bill has a significant fiscal impact (see Section V. Fiscal Impact Statement), the

Fiscal Year 2015-2016 General Appropriations Act provided \$125 million from the Inland Protection Trust Fund within the Department of Environmental Protection (DEP) to support these programs.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Quality Standards

Under s. 303 of the federal Clean Water Act (CWA), states are incentivized to adopt water quality standards (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.¹

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.² These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.³ The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.⁴

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.⁵ The Department of Environmental Protection (DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.⁶ The SUPER Act authorized the DEP to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

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

² DEP, Guide to Florida's Petroleum Cleanup Program 1 (2002), (on file with the Senate Committee on Environmental Preservation and Conservation.

³ *Id.*

⁴ *Id.*

⁵ Ch. 83-310, Laws of Fla.

⁶ Ch. 86-159, Laws of Fla.

Abandoned Tank Restoration Program

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 was subsequently extended twice, to 1992 and then to 1994. In 1996, the Legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.⁷

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.⁸ These levels are known as Cleanup Target Levels (CTLs).⁹ Once the CTLs for a contaminated site¹⁰ has been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.¹¹

State Funding Assistance for Rehabilitation

In 2002, the average cost to rehabilitate a site was approximately \$300,000, but some sites may cost millions of dollars to rehabilitate.¹² Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.¹³ Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation.

⁷ Chapter 89-188, Laws of Fla.

⁸ Section 376.3071(5)(b)3., F.S.

⁹ *Id.*

¹⁰ A “site” is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.

¹¹ DEP, Guide to Florida’s Petroleum Cleanup Program 24 (2002), (on file with the Senate Committee on Environmental Preservation and Conservation.

¹² *Id.* at 26.

¹³ Section 376.308, F.S.

To receive rehabilitation funding assistance, a site must qualify under one of the programs outlined in the following table:

Table 1: State Assisted Petroleum Cleanup Eligibility Programs		
Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.30371(9), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	<ul style="list-style-type: none"> • First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	<ul style="list-style-type: none"> • Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	Applications must have been submitted between June 1, 1990, and June 30, 1996 ¹⁴	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program (s. 376.30715, F.S.)	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)	PCPP began on July 1, 1996, and accepted applications until December 31, 1998	<ul style="list-style-type: none"> • Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs¹⁵ • Originally had a \$300,000 cap on the amount of coverage, which was raised to \$400,000 beginning July 1, 2008
Consent Order (aka “Hardship” or “Indigent”) (s. 376.3071(7)(c), F.S.)	The program began in 1986 and remains open	<ul style="list-style-type: none"> • Created to provide financial assistance under certain circumstances for sites that the DEP initiates an enforcement action to clean up • An agreement is formed whereby the DEP conducts the cleanup and the site owner or responsible party pays for a portion of the costs

¹⁴ The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

¹⁵ The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

As of January 2015, there are 19,261 sites eligible for state funding through one of the above programs. Of these, approximately 8,348 have been rehabilitated and closed, approximately 5,059 are currently undergoing some phase of rehabilitation, and approximately 5,854 await rehabilitation.¹⁶

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).¹⁷ The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.¹⁸ The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.¹⁹ At present, the excise tax is \$10.80 per barrel.²⁰ For the last three years, on average approximately \$193 million from the excise tax is deposited into the IPTF, of which \$120 million has been appropriated for site rehabilitation.

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.²¹ Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a score of 5 representing a very low threat. Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.²² The DEP sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time. Currently, the threshold is set at 30 points.²³

Expediting Site Rehabilitation

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

Advanced Cleanup

Advanced Cleanup (formerly known as Preapproved Advanced Cleanup) is a program that was created in 1996 to allow an eligible site to receive state rehabilitation funding even if the site's

¹⁶ DEP, *Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁷ Section 376.3071(3)-(4), F.S.

¹⁸ Sections 206.9935(3) and 376.3071(6), F.S.

¹⁹ The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between \$100 million and \$150 million; 60 cents if the unobligated balance is between \$50 million and \$100 million; and 80 cents if the unobligated balance is \$50 million or less. Section 206.9935(3), F.S.

²⁰ DOR, Pollutants Tax, <http://dor.myflorida.com/dor/taxes/fuel/pollutants.html> (last visited Oct. 19, 2015).

²¹ Fla. Admin. Code R. 62-771.100.

²² Fla. Admin. Code R. 62-771.300.

²³ DEP, *Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

priority score does not fall within the threshold currently being funded.²⁴ The purpose of creating Advanced Cleanup was to facilitate property transactions or public works projects on contaminated sites.²⁵ To participate in Advanced Cleanup, a site must be eligible for state rehabilitation funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), the Abandoned Tank Restoration Program (ATRP), the Innocent Victim Petroleum Storage System Restoration Program (Innocent Victim), or the Petroleum Cleanup Participation Program (PCPP).²⁶

To apply for Advanced Cleanup, a site owner or responsible party must bid a cost share of the total site rehabilitation.²⁷ The cost share must be at least 25 percent of the total cost of rehabilitation.²⁸ For PCPP sites, the cost share must be at least 25 percent of the state's share of the rehabilitation, as the site owner or responsible party is already required to pay for 25 percent of the total cost of rehabilitation to be eligible for PCPP.²⁹ Alternatively, an applicant may use a commitment to pay, a demonstrated cost savings to the DEP, or both to meet this requirement if the application proposes a performance-based contract for the cleanup of 20 or more sites.³⁰

In years when the DEP runs a bid cycle, bids may be accepted in two windows of May 1 through June 30 and November 1 through December 31.³¹ Bids are awarded based solely on the proposed cost-share percentage and not the estimated dollar amount of that share.³² The DEP may enter into Advanced Cleanup contracts for a total of up to \$15 million per fiscal year,³³ and no more than \$5 million per fiscal year may be approved for rehabilitation work at an individual facility.³⁴

Low Scored Site Initiative

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

- Upon assessment, the site retains a priority ranking score of 29 points or less;
- No excessively contaminated soil exists onsite;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The remaining contamination resulting from petroleum products does not adversely affect adjacent surface waters;

²⁴ Section 376.30713(1), F.S.

²⁵ *Id.*

²⁶ For PCPP sites, Advanced Cleanup is only available if the 25 percent copay requirement of PCPP has not been reduced or eliminated. Section 376.30713(1)(d), F.S.

²⁷ Section 376.30713(2)(a), F.S.

²⁸ *Id.*

²⁹ Section 376.30713(1)(d)-(2)(a), F.S.

³⁰ Section 376.30713(2)(a)1., F.S.

³¹ Section 376.30713(2)(a), F.S.

³² Section 376.30713(2)(b), F.S.

³³ Section 376.30713(4), F.S.

³⁴ A "facility" includes, but is not limited to, "multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter." Section 376.30713(4), F.S.

- The area of groundwater contamination is less than one-quarter acre and is confined to the source property boundary; and
- Soils onsite found between the land surface and two feet below the land surface must meet the soil cleanup target levels (SCTLs) established by the DEP unless human exposure is limited by appropriate institutional or engineering controls.³⁵

An assessment is conducted to determine whether the above criteria are met.³⁶ The state pays the assessment costs for sites eligible for funding under EDI, ATRP, Innocent Victim, PLRIP, or PCPP.³⁷ Funding for LSSI is limited to \$10 million per fiscal year, which may only be used to fund site assessments.³⁸ Each site has a funding cap of \$30,000, and each site owner or responsible party is limited to ten eligible sites per fiscal year.³⁹ Funds are allocated on a first-come, first-served basis.⁴⁰ Sites not eligible for state rehabilitation funding may still qualify for closure under LSSI if an assessment reveals that the above criteria are met, but the state will not pay for the assessment.⁴¹

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

- If no contamination is detected during the assessment, the DEP may issue a site rehabilitation completion order;⁴²
- If the assessment demonstrates that minimal contamination exists onsite, but the above criteria are met, the DEP may issue an LSSI no further action administrative order. This determination acknowledges that the contamination is not a threat to human health or the environment; or⁴³
- If soil between the land surface and two feet below the land surface exceeds SCTLs, but the above criteria are otherwise met, the DEP may issue a site rehabilitation completion order with conditions. This determination requires that institutional and/or engineering controls be put in place to prevent human or environmental exposure to the contamination. The state is not authorized to fund such controls.⁴⁴

If at any time data collected during the assessment indicate that the above criteria for closure will not be met, assessment activities will be terminated.⁴⁵ LSSI funding will be discontinued if it is determined at any point that a closure cannot be accomplished within the \$30,000 funding limit, unless the site owner or responsible party is willing to contribute funds to the assessment work.⁴⁶ A site determined to be ineligible for LSSI funding retains its current program eligibility and will receive rehabilitation funding in priority order.

³⁵ Section 376.3071(11)(b)1., F.S.

³⁶ DEP Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 9 (2013), available at http://www.dep.state.fl.us/Waste/quick_topics/publications/pss/pcp/screening/LSSI-Guidance_30Aug13.pdf (last accessed Oct. 5, 2015).

³⁷ *Id.* at 3.

³⁸ Section 376.3071(11)(b)3.c., F.S.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ DEP, Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 1-2 (2013).

⁴² Section 376.3071(12)(b)2., F.S.

⁴³ *Id.*

⁴⁴ DEP Petroleum Restoration Program, Procedural and Technical Guidance for the Low-Scored Site Initiative 3 (2013).

⁴⁵ *Id.* at 11.

⁴⁶ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 376.305, F.S., concerning the Abandoned Tank Restoration Program.

The bill expands the Abandoned Tank Restoration Program (ATRP) program by removing the reporting deadline, which currently separates eligible from ineligible sites. The expansion of the program will provide state funding eligibility for remediation of a large but indeterminate number of discharges. It also specifies that a site eligible for the PCPP may not participate in the ATRP.

The bill removes a provision specifying that the owner of a site in the ATRP must provide evidence that he or she had a complete understanding of the use of the property prior to acquisition.

The bill removes a section that excludes site owners from eligibility for site rehabilitation funding when the site owner, “had knowledge of the polluting condition when title was acquired, unless the person acquired title to the site after issuance of a notice of site eligibility by the Department of Environmental Protection (DEP).”

Section 2 amends s. 376.3071, F.S., concerning the Low Risk Site Initiative.

The bill changes the name of the Low Scored Site Initiative to the Low-Risk Site Initiative (LRSI) and makes various changes to the program. The bill requires a responsible party who wishes to participate in LRSI to provide evidence of authorization from the property owner.

To participate in LRSI, the bill requires a property owner or responsible party to submit a “No Further Action” proposal that demonstrates the required criteria are met. In addition, the bill revises the criteria in the following manner:

- Removes the requirement that a contaminated site must have a priority ranking score of 29 points or less;
- Provides a more specific standard for the prohibition on the presence of excessively contaminated soil on the site. Specifically, soil saturated with petroleum or petroleum products, or soil that causes a total corrected hydrocarbon measurement of 500 parts per million (ppm) or higher for Gasoline Analytical Group or 50 ppm or higher for Kerosene Analytical Group, as defined by DEP rule, must not exist onsite as a result of a release of petroleum products;
- Specifies that the requirement that contamination remaining at the site does not adversely affect adjacent surface waters includes the effects of those waters on human health and the environment;
- Removes the requirement that the area of groundwater contamination is less than one-quarter acre;
- Allows the presence of groundwater containing petroleum products’ chemicals of concern that is not confined to the source property boundaries if the chemicals only migrate to a transportation facility of the Florida Department of Transportation; and
- Adds a requirement that the groundwater contamination containing the petroleum products’ chemicals of concern is not a threat to any permitted potable water supply well.

If the DEP determines that the property owner or responsible party has demonstrated that these conditions are met, the DEP must issue a site rehabilitation completion order that incorporates the “No Further Action” proposal. This determination acknowledges that minimal contamination exists onsite and that such contamination is not a threat to the public health, safety, or welfare, water resources, or the environment. If the DEP determines that a discharge for which a site rehabilitation completion order was issued pursuant to LRSI may pose a threat to the public health, safety, or welfare, water resources, or the environment, the issuance of the site rehabilitation completion order does not alter eligibility for state-funded rehabilitation that would otherwise apply.

Under current law, the DEP can approve the cost of the assessment, including six months of groundwater monitoring. The bill authorizes the DEP to approve the cost of both the assessment *and* remediation if the DEP determines that it will result in a finding of “No Further Action”. The approval may be provided in one or more task assignments or modifications. The total amount authorized for a particular site is increased from \$30,000 to \$35,000. The bill authorizes the DEP to pay the costs associated with a professional land survey or specific purpose survey, if needed, and costs associated with obtaining a title report and recording fees. The bill also authorizes the DEP to approve up to an additional \$35,000 for limited remediation, if needed, to achieve a determination of "No Further Action", after the DEP approves the initial site assessment provided by the property owner or a responsible party.

The bill increases the amount of time within which assessment and remediation work must be completed from six months to nine months. If groundwater monitoring is required following the assessment in order to satisfy the LRSI conditions, the DEP may authorize an additional six months to complete the monitoring.

The bill also increases the annual amount of money that may be encumbered from the Inland Protection Trust Fund to fund LRSI from \$10 million to \$15 million.

Section 3 amends s. 376.30713, F.S., concerning Advanced Cleanup.

The bill reduces the minimum number of sites that a facility owner or operator or other responsible party must bundle in order to be eligible for performance-based contracts under Advanced Cleanup from 20 to 10.

The bill increases the annual allocation for Advanced Cleanup contracts from \$15 million to \$25 million.

The bill allows a property owner or responsible party to enter into a voluntary cost share agreement for bundling multiple sites and to provide a list of the sites to be included in future bundles. The sites that will be included in a future bundle are not subject to agency term contractor assignment pursuant to rule. The DEP may terminate the voluntary cost share agreement if the application to bundle multiple sites is not submitted during the open application period. This provision will extend the period of time listed sites will be remediated because they are not subject to the agency term contractor assignment.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill appears to have an indeterminate positive fiscal impact on the private sector since more rehabilitation contracts may be awarded as a result of increasing the total funding limits for the Advanced Cleanup and Low-Risk Site Initiative (LRSI) programs.

C. Government Sector Impact:

The amended eligibility requirements for the Abandoned Tank Restoration Program (ATRP) are estimated to have an increased recurring cost of \$4.7 million, and the revisions to the Petroleum Clean Participation Program (PCPP) are estimated to have a total cost of \$14.9 million.

For the Low-Risk Site Initiative (LRSI), the bill increases the amount of funding from \$10 million to \$15 million and increases the funding limit per site from \$30,000 to \$35,000. In addition, the bill allows for the approval of an additional \$35,000 per site for limited remediation activities to achieve a “No Further Action” order. The estimated total cost is \$16.5 million over four years. It is also estimated that \$6 million in cost savings may be achieved based on a number of sites receiving a “No Further Action” closure order. These savings could reduce the overall cost increases in the program.

Increases to the annual allocation for the Advanced Cleanup Program contracts from \$15 million to \$25 million and reductions to the number of sites that must be bundled to be eligible to compete for performance-based contracts (from 20 to 10), should result in more sites being cleaned up sooner. This may result in an indeterminate cost savings over time.

The Inland Protection Trust Fund within the Department of Environmental Protection (DEP) is the fund source that supports all petroleum restoration programs that is included

each fiscal year in the General Appropriations Act. The changes to the funding levels for each program provided in the bill should not increase the DEP's overall annual appropriation, as this amount is based on annual revenues estimated by the Revenue Estimating Conference and deposited into the trust fund. Increasing the annual funding for the Low-Risk Site Initiative and Preapproved Advanced Cleanup programs could reduce the funds available for other remaining programs supported by this fund. However, all eligibility petroleum restoration programs are prioritized and funded based on the risk to public health and safety.

The DEP was appropriated \$125 million in the Fiscal Year 2015-2016 General Appropriations Act from the Inland Protection Trust Fund for the Petroleum Tanks Cleanup programs. The DEP has requested \$110 million for the 2016-2017 fiscal year for the programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.305, 376.3071, and 376.30713.

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 Simpson

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A bill to be entitled

An act relating to the Petroleum Restoration Program; amending s. 376.305, F.S.; revising the eligibility requirements of the Abandoned Tank Restoration Program; deleting provisions prohibiting the relief of liability for persons who acquired title after a certain date; amending s. 376.3071, F.S.; renaming "the low-scored site initiative" as "the low-risk site initiative"; revising the conditions for eligibility and methods for payment of costs for the low-risk site initiative; revising the eligibility requirements for receiving rehabilitation funding; clarifying that a change in ownership does not preclude a site from entering into the program; amending s. 376.30713, F.S.; reducing the number of sites that may be proposed for certain advanced cleanup applications; increasing the total amount for which the department may contract for advanced cleanup work in a fiscal year; authorizing property owners and responsible parties to enter into voluntary cost-share agreements under certain circumstances; providing an effective date.

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

Section 1. 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

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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 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.

4. The site is not otherwise eligible for the Petroleum Cleanup Participation Program under s. 376.3071(13) based on any discharge reporting form received by the department before January 1, 1995, or a written report of contamination submitted to the department on or before December 31, 1998.

(b) In order to be eligible for the program, petroleum storage systems from which a discharge occurred must be closed pursuant to department rules before an eligibility determination. However, if the department determines that the owner of the facility cannot financially comply with the

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59 department's petroleum storage system closure requirements and
60 all other eligibility requirements are met, the petroleum
61 storage system closure requirements shall be waived. The
62 department shall take into consideration the owner's net worth
63 and the economic impact on the owner in making the determination
64 of the owner's financial ability. ~~The June 30, 1996, application~~
65 ~~deadline shall be waived for owners who cannot financially~~
66 ~~comply.~~

67 (c) Sites accepted in the program are eligible for site
68 rehabilitation funding as provided in s. 376.3071.

69 (d) The following sites are excluded from eligibility:

- 70 1. Sites on property of the Federal Government;
- 71 2. Sites contaminated by pollutants that are not petroleum
72 products; or
- 73 3. Sites where the department has been denied site access;
74 ~~or~~
- 75 4. ~~Sites which are owned by a person who had knowledge of~~
76 ~~the polluting condition when title was acquired unless the~~
77 ~~person acquired title to the site after issuance of a notice of~~
78 ~~site eligibility by the department.~~

79 (e) Participating sites are subject to a deductible as
80 determined by rule, not to exceed \$10,000.

81 ~~This subsection does not relieve a person who has acquired title~~
82 ~~after July 1, 1992, from the duty to establish by a~~
83 ~~preponderance of the evidence that he or she undertook, at the~~
84 ~~time of acquisition, all appropriate inquiry into the previous~~
85 ~~ownership and use of the property consistent with good~~
86 ~~commercial or customary practice in an effort to minimize~~
87

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88 ~~liability, as required by s. 376.308(1)(c).~~

89 Section 2. Paragraph (b) of subsection (12) and subsection
90 (13) of section 376.3071, Florida Statutes, are amended, and
91 paragraph (c) is added to subsection (12) of that section, to
92 read:

93 376.3071 Inland Protection Trust Fund; creation; purposes;
94 funding.—

95 (12) SITE CLEANUP.—

96 (b) Low-risk ~~Low-scored~~ site initiative.—Notwithstanding
97 subsections (5) and (6), a site ~~with a priority ranking score of~~
98 ~~29 points or less~~ may voluntarily participate in the low-risk
99 ~~low-scored~~ site initiative regardless of whether the site is
100 eligible for state restoration funding.

101 1. To participate in the low-risk ~~low-scored~~ site
102 initiative, the ~~responsible party or~~ property owner, or a
103 responsible party that provides evidence of authorization from
104 the property owner, must submit a "No Further Action" proposal
105 and affirmatively demonstrate that the following conditions
106 under subparagraph 4. are met.+

107 a. ~~Upon reassessment pursuant to department rule, the site~~
108 ~~retains a priority ranking score of 29 points or less.~~

109 b. ~~Excessively contaminated soil, as defined by department~~
110 ~~rule, does not exist onsite as a result of a release of~~
111 ~~petroleum products.~~

112 c. ~~A minimum of 6 months of groundwater monitoring~~
113 ~~indicates that the plume is shrinking or stable.~~

114 d. ~~The release of petroleum products at the site does not~~
115 ~~adversely affect adjacent surface waters, including their~~
116 ~~effects on human health and the environment.~~

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117 e. ~~The area of groundwater containing the petroleum~~
 118 ~~products' chemicals of concern is less than one quarter acre and~~
 119 ~~is confined to the source property boundaries of the real~~
 120 ~~property on which the discharge originated.~~

121 ~~f. Soils onsite that are subject to human exposure found~~
 122 ~~between land surface and 2 feet below land surface meet the soil~~
 123 ~~cleanup target levels established by department rule or human~~
 124 ~~exposure is limited by appropriate institutional or engineering~~
 125 ~~controls.~~

126 2. Upon affirmative demonstration that ~~of~~ the conditions
 127 under subparagraph 4. are met ~~subparagraph 1.~~, the department
 128 shall issue a site rehabilitation completion order incorporating
 129 the determination of "No Further Action." proposal submitted by
 130 the property owner or the responsible party that provides
 131 evidence of authorization from the property owner ~~Such~~
 132 ~~determination acknowledges that minimal contamination exists~~
 133 ~~onsite and that such contamination is not a threat to the public~~
 134 ~~health, safety, or welfare, water resources, or the environment.~~
 135 If no contamination is detected, the department may issue a site
 136 rehabilitation completion order.

137 3. Sites that are eligible for state restoration funding
 138 may receive payment of costs for the low-risk low-scored site
 139 initiative as follows:

140 a. A ~~responsible party or~~ property owner, or a responsible
 141 party that provides evidence of authorization from the property
 142 owner, may submit an assessment and limited remediation plan
 143 designed to affirmatively demonstrate that the site meets the
 144 conditions under subparagraph 4 ~~subparagraph 1.~~ Notwithstanding
 145 the priority ranking score of the site, the department may

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146 approve the cost of the assessment and limited remediation,
 147 including up to 6 months of groundwater monitoring, in one or
 148 more task assignments, or modifications thereof, not to exceed
 149 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 150 ~~\$30,000~~ for each site where the department has determined that
 151 the assessment and limited remediation, if applicable, will
 152 likely result in a determination of "No Further Action." The
 153 department may not pay the costs associated with the
 154 establishment of institutional or engineering controls, with the
 155 exception of the costs associated with a professional land
 156 survey or specific purpose survey, if needed, and the costs
 157 associated with obtaining a title report and paying recording
 158 fees.

159 b. After the approval of initial site assessment results
 160 provided pursuant to state funding under sub-subparagraph a.,
 161 the department may approve an additional amount not to exceed
 162 the threshold amount provided in s. 287.017 for CATEGORY TWO for
 163 limited remediation where needed to achieve a determination of
 164 "No Further Action."

165 ~~c.b.~~ The assessment and limited remediation work shall be
 166 completed no later than 9 ~~6~~ months after the department
 167 authorizes the start of a state-funded, low-risk site initiative
 168 task issues its approval. If groundwater monitoring is required
 169 after the assessment and limited remediation in order to satisfy
 170 the conditions under subparagraph 4., the department may
 171 authorize an additional 6 months to complete the monitoring.

172 ~~d.e.~~ No more than \$15 ~~\$10~~ million for the low-risk low-
 173 ~~scored~~ site initiative may be encumbered from the fund in any
 174 fiscal year. Funds shall be made available on a first-come,

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175 first-served basis and shall be limited to 10 sites in each
 176 fiscal year for each ~~responsible party or~~ property owner or each
 177 responsible party that provides evidence of authorization from
 178 the property owner.

179 ~~e.~~ Program deductibles, copayments, and the limited
 180 contamination assessment report requirements under paragraph
 181 (13) (c) do not apply to expenditures under this paragraph.

182 4. The department shall issue a site rehabilitation
 183 completion order incorporating the "No Further Action" proposal
 184 submitted by a property owner or a responsible party that
 185 provides evidence of authorization from the property owner upon
 186 affirmative demonstration that all of the following conditions
 187 are met:

188 a. Soil saturated with petroleum or petroleum products, or
 189 soil that causes a total corrected hydrocarbon measurement of
 190 500 parts per million or higher for Gasoline Analytical Group or
 191 50 parts per million or higher for Kerosene Analytical Group, as
 192 defined by department rule, does not exist onsite as a result of
 193 a release of petroleum products.

194 b. A minimum of 6 months of groundwater monitoring
 195 indicates that the plume is shrinking or stable.

196 c. The release of petroleum products at the site does not
 197 adversely affect adjacent surface waters, including their
 198 effects on human health and the environment.

199 d. The area of groundwater containing the petroleum
 200 products' chemicals of concern is confined to the source
 201 property boundaries of the real property on which the discharge
 202 originated, or has migrated from the source property to only a
 203 transportation facility of the Department of Transportation.

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204 e. The groundwater contamination containing the petroleum
 205 products' chemicals of concern is not a threat to any permitted
 206 potable water supply well.

207 f. Soils onsite found between land surface and 2 feet below
 208 land surface which are subject to human exposure meet the soil
 209 cleanup target levels established in subparagraph (5) (b) 9., or
 210 human exposure is limited by appropriate institutional or
 211 engineering controls.

212 Issuance of a site rehabilitation completion order under this
 213 paragraph acknowledges that minimal contamination exists onsite
 214 and that such contamination is not a threat to the public
 215 health, safety, or welfare, water resources, or the environment.
 216 If the department determines that a discharge for which a site
 217 rehabilitation completion order was issued pursuant to this
 218 paragraph may pose a threat to the public health, safety, or
 219 welfare, water resources, or the environment, the issuance of
 220 the site rehabilitation completion order, with or without
 221 conditions, does not alter eligibility for state-funded
 222 rehabilitation that would otherwise be applicable under this
 223 section.

224 (13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage
 225 detection, reporting, and cleanup of contamination caused by
 226 discharges of petroleum or petroleum products, the department
 227 shall, within the guidelines established in this subsection,
 228 implement a cost-sharing cleanup program to provide
 229 rehabilitation funding assistance for all property contaminated
 230 by discharges of petroleum or petroleum products from a
 231 petroleum storage system occurring before January 1, 1995,
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233 subject to a copayment provided for in a Petroleum Cleanup
 234 Participation Program site rehabilitation agreement. Eligibility
 235 is subject to an annual appropriation from the fund.
 236 Additionally, funding for eligible sites is contingent upon
 237 annual appropriation in subsequent years. Such continued state
 238 funding is not an entitlement or a vested right under this
 239 subsection. Eligibility shall be determined in the program,
 240 notwithstanding any other provision of law, consent order,
 241 order, judgment, or ordinance to the contrary.

242 (a)1. The department shall accept any discharge reporting
 243 form received before January 1, 1995, as an application for this
 244 program, and the facility owner or operator need not reapply.

245 2. Owners or operators of property, regardless of whether
 246 ownership has changed, which is contaminated by petroleum or
 247 petroleum products from a petroleum storage system may apply for
 248 such program by filing a written report of the contamination
 249 incident, including evidence that such incident occurred before
 250 January 1, 1995, with the department. Incidents of petroleum
 251 contamination discovered after December 31, 1994, at sites which
 252 have not stored petroleum or petroleum products for consumption,
 253 use, or sale after such date shall be presumed to have occurred
 254 before January 1, 1995. An operator's filed report shall be an
 255 application of the owner for all purposes. ~~Sites reported to the~~
 256 ~~department after December 31, 1998, are not eligible for the~~
 257 ~~program.~~

258 (b) Subject to annual appropriation from the fund, sites
 259 meeting the criteria of this subsection are eligible for up to
 260 \$400,000 of site rehabilitation funding assistance in priority
 261 order pursuant to subsections (5) and (6). Sites meeting the

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262 criteria of this subsection for which a site rehabilitation
 263 completion order was issued before June 1, 2008, do not qualify
 264 for the 2008 increase in site rehabilitation funding assistance
 265 and are bound by the pre-June 1, 2008, limits. Sites meeting the
 266 criteria of this subsection for which a site rehabilitation
 267 completion order was not issued before June 1, 2008, regardless
 268 of whether they have previously transitioned to nonstate-funded
 269 cleanup status, may continue state-funded cleanup pursuant to
 270 this section until a site rehabilitation completion order is
 271 issued or the increased site rehabilitation funding assistance
 272 limit is reached, whichever occurs first. The department may not
 273 pay expenses incurred beyond the scope of an approved contract.

274 (c) Upon notification by the department that rehabilitation
 275 funding assistance is available for the site pursuant to
 276 subsections (5) and (6), the owner, operator, or person
 277 otherwise responsible for site rehabilitation shall provide the
 278 department with a limited contamination assessment report and
 279 shall enter into a Petroleum Cleanup Participation Program site
 280 rehabilitation agreement with the department. The agreement must
 281 provide for a 25-percent copayment by the owner, operator, or
 282 person otherwise responsible for conducting site rehabilitation.
 283 The owner, operator, or person otherwise responsible for
 284 conducting site rehabilitation shall adequately demonstrate the
 285 ability to meet the copayment obligation. The limited
 286 contamination assessment report and the copayment costs may be
 287 reduced or eliminated if the owner and all operators responsible
 288 for restoration under s. 376.308 demonstrate that they cannot
 289 financially comply with the copayment and limited contamination
 290 assessment report requirements. The department shall take into

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291 consideration the owner's and operator's net worth in making the
 292 determination of financial ability. In the event the department
 293 and the owner, operator, or person otherwise responsible for
 294 site rehabilitation cannot complete negotiation of the cost-
 295 sharing agreement within 120 days after beginning negotiations,
 296 the department shall terminate negotiations and the site shall
 297 be ineligible for state funding under this subsection and all
 298 liability protections provided for in this subsection shall be
 299 revoked.

300 (d) A report of a discharge made to the department by a
 301 person pursuant to this subsection or any rules adopted pursuant
 302 to this subsection may not be used directly as evidence of
 303 liability for such discharge in any civil or criminal trial
 304 arising out of the discharge.

305 (e) This subsection does not preclude the department from
 306 pursuing penalties under s. 403.141 for violations of any law or
 307 any rule, order, permit, registration, or certification adopted
 308 or issued by the department pursuant to its lawful authority.

309 (f) Upon the filing of a discharge reporting form under
 310 paragraph (a), the department or local government may not pursue
 311 any judicial or enforcement action to compel rehabilitation of
 312 the discharge. This paragraph does not prevent any such action
 313 with respect to discharges determined ineligible under this
 314 subsection or to sites for which rehabilitation funding
 315 assistance is available pursuant to subsections (5) and (6).

316 (g) The following are excluded from participation in the
 317 program:

318 1. Sites at which the department has been denied reasonable
 319 site access to implement this section.

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320 2. Sites that were active facilities when owned or operated
 321 by the Federal Government.

322 3. Sites that are identified by the United States
 323 Environmental Protection Agency to be on, or which qualify for
 324 listing on, the National Priorities List under Superfund. This
 325 exception does not apply to those sites for which eligibility
 326 has been requested or granted as of the effective date of this
 327 act under the Early Detection Incentive Program established
 328 pursuant to s. 15, chapter 86-159, Laws of Florida.

329 4. Sites for which contamination is covered under the Early
 330 Detection Incentive Program, the Abandoned Tank Restoration
 331 Program, or the Petroleum Liability and Restoration Insurance
 332 Program, in which case site rehabilitation funding assistance
 333 shall continue under the respective program.

334 Section 3. Paragraph (a) of subsection (2) and subsection
 335 (4) of section 376.30713, Florida Statutes, are amended to read:
 336 376.30713 Advanced cleanup.—

337 (2) The department may approve an application for advanced
 338 cleanup at eligible sites, before funding based on the site's
 339 priority ranking established pursuant to s. 376.3071(5)(a),
 340 pursuant to this section. Only the facility owner or operator or
 341 the person otherwise responsible for site rehabilitation
 342 qualifies as an applicant under this section.

343 (a) Advanced cleanup applications may be submitted between
 344 May 1 and June 30 and between November 1 and December 31 of each
 345 fiscal year. Applications submitted between May 1 and June 30
 346 shall be for the fiscal year beginning July 1. An application
 347 must consist of:

348 1. A commitment to pay 25 percent or more of the total

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349 cleanup cost deemed recoverable under this section along with
 350 proof of the ability to pay the cost share. An application
 351 proposing that the department enter into a performance-based
 352 contract for the cleanup of 10 ~~20~~ or more sites may use a
 353 commitment to pay, a demonstrated cost savings to the
 354 department, or both to meet the cost-share requirement. For an
 355 application relying on a demonstrated cost savings to the
 356 department, the applicant shall, in conjunction with the
 357 proposed agency term contractor, establish and provide in the
 358 application the percentage of cost savings in the aggregate that
 359 is being provided to the department for cleanup of the sites
 360 under the application compared to the cost of cleanup of those
 361 same sites using the current rates provided to the department by
 362 the proposed agency term contractor. The department shall
 363 determine whether the cost savings demonstration is acceptable.
 364 Such determination is not subject to chapter 120.

365 2. A nonrefundable review fee of \$250 to cover the
 366 administrative costs associated with the department's review of
 367 the application.

368 3. A limited contamination assessment report.

369 4. A proposed course of action.

370

371 The limited contamination assessment report must be sufficient
 372 to support the proposed course of action and to estimate the
 373 cost of the proposed course of action. Costs incurred related to
 374 conducting the limited contamination assessment report are not
 375 refundable from the Inland Protection Trust Fund. Site
 376 eligibility under this subsection or any other provision of this
 377 section is not an entitlement to advanced cleanup or continued

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378 restoration funding. The applicant shall certify to the
 379 department that the applicant has the prerequisite authority to
 380 enter into an advanced cleanup contract with the department. The
 381 certification must be submitted with the application.

382 (4) The department may enter into contracts for a total of
 383 up to ~~\$25~~ \$15 million of advanced cleanup work in each fiscal
 384 year. However, a facility or an applicant who bundles multiple
 385 sites as specified in subparagraph (2)(a)1. may not be approved
 386 for more than \$5 million of cleanup activity in each fiscal
 387 year. A property owner or responsible party may enter into a
 388 voluntary cost-share agreement in which the property owner or
 389 responsible party commits to bundle multiple sites and lists the
 390 facilities that will be included in those future bundles. The
 391 facilities listed are not subject to agency term contractor
 392 assignment pursuant to department rule. The department reserves
 393 the right to terminate the voluntary cost-share agreement if the
 394 property owner or responsible party fails to submit an
 395 application to bundle multiple sites within an open application
 396 period during which it is eligible to participate. For the
 397 purposes of this section, the term "facility" includes, but is
 398 not limited to, multiple site facilities such as airports, port
 399 facilities, and terminal facilities even though such enterprises
 400 may be treated as separate facilities for other purposes under
 401 this chapter.

402 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-2015

Meeting Date

100

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

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

S-001 (10/14/14)

APPEARANCE RECORD

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

10-20-15

Meeting Date

100

Bill Number (if applicable)

Topic Petroleum Restoration

Amendment Barcode (if applicable)

Name Samantha ~~Padgett~~ Padgett

Job Title General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee FL 32301

Email samantha@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing FPMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

October 7, 2015

Honorable Alan Hays
Appropriations Subcommittee on General Government
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Hays,

Please place Senate Bill 100 relating to the Petroleum Restoration Program, on the Appropriations Subcommittee on General Government agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson

Senator, 18th District

CC: Jamie DeLoach, Staff Director

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 148 (712120)

INTRODUCER: Appropriations Subcommittee on General Government; Commerce and Tourism Committee; and Senator Ring

SUBJECT: Consumer Protection

DATE: October 22, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 148 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within three business days of their purchase if the consumer:

- Has been adjudicated incapacitated;
- Is subject to a guardianship, and the guardian has the authority to determine the consumer's right to manage property; or
- Has a doctor's note that indicates that he has been diagnosed with a medical condition that causes him to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his person or property, and has a power of attorney in effect.

The bill also authorizes the Department of Agriculture and Consumer Services (DACS) to administer a fine of up to two times the value of the goods purchased.

The bill has an insignificant, indeterminate fiscal impact on state funds.

The effective date of the bill is July 1, 2016.

II. Present Situation:

Consumer Protections

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints. Specifically, s. 501.142, F.S., tasks the division with the oversight and regulation of a range of business practices related to refunds, returns, and exchanges at retail stores. The enforcement of s. 501.142, F.S., results from complaints made directly to the DACS by consumers. The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon request by the DACS.¹

Currently, s. 501.142(1), F.S., requires retail stores to clearly post a “no refunds” sign at the point of sale in order to enforce this policy. If the retail store does not have a posted “no refunds” policy, then it must present a written version of its refund policy upon a consumer’s request or adhere to the default refund policy described in s. 501.142(1), F.S. This provision requires a full refund to any customer who presents to the retail store within seven days of the original purchase their proof of purchase and the unused and originally-packaged item. A retail store’s refund policy may allow for a longer return period.²

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a directive to cease and desist from the violation. Additionally, a local government may apply penalties as outlined in s. 501.142(6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer’s request, or goods that may not legally be resold by the retail store.³

Seniors vs Crime

Seniors vs Crime (SVC) is a special project of the Florida Office of the Attorney General with a mission to reduce the victimization of senior citizens.⁴ SVC utilizes volunteers across the state to monitor and report on scams against the elderly, such as fraud, high pressure sales techniques, false advertising, and unfair and deceptive trade practices. Some cases discovered by SVC are referred to state agencies for an investigation of an administrative violation, or to law enforcement for further investigation of a criminal violation. Some civil issues, however, are

¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

² Section 501.142(1), F.S.

³ Section 501.142(2), F.S.

⁴ Seniors vs Crime, *The History of the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/history> (last visited October 5, 2015).

retained by SVC for mediation conducted by its members or by the consumer with assistance from SVC.⁵ In 2013, SVC assisted 5,145 Florida seniors.⁶

Exploitation of the Elderly

Elderly persons and disabled adults receive enhanced protection from financial exploitation under s. 825.103, F.S., “Exploitation of an Elderly Person or Disabled Adult,” which criminalizes, generally, the theft or unauthorized appropriation of their funds, assets, or property.

Section 825.101, F.S., defines the following terms:

- An “elderly person” is a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability to provide adequately for his or her own care is impaired; and
- A “disabled adult” is a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Criminal prosecutions under s. 825.103, F.S., must prove that a victim of alleged financial exploitation not only meets the age requirement provided for in s. 825.101, F.S., but also that the victim suffers from infirmities of aging, which results in an impaired ability to care for or protect herself.⁷

Incapacity

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the U.S.—10,300,000, or 13 percent of the total population.⁸ In 2010, Florida had the highest proportion of people over the age of 65, representing 17 percent of the total state population.⁹

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.¹⁰

Protections exist for individuals with cognitive impairment or incapacity and range from issue or

⁵ See, e.g., *2013 Cases Resolved by Seniors vs Crime*, available at <http://www.seniorsvscrime.com/test-cases> (last visited October 5, 2015).

⁶ Press Release, Attorney General Pam Bondi, Attorney General Pam Bondi Recognizes the Silver Anniversary of Florida’s Seniors vs. Crime Program (April 9, 2014). Available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/248AB317E66FDCFF85257CB5006B12E6> (last visited October 5, 2015.)

⁷ *Watson v. State*, 95 So. 3d 977, 981-982 (Fla. 1st DCA 2012).

⁸ Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at <http://www.ncea.aoa.gov/Library/Data/index.aspx> (citing U.S. Department of Commerce, U.S. Census Bureau, *The Older Population: 2010, 2011*, Publication C2010BR-09) (last visited October 5, 2015).

⁹ *Id.*

¹⁰ Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities*, p. 7-8 (May 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf (last visited October 5, 2015).

authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.¹¹

A power of attorney or a durable power of attorney¹² is a legally binding document that delegates specific authority to an agent to act on a person's behalf. Powers of attorney are often used by elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated. The authority granted by a power or attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property, or may be broadly drawn to cover all legal acts that the principal could otherwise do.¹³ While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.¹⁴ As such, a power of attorney or a durable power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian, who "has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability."¹⁵ Any adult may petition a court to initiate a petition to determine another's incapacity.¹⁶ An "incapacitated person" is a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.¹⁷ In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.¹⁸ Guardians are governed exclusively by the Florida Statutes,¹⁹ and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.²⁰ A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as "Terry's Law."

Section 2 amends s. 501.142, F.S., to require all retail stores, with the exception of motor vehicle retail establishments, to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and complies, either personally or through his or her representative, with all of the following:

¹¹ Section 744.331(6)(a), F.S. The court shall make a finding of "the exact nature and scope of the person's incapacities;...and the specific rights that the person is incapable of exercising."

¹² See ch. 709, F.S.

¹³ The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> (last visited October 5, 2015).

¹⁴ Sections 709.2102(4), 709.2104, and 709.2109(1)(b) F.S.

¹⁵ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁶ Section 744.3201(1), F.S.

¹⁷ Section 744.102(12), F.S.

¹⁸ Section 744.331(6)(b), F.S.

¹⁹ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966).

²⁰ Section 744.361, F.S., provides the standard powers and duties of a guardian.

- Within three business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and
- Provides documentation establishing that:
 - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
 - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer's right to manage property; or
 - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

The bill also provides the DACS additional authority to impose an administrative fine of twice the value of the goods purchased.

Section 3 corrects cross-references in s. 501.95, F.S.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses will be subject to fines as penalties for violations of PCS/CS/SB 148.

C. **Government Sector Impact:**

The DACS estimates there will be an insignificant, indeterminate fiscal impact as enforcement is based on consumer complaints. Historically, the DACS has only issued one administrative fine for noncompliance with current consumer returns laws.²¹

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.²² Therefore, proposed s. 501.142(2)(c)1., may be broader than necessary.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 501.142 and 501.95.

IX. **Additional Information:**

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

Recommended CS/CS by Appropriations Subcommittee on General Government on October 20, 2015:

The committee substitute provides an exemption for motor vehicle retail establishments currently regulated under part VI of ch. 501, F.S., from the provisions in the bill.

CS by Commerce and Tourism on October 5, 2015:

The committee substitute removes the preamble from the title.

- B. **Amendments:**

None.

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

²¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

²² Section 744.3215, F.S.



571432

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
	.	
	.	
	.	

Appropriations Subcommittee on General Government (Simpson)
recommended the following:

Senate Amendment (with title amendment)

Between lines 109 and 110

insert:

(9) Retail sales regulated under part VI of this chapter
are exempt from the provisions of this section.

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

And the title is amended as follows:

Delete line 11



571432

11 and insert:
12 the requirements; providing an exemption; making
13 technical changes; amending

By the Committee on Commerce and Tourism; and Senator Ring

577-00705-16

2016148c1

A bill to be entitled

An act relating to consumer protection; providing a short title; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. This act may be cited as "Terry's Law."

Section 2. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, each every retail sales establishment offering goods for sale to the general public shall grant a cash refund or credit refund to a

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577-00705-16

2016148c1

consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is currently exercisable by the consumer's agent, and the consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, which is evidenced by a written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice medicine under the laws of another state.

(3) (a) Except as provided in subsection (2), a retail sales establishment offering goods for sale to the general public may ~~refuse to offer a that offers no~~ cash refund, credit refund, or exchange ~~for the purchase if the retailer posts of merchandise must post~~ a sign at the point of sale ~~so~~ stating that refunds or exchanges are not allowed at the point of sale. Failure of a

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577-00705-16

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59 retail sales establishment to exhibit a "no refund or exchange"
60 sign at the point of sale under such circumstances means at the
61 ~~point of sale shall mean~~ that a refund or exchange policy
62 exists, and the policy must ~~shall~~ be presented in writing to the
63 consumer upon request.

64 (b) A ~~Any~~ retail sales establishment that violates this
65 subsection failing to comply with the provisions of this section
66 shall grant to the consumer, upon request and proof of purchase,
67 a refund for the purchase on the merchandise, within 7 business
68 days after ~~of~~ the date of purchase if, ~~provided~~ the goods are
69 ~~merchandise is~~ unused and in the original carton, if one was
70 furnished. This section does not ~~Nothing herein shall~~ prohibit a
71 retail sales establishment from having a refund policy that
72 which exceeds 7 business the number of days and specified
73 herein. However, this subsection does not prohibit a local
74 government from enforcing the provisions established by this
75 section.

76 (4)(2) The provisions of This section does shall not apply
77 to the sale of food, perishable goods, goods that which are
78 custom made, goods that which are custom altered at the request
79 of the customer, or goods that which cannot be resold by the
80 merchant because of any law, rule, or regulation adopted by a
81 governmental body.

82 (5)(3) If the department finds that a person has violated
83 or is operating in violation of:

84 (a) Subsection (2), the department shall enter an order
85 that imposes an administrative fine in the amount of twice the
86 value of the goods, excluding tax, which the person refused to
87 refund.

577-00705-16

2016148c1

88 (b) Subsection (3) or an order issued under this section,
89 the department may enter an order that imposes ~~doing~~ one or more
90 of the following if the department finds that a person has
91 violated or is operating in violation of any of the provisions
92 of this section or the orders issued under this section:

93 1.(a) Impose An administrative fine not to exceed \$100 for
94 each violation.

95 2.(b) A directive to Direct the person to cease and desist
96 specified activities.

97 (6)(4) An The administrative proceeding proceedings that
98 may could result in the entry of an order imposing any of the
99 penalties specified in subsection (5) is (3) are governed by
100 chapter 120.

101 (7)(5) Any Moneys recovered by the department ~~of~~
102 Agriculture and Consumer Services as a penalty under this
103 section shall be deposited in the General Inspection Trust Fund.

104 (8)(6) Upon the first violation of this section, a local
105 government may issue a written warning. Upon a second or and any
106 subsequent violation, a local government may impose a fine of up
107 to \$50 per violation. Any Moneys recovered by the local
108 government as a penalty under this section shall be deposited in
109 the appropriate local account.

110 Section 3. Paragraph (c) of subsection (2) of section
111 501.95, Florida Statutes, is amended to read:

112 501.95 Gift certificates and credit memos.—

113 (2)

114 (c) Enforcement of this section shall be as provided in s.
115 501.142(5) (b), (6), and (7) s. 501.142(3), (4), and (5) for
116 violations of this section.

577-00705-16

2016148c1

117

Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15
Meeting Date

148
Bill Number (if applicable)
571432
Amendment Barcode (if applicable)

Topic RETAIL SALES

Name DAVID RAMBA

Job Title _____

Address 120 S. MONROE ST.

Phone 850.443.4444

TALLAHASSEE FL 32301

City State Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA AUTOMOBILE DEALERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-2015

Meeting Date

148

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg

FL

33705

Email justice2jesus@yahoo.com

City

State

Zip

Speaking: For Against Information

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

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.

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

S-001 (10/14/14)

APPEARANCE RECORD

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

10/20/15
Meeting Date

148
Bill Number (if applicable)

Topic Consumer Protection

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.

Phone 850 228-4243

Street

Tally
City

FL
State

32301
Zip

Email zsmith@aarp.org

Speaking: For Against Information

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

Representing AARP

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.



Florida Department of Agriculture and Consumer Services

Senate General Government Appropriations October 20, 2015

Sen. Alan Hays, Chair

Jim Karels, Director,
Florida Forest Service

Florida Forest Service Funding

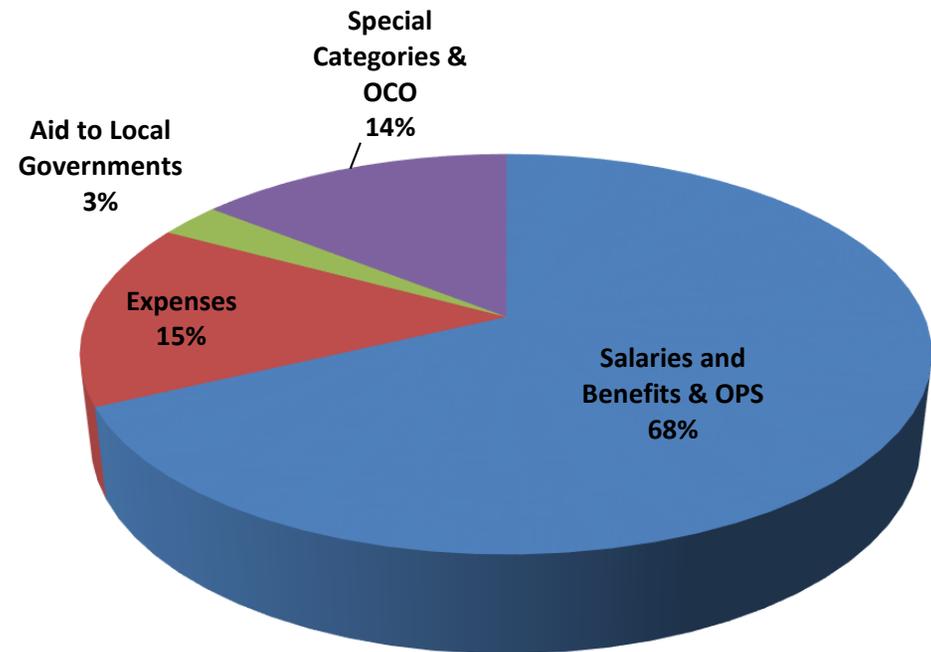
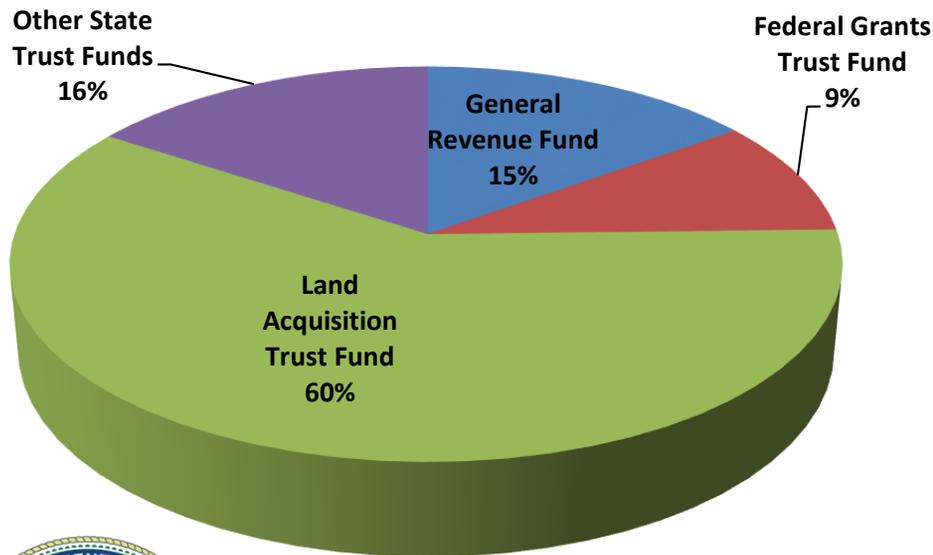


Florida Forest Service Base Budget by Fund Source

Fund Source	Base Budget
General Revenue Fund	14,551,498
Federal Grants Trust Fund	9,214,548
Land Acquisition Trust Fund	57,559,152
Other State Trust Funds	15,217,892
Total	96,543,090

Florida Forest Service Base Budget by Category

Appropriation Category	Base Budget
Salaries and Benefits	63,734,087
Other Personal Services	1,847,061
Expenses	14,453,061
Aid to Local Governments	2,690,890
Operating Capital Outlay	850,074
Special Categories	12,967,917
Total	96,543,090



Florida Forest Service Legislative Budget Request



Issues Include:

- \$2.4 million in General Revenue funding to provide pay increases to our certified firefighter and fire support positions.
- \$5.9 million in Trust funding for firefighting equipment and \$671,000 in General Revenue funding to replace a 1970 fixed wing aircraft.
- \$600,000 in General Revenue funding to replace 240 mobile communication radios.



Legislative Budget Request Continued



- \$25 million in Trust funding to support the Rural and Family Lands Protection Program.
- \$5.8 million in Trust funding for maintenance and repairs of state forest facilities, roads and bridges.
- \$3 million in Trust funding to support reforestation projects on private lands in North Florida.
- \$1 million in Trust funding for additional prescribed fire assistance on public conservation lands.



Rural and Family Lands



Signed into Law in 2001 the Rural and Family program goals are:

- Perpetuate open space on working lands that contain significant natural areas.
- Protect, restore, or enhance water bodies, recharge areas, springsheds, watersheds and species habitat.
- Promote more complete pattern of protection for environmental buffers, military installations, ecological greenways, and functioning ecosystems.



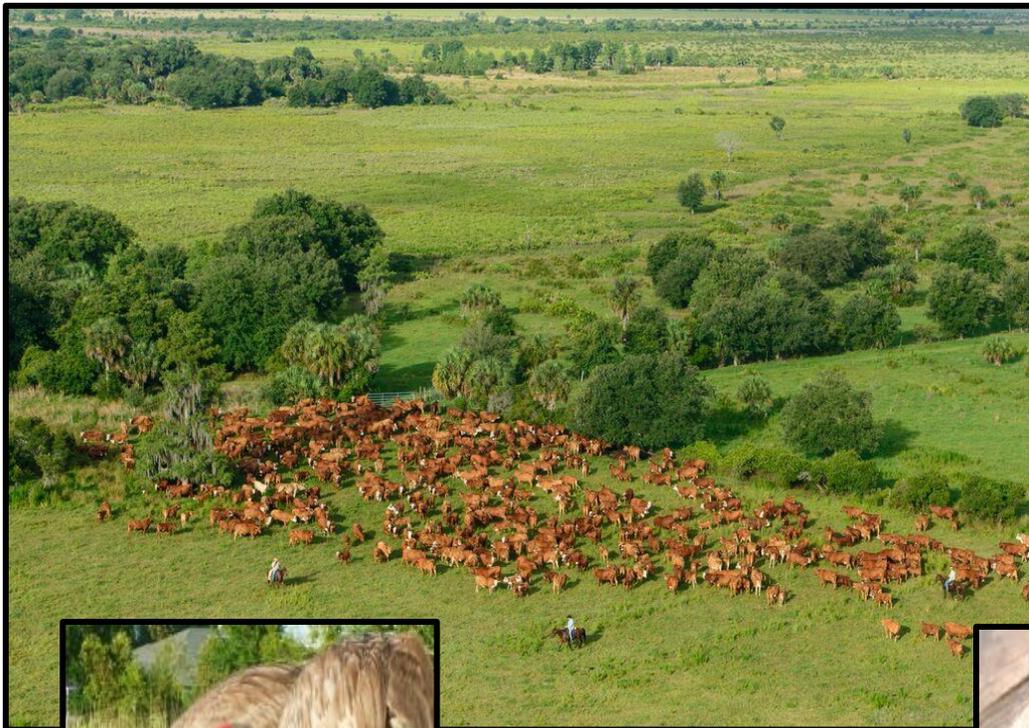


Rural & Family Lands Protection Program:

- 70 Projects recommended for acquisition.
- 35 Projects listed on Tier I totaling 137,991 acres.
- Estimated \$350 million in potential easements.
- 20 Easements have been approved by the BOT totaling 12,811 acres at \$20,288,868.
- \$5,600,000 of matching funds from partnerships.



Rural and Family Lands



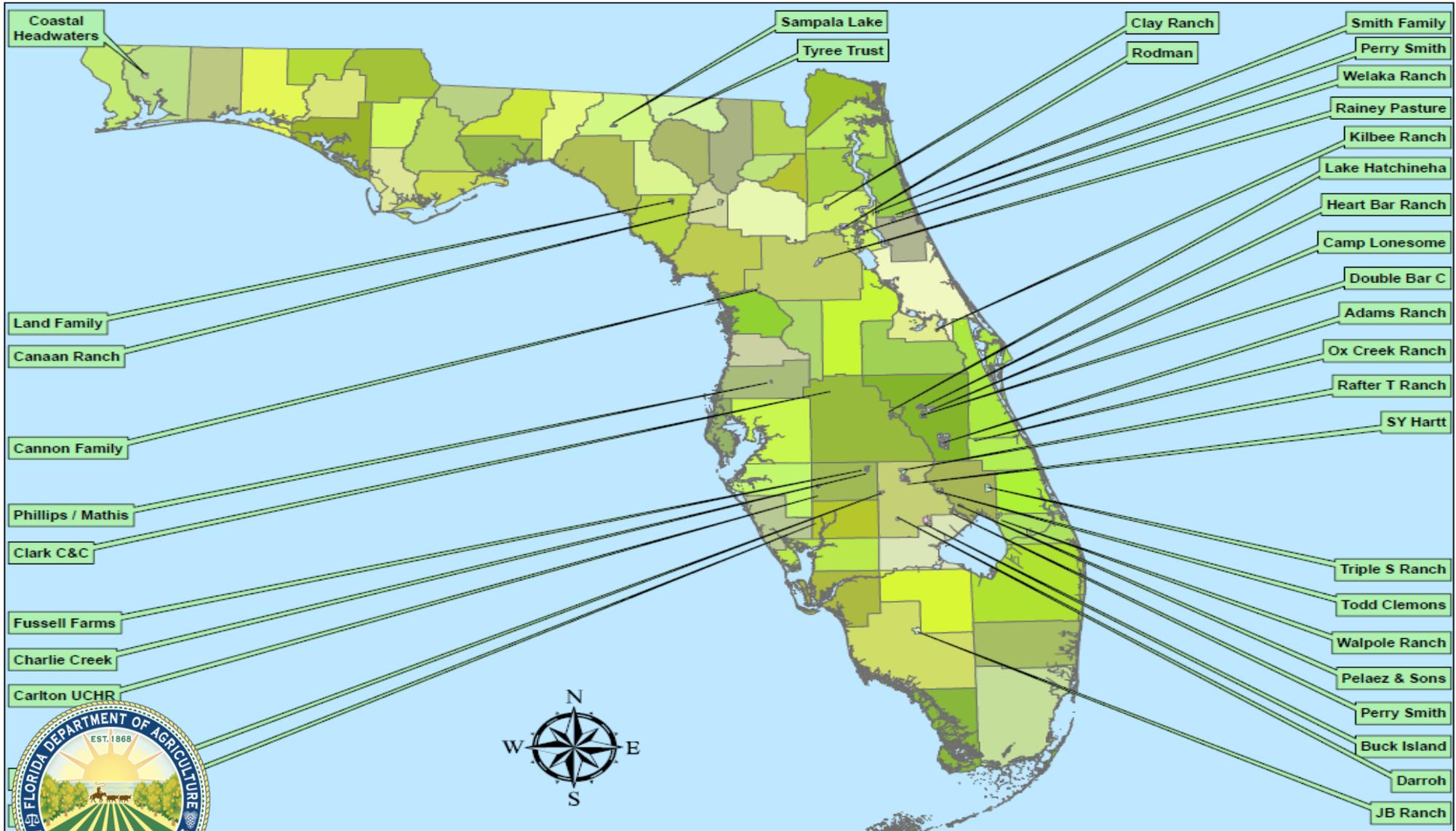
Rural & Family Lands



Florida Forest Service
Coordinate System: Florida Albers
High Accuracy Reference System (HARS) Datum

Rural & Family Lands Protection Program 2015 Tier I Projects

Wegand Area boundaries courtesy of the Florida National Area Inventory, formerly used Defense Base (DFBI) and US Army Corps of Engineers





Land Management Activities:

- Reforestation & Forest Products
- Invasive Species
- Recreation & Public Access Improvement
- Prescribed Fire
- Operation Outdoor Freedom



Reforestation



**In the last 10 years,
the FFS planted an
average of 5,800
acres of pine**



Forest Products



In the last 10 years more than \$65 million in revenue has been generated by properly managing the forest products in our state forests



Treatment of Invasive Species



Recreation & Public Access



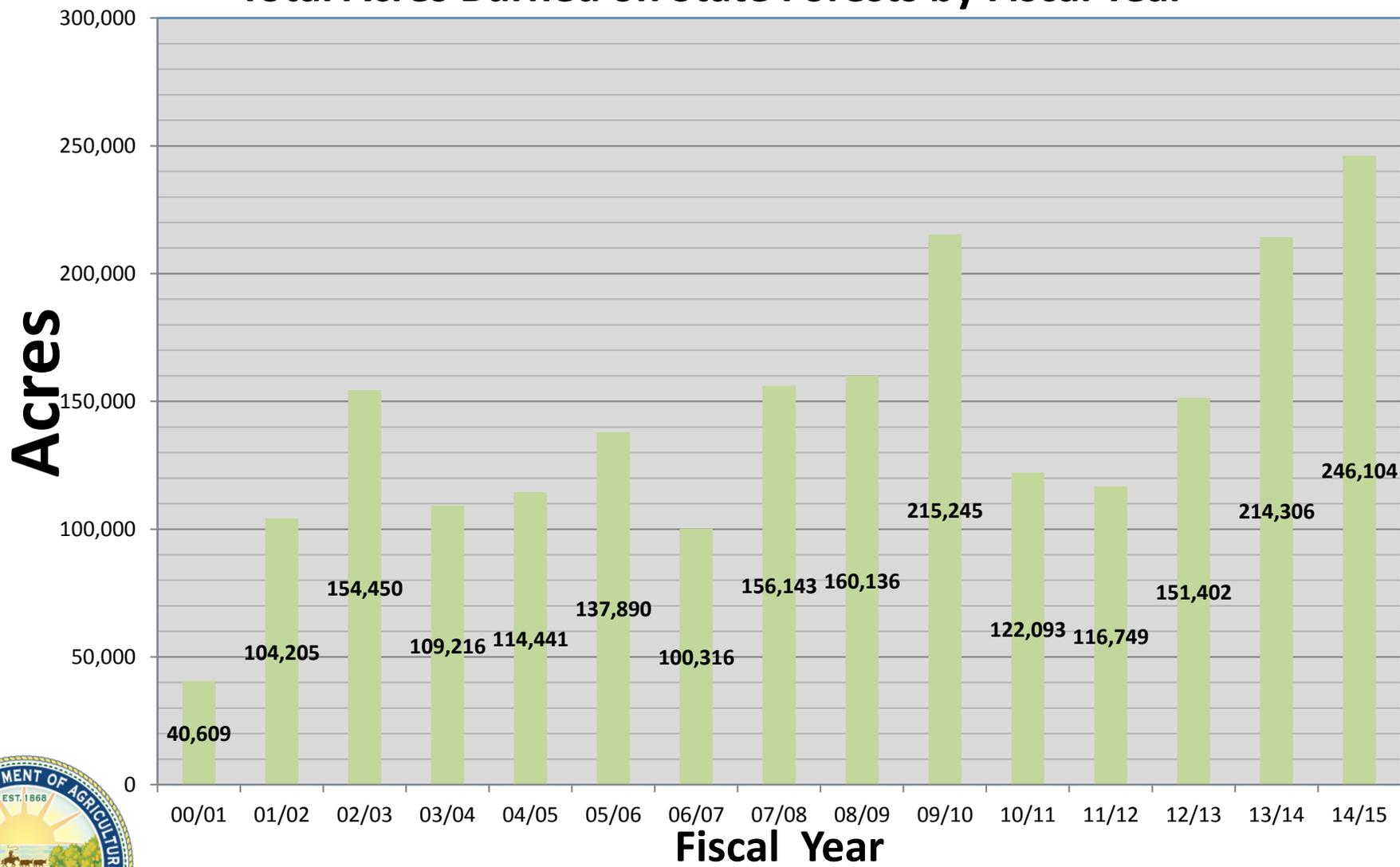
Prescribed Fire



Prescribed Fire



Total Acres Burned on State Forests by Fiscal Year





Questions?



Florida Department of Agriculture and Consumer Services

Commissioner Adam H. Putnam

Jim Karels, Director,
Florida Forest Service

Animal Pest and Disease Prevention and Response

Senate Appropriations Subcommittee
on General Government
Sen. Alan Hays, Chair

Dr. Mike Short, State Veterinarian/Director
Division of Animal Industry
October 20, 2015



Division of Animal Industry

Mission: Prevent, control, and eradicate animal pests and diseases which could have major economic and public health consequences

- **Surveillance**
- **Control & Eradicate Diseases**
Rapid & Accurate Diagnostic Services
- **Coordinate with Wildlife and Public Health Officials**
- **Emergency Response-ESF-17**



Division of Animal Industry

- **Two Bureaus**

- Bureau of Animal Disease Control

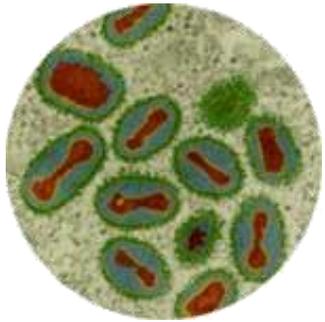
- 6 Districts
- Veterinary Medical Officers
 - Trained in Foreign Animal Disease Investigations

- Bureau of Diagnostic Laboratory

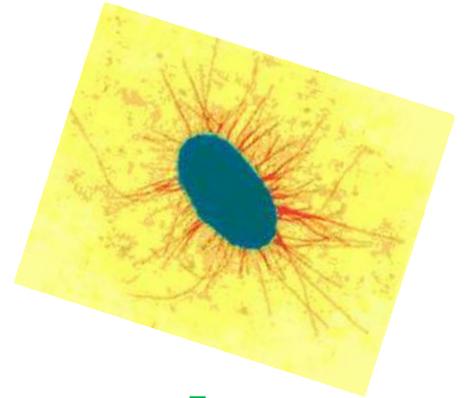
- Bronson Animal Disease Diagnostic Laboratory (BADDL)
- American Association of Veterinary Laboratory Diagnosticians (AAVLD) Accredited and National Animal Health Laboratory Network (NAHLN) Member
- Bio-Safety Level 3 (BSL-3) Laboratory



Current Disease Issues



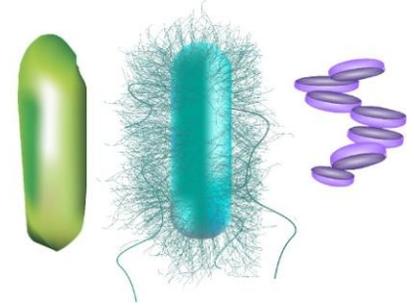
- **Animal pests and diseases of high consequence**
- **Zoonotic diseases**
 - Diseases that can be passed Between animals and humans
- **Global trade and movements**
- Food safety
- Antimicrobial resistance
- Agents of bio- and agro-terrorism – 80%*



*Public Health Rep. 2008 May-Jun; 123(3): 276–281

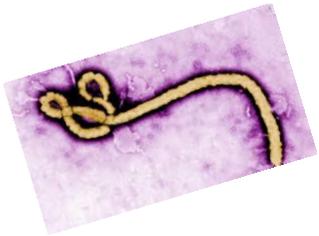
Current Disease Issues

Diseases of high consequence



Reportable Diseases

- Require Reporting-F.A.C. 5C-20
- Foreign animal diseases-Foot and Mouth Disease (FMD), Highly Pathogenic Avian Influenza (HPAI), Heartwater...
- Zoonotic diseases-Tuberculosis, Brucellosis, Salmonella, E. coli, Eastern Equine Encephalitis (EEE), Rabies, Anthrax, Plague, Leshmania...



Emerging diseases – 70% zoonotic*

Flu viruses, West Nile Virus, Ebola Virus, Middle Eastern Respiratory Syndrome (MERS)...

*Emerging Infectious Diseases, 2004 Nov; 10(11): e28.



Florida Is A High Risk State

- **15 Deep water seaports***
- **10 International airports****
- **Subtropical climate**
- **USDA Animal Import Center in Miami**



*Florida Chamber of Commerce, *Florida Trade and Logistics Study 2.0*

**Florida Airports Council

Economic Impact of Animal Disease Outbreaks

Recent Outbreaks

Foot and Mouth Disease-England 2001*

- 6.5 to 10 million animals depopulated
- Estimated cost estimated at \$12.2 billion

Foot and Mouth Disease-Japan 2010*

- Close to 300,000 animals euthanized
- Economic damage estimated at \$1 billion

Highly Pathogenic Avian Influenza (HPAI)-United States 2015 **

- Economic costs estimated at \$1 billion

Indirect Costs

Historically 4-5 X direct costs

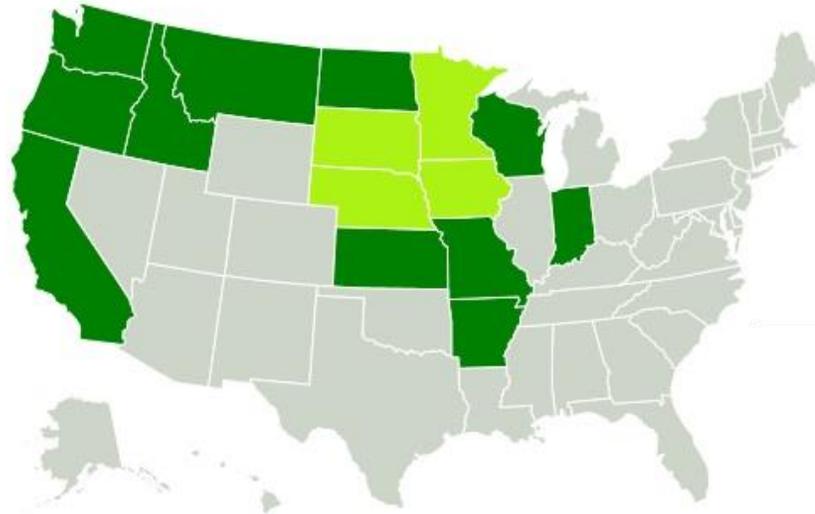
- Loss of employment
- Loss of export market
- Loss of consumer confidence and sales
- Loss of support industries (feed, markets, transportation)
- Loss of tourism

*Preventative Veterinary Medicine-2013:112(3-4) 161-173

** USDA, Highly Pathogenic Avian Influenza Outbreak ,
Weekly National Situation Report,
September 18, 2015



Highly Pathogenic Avian Influenza Outbreak 2015*



223

Detections Reported

48,091,293

Birds Affected

12/19/14

First Detection Reported

6/17/15

Last Detection Reported



*USDA, Highly Pathogenic Avian Influenza Outbreak , Weekly
National Situation Report, September 18, 2015

Highly Pathogenic Avian Influenza Outbreak 2015*

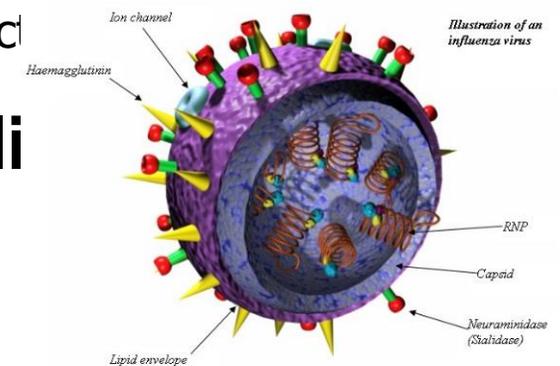
- **Deemed the worst agricultural disaster in decades by USDA**
- **Approximately 1 billion dollars spent to date, with more than 1050 responders**
- **Approximately 10% US laying hens and 7.4% of turkeys have been destroyed**
- **50 countries have placed restrictions on U.S. poultry exports**



** USDA, Highly Pathogenic Avian Influenza Outbreak , Weekly National Situation Report, September 18, 2015

Highly Pathogenic Avian Influenza (HPAI)

- **Foreign Animal Disease**
- **Type A Virus-** Infects birds, humans, swine, and other mammals
- **Categorized by surface proteins-**Current outbreak H5N2 and H5N8
- **No human infections with the virus have been detected at this time**
 - CDC considers the risk to people from these HPAI H5 infected
- **Kills domestic poultry > 90% mortality**
 - Turkeys more susceptible than chickens

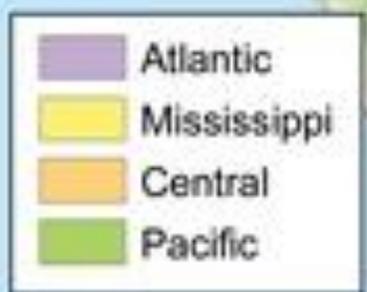


Highly Pathogenic Avian Influenza (HPAI)

- **Wild waterfowl are asymptomatic carriers**
- **At above 65 degrees Fahrenheit, hard for (H5) virus to survive**
- **H5N2 bird flu will likely reappear again this fall when damp, cool air returns and wild waterfowl migrate down the flyways**
- **Commercial vaccine not very effective**



Waterfowl Flyways



Florida's Commercial Poultry Industry*

• Industry primarily consists of Egg and Meat type poultry

• Egg-Layers

- 9 million laying hens,
- Produce 2.40 billion eggs per year
- \$219 million in sales per year
- Rank 14 in production nationally



• Broilers

- 10 million broilers in Florida
- \$250 million in sales
- Rank 19 in production nationally

• Poultry industry adds \$1.27 billion to Florida's GDP



*Livestock, Dairy & Poultry Summary – 2014 (June 2015) 37
USDA, National Agricultural Statistics Service

Highly Pathogenic Avian Influenza Preparedness

Disease Surveillance

- Passive-conduct surveillance at show, fairs, auctions, commercial premises
- Active-Sick bird investigations-75 YTD

Testing-Bronson Animal Disease Diagnostic Laboratory (BADDL)

- BADDL is USDA approved to run AI testing
- Will test more than 20,000 birds this year



Training/Exercises

- Site management, depopulation, disposal, movement permitting

Meetings and Workshops

- Conducted more than 40 meetings with industry and agency partners
 - Coordinating with partner agencies
 - Workshop on August 5
 - Producer meetings (FPF, commercial and backyard producers)



Continued Surveillance Testing Bronson Animal Disease Diagnostic Laboratory (BADDL)

**Need to continue
to invest in
improvements**

**Vitally important for
protecting Florida's
agricultural industry**

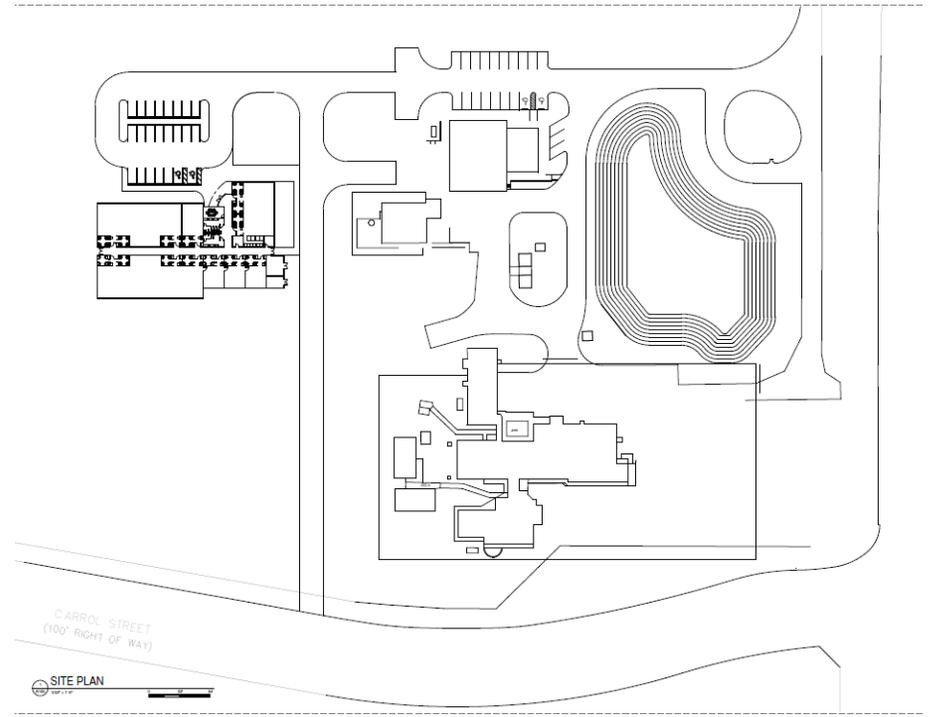
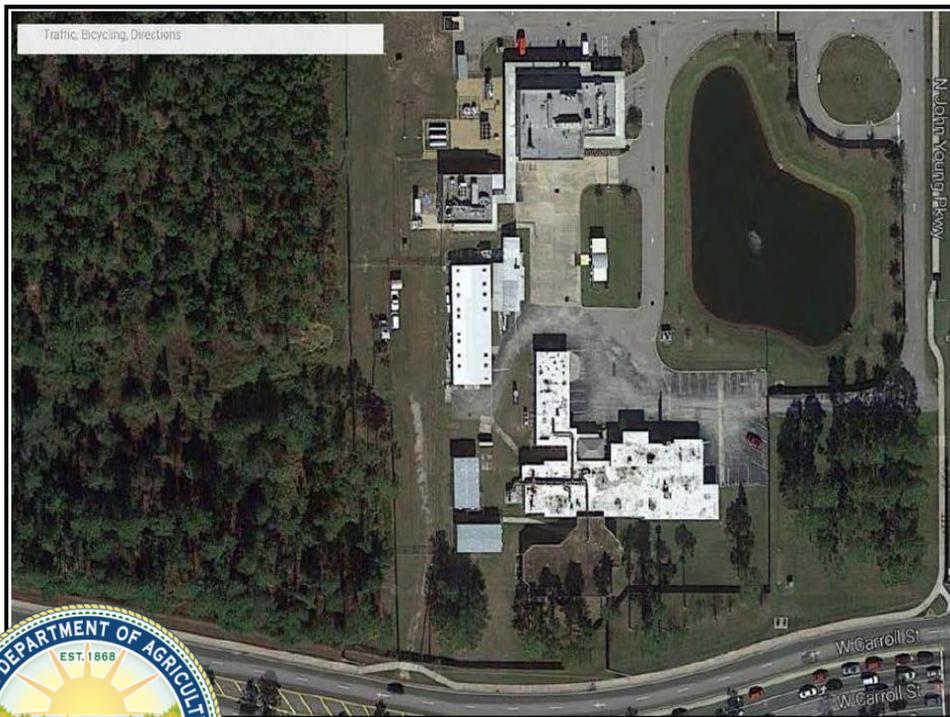


**Necessary to maintain accreditation in the American
Association of Veterinary Laboratory Diagnosticians (AAVLD)
and membership in the National Animal Health Laboratory
Network (NAHLN)**



Current Budget Request

- **\$10.3 million in General Revenue funding to construct new diagnostic facilities on site at BADDL complex in Kissimmee**
- **\$195,000 in Trust funding for replacement laboratory equipment**



Questions?



Division of Plant Industry An Overview



**Trevor Smith, Ph.D.
Division Director**

Senate Appropriations Committee

October 20, 2015



Florida under siege



Geographic location

Unique climate

Crop diversity

Increased trade

- 15 major airports
- 12 maritime ports

Florida under siege



Florida . . . The Regulatory Challenge

- **27 ports of entry**
- **72% cut flower shipments, and a third of all plant material entering the U.S. comes through Florida**
- **Climate gradient of temperate, subtropical and tropical with diverse host plants**
- **Over 200 million tons of perishable cargo enter FL annually**
- **50 million visitors each year**



Emergency Programs



Giant African Land Snail



Mediterranean Fruit Fly



**Asian Citrus Psyllid /
Citrus Greening**



Oriental Fruit Fly



Laurel Wilt



Tree Termite



Citrus Health Response Program



Citrus Industry Overview

- Citrus remains Florida's iconic crop – **68 million trees to protect**
- Industry generates roughly **76,000 jobs**
- Total impact of citrus industry is approximately **\$10.7 billion**
- **Sobering statistics:**
 - **2015-2016** orange crop will bear **80 million boxes**
 - **2003** orange crop harvested **242 million boxes**



Citrus Pests and Diseases



Citrus leaf miner
damage
Citrus leaf miner
insect

Damaged leaves
allow diseases such
as citrus canker to
infect trees



Citrus canker
Bacterial disease spread by wind
and rain



Citrus black spot
Fungal disease
spread by wind



Citrus greening
Asian citrus psyllids
(ACP)

Bacterial disease spread
by ACP



Citrus Greening

Asian Citrus Psyllid

- **1998** - first **Asian citrus psyllid** found on a dooryard citrus tree in Delray Beach

Citrus Greening – Huanglongbing

- **2005** – citrus **greening** first identified in the U.S. in South Florida
- In areas where the disease is endemic, citrus trees live for 6-8 years, and most never bear usable fruit
- **2015** – All citrus producing counties of Florida infected with citrus greening



FDACS Support of Citrus Industry

- **Citrus Germplasm Introduction Program . . .**
Ensuring plants disease-free start
 - Provides a means for safely introducing healthy foreign citrus varieties into Florida
 - The Florida Citrus Repository at LaCrosse completed in 2014 – 25,000 sq ft facility with a capacity to release up to 30 new varieties of citrus a year
- **Citrus Budwood Registration . . .**
Responding to disease pressures
 - Provides clean budwood to citrus industry
 - Chiefland Budwood Facility – 80,000 sq-ft facility produced 1,316,197 bud eyes for commercial nurseries and research facilities



FDACS Support of Citrus Industry

- **Citrus Nursery . . . *Providing clean stock for nursery growers***
 - Geographic separation of new nurseries from groves
 - Nursery stock propagated in insect-proof structures
 - 63 citrus nurseries in operation
- **Biological Control . . . *Natural solutions to pests and diseases***
 - Developed mass-rearing technique for *Tamarixia* species, parasitoids of Asian citrus psyllid. Upwards of 100,000 released monthly in areas where insecticides are not being applied (residential, abandoned groves, etc.)
 - Not a cure, but a valuable management tool



FDACS Support of Citrus Industry

- **Citrus Health Management Areas (CHMAs) . . .**

 - ***A cooperative effort***

 - Department in cooperation with UF/IFAS assists industry
 - Growers work together to coordinate pest management strategies with emphasis on control of Asian citrus psyllid

- **Abandoned Grove Initiative . . . *Removing risk of pests and diseases***

 - Mitigate impact of citrus pests and diseases
 - Identify abandoned groves and work cooperatively with county tax assessors and property owners regarding abatement options and tax incentives



Summary FDACS Support of Citrus Industry

This year's budget request includes three issues aimed at supporting the state's citrus industry.

- **The first is \$7.7 million of Trust to continue the Citrus Health Response Program.**
- **The second is \$8.5 million of General Revenue funding for further research into the citrus greening disease. This research funding will be administered by the Citrus Research and Development Foundation.**
- **The third is \$2.5 million of General Revenue transfer funding to support the Citrus Inspection Trust Fund.**



Giant African Land Snail



Giant African Land Snail Eradication Program

Major landscape and agricultural pest

Public health threat – carries rat lungworm parasite

Eats stucco

Able to reproduce rapidly

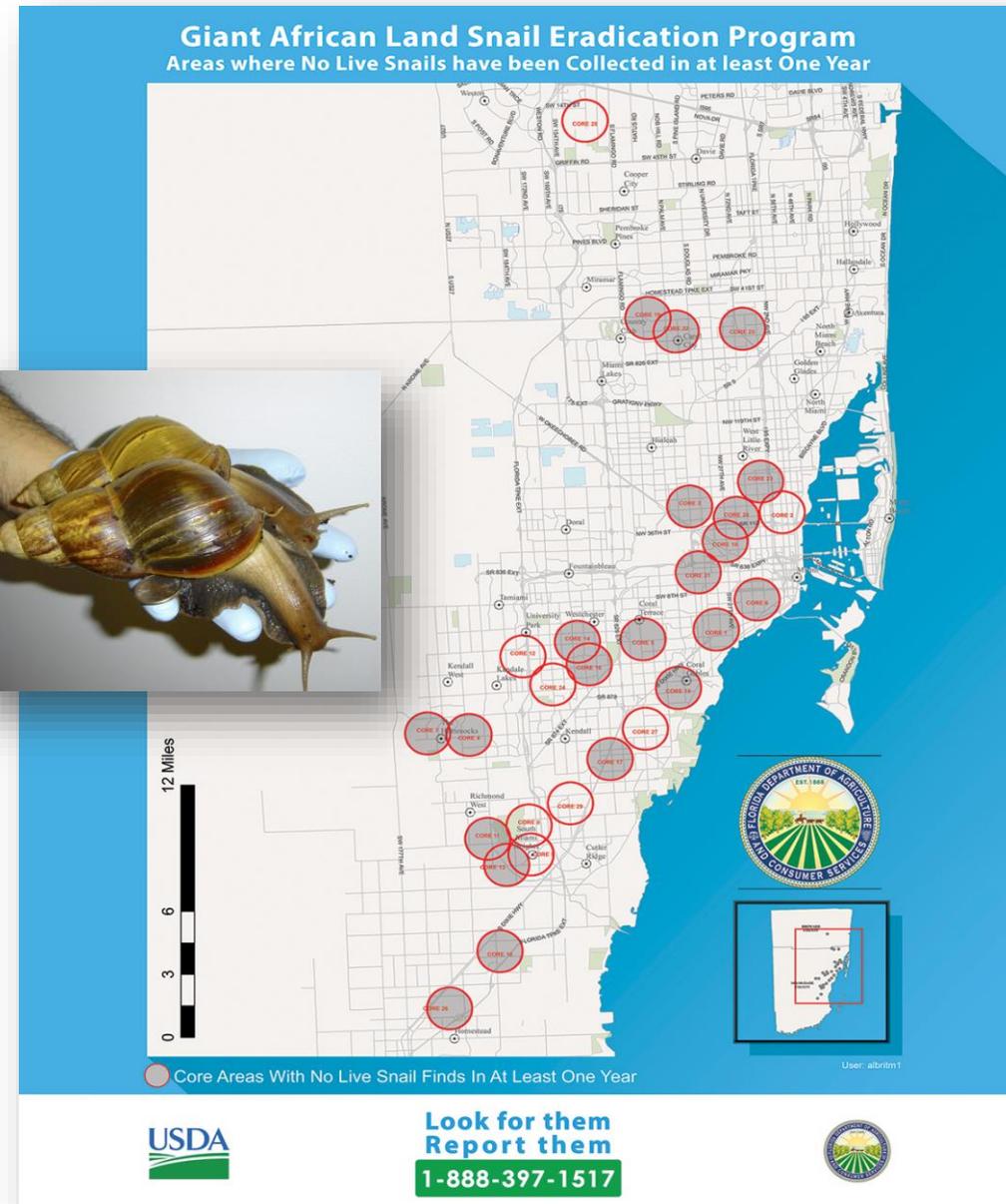
No natural enemies



Giant African Land Snail Eradication Program

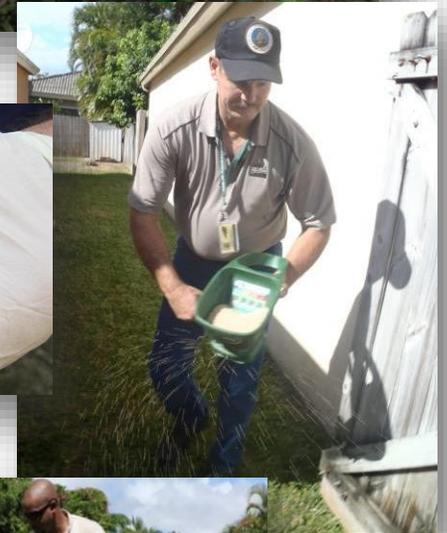
Program in 4th Year

- **159,000+** collected
- Stronger molluscicide approved
- Mortality rate increased significantly / number of snails collected decreased significantly
- 95% of positive properties from calls to the helpline
- 19 of 29 cores have not had positive find in over a year
- Eradication can be declared two years after last positive find

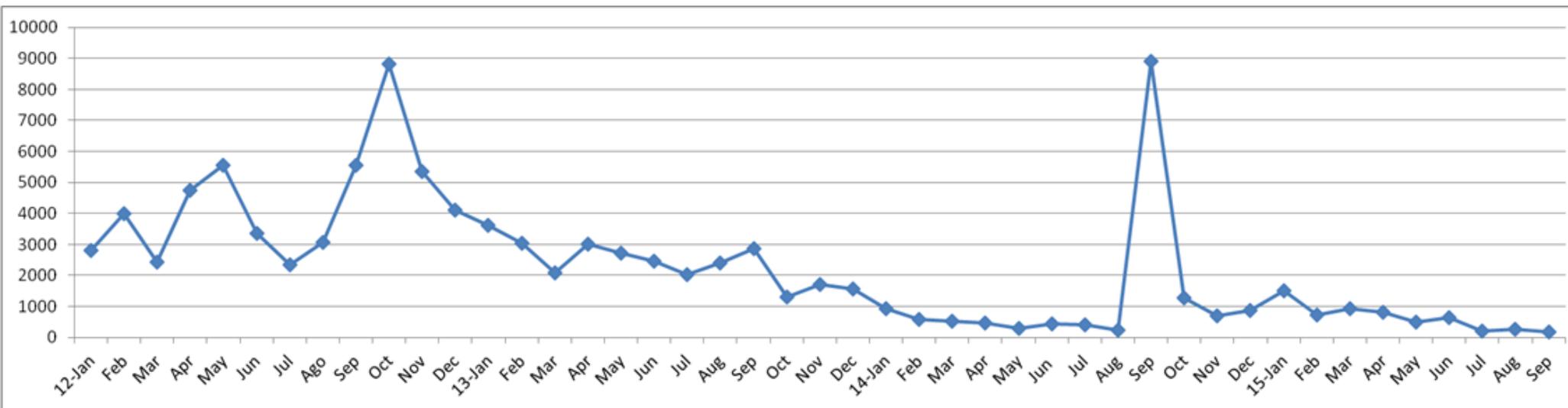


Management Approach

- **‘Boots on Ground’ control approach**
 - ✓ Survey
 - ✓ Hand collect snails
 - ✓ Treat properties with EPA-approved molluscicides added to a snail bait product (Metaldehyde)
 - ✓ Collect and dispose of debris
 - ✓ Detector dogs on duty!



Number of Giant African Land Snail Collected



Giant African Land Snail Eradication Program



Food for thought:

During the 7-year eradication program
in the 70's 17,000 snails collected . . .

Program costs around \$1 million

**In the first 4 years of the current infestation,
over 159,000 have been collected . . .**

Program costs around \$6.5 million



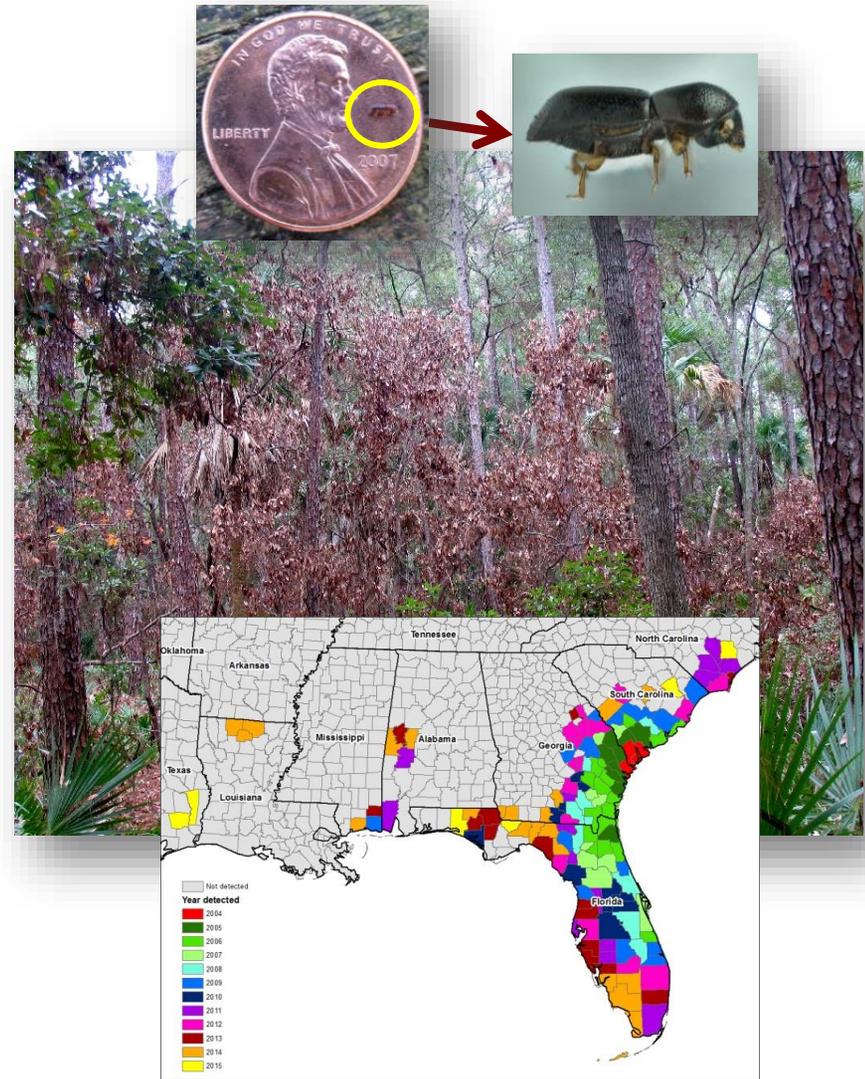
Requesting \$2.3 million (Trust) to eradicate pest

Laurel Wilt Disease



Redbay Ambrosia Beetle / Laurel Wilt

- **2005** – Redbay ambrosia beetle, vector of laurel wilt, arrived in Florida
- **2006** – Laurel wilt discovered in FL
- **2009** Commissioner forms Laurel Wilt Working Group
- **2011** – Redbay trees in Miami-Dade confirmed infected with laurel wilt
- **2012** – Laurel wilt confirmed in Miami-Dade County avocado grove
- **Current status** – found in 8 states; 60 Florida counties; and still spreading. Hundreds of millions of redbay trees killed throughout southeast and acres of diseased avocados exist.



Laurel Wilt Symptoms



Sawdust tubes



Crown wilting and leaf dieback



Striped discolorations



Fighting Laurel Wilt

- **Trapping and specimen evaluation** – state services 45 traps every two weeks in Miami-Dade County near commercial avocado production area, and identifies hundreds of specimens collected from the traps
- **19 sentinel sites** with avocado trees inspected monthly
- Ongoing outreach efforts including the **Save the Guac** campaign and the Don't Move Firewood messages
- **Research** efforts being conducted by industry, UF/IFAS include evaluating beetle behavior, plant pathology and treatment options



Saving Florida's Avocado Industry

▪ Stats:

- 2nd largest agriculture crop in Florida
- 50 varieties grown in Florida
- 7,000 acres; 60 percent of tropical fruit crop acreage
- 500 registered growers, and 30 registered handlers and shippers
- 98% of Florida avocados are grown in Miami-Dade County

▪ Economic Benefits:

- Farm gate sales \$24 million
- Approximately 80 percent of the crop is sold outside Florida; hence, the industry brings in substantial amount of "new dollars" to the state, resulting in an overall economic impact of close to \$100 million per annum

▪ Risks:

- Laurel wilt disease
- Oriental fruit fly (68 avocado groves in current Miami-Dade County Oriental Fruit Fly quarantine area)

Sources: UF/IFAS, NASS/USDA, Avocado Committee



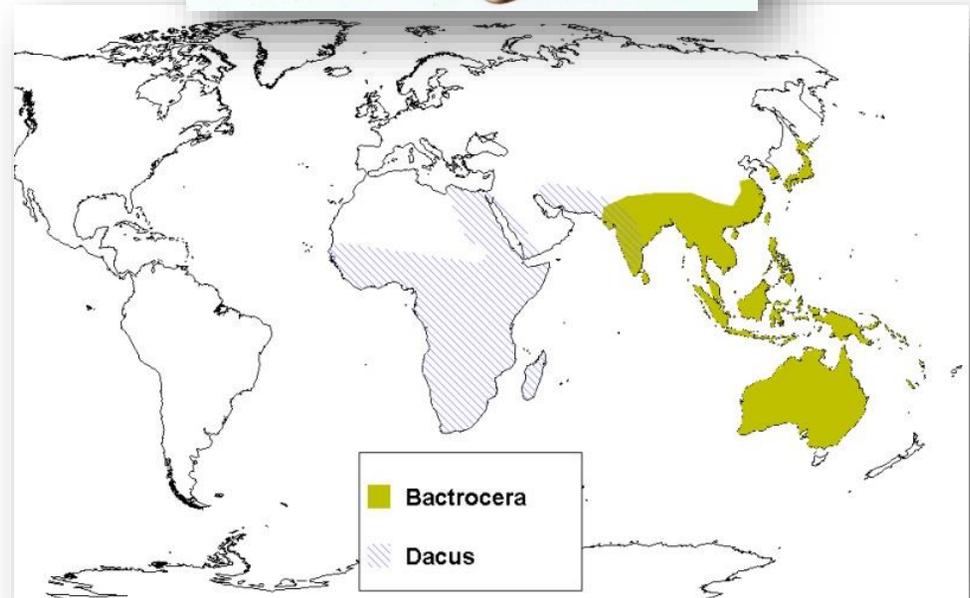
Requesting \$150,000 (GR) to continue efforts to fight laurel wilt disease

Oriental Fruit Fly Eradication Program



Oriental Fruit Fly

- Native to southeast Asia
- Introduced into Hawaii 1945
- First found in California in 1960 - detected in California every year since 1966
- First found in Florida in 1964 - appearances in 13 different years



OFF Previous Florida Detections

- 1964: Pinellas – **1 fly**
2-month trapping
- 1969: Miami – **1 fly** – \$25K
2-month trapping
- 1994: Broward – **1 fly** - \$100k
3-month trapping
- 1995: Pinellas – **3 flies** - \$530k
3-month **eradication program**
- 1999: Hillsborough – 16 flies - \$100k
3-month **eradication program**
- 1999: Volusia – **1 fly**
3-month trapping
- 1999: Brevard – **2 flies**
3-month trapping
- 2000: Manatee – **1 fly**
3-month trapping
- 2001: Orange – **1 fly**
3-month trapping
- 2001: Sarasota – **2 flies** - \$100K
3-month **eradication program**
- 2002: Orange – **2 flies**
3-month trapping
- 2002: Broward – **1 fly**
3-month trapping
- 2007: Hillsborough – **1 fly**
3-month trapping
- 2007: Orange – **1 fly**
3-month trapping
- 2007: Orange – **1 fly**
3-month trapping
- 2008: Orange – **2 flies**
3-month trapping
- 2010: Pinellas – **2 flies**
3-month trapping
- 2014: Broward – **1 fly**
3-month trapping

- **2015: Miami – 165 flies - \$\$\$
Eradication program – duration unknown**



What We Do When We Find Them



Exotic fruit fly eradication programs run by USDA, FDACS and CDFA are some of the most scientifically rigorous regulatory programs conducted to protect agriculture

Programs are based on the reproductive, dispersal or host-searching behaviors of the flies

Hundreds of years of research; 90 years of research in Florida alone

Florida must hold itself to the same standard to which we hold our trading partners; we would never accept host materials from other states or countries if circumstances were reversed

Every host on host list has published literature demonstrating that it has been found to be a host of OFF in the field

Delimiting Survey/ Intensive Trapping

One male fly found

Eradication Program Triggers

Two flies within a 3.5 mile radius and within a time period equal to one life cycle; or

One mature female; or

Larvae or pupae



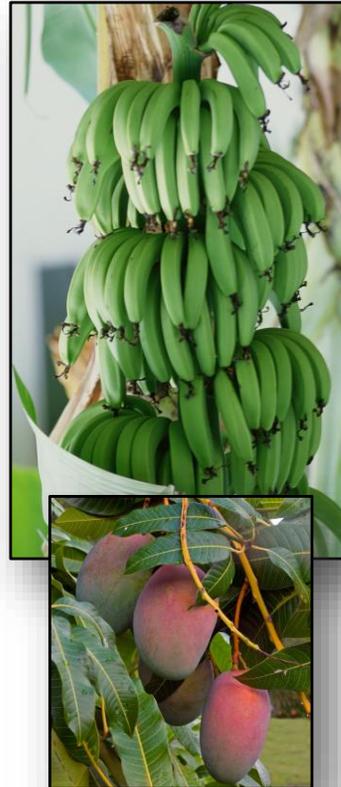
OFF Redland Eradication Program

- August 26, 2015, a male Oriental fruit fly was detected in a trap in the Redland area of Miami, Dade County
- On August 27th, after placing **additional traps** in the immediate area, **45 males were found in a trap** – an unprecedented amount of flies in one trap
- **Eradication program immediately mobilized**



Quarantine Requirements

- ✓ Movement of host material in regulated area is restricted
- ✓ Businesses required to **sign compliance agreements** (growers, packers, lawn maintenance, fruit stands, nurseries, flea markets, mobile vendors)
- ✓ Certification process in place allowing host materials to move in and out of quarantine area



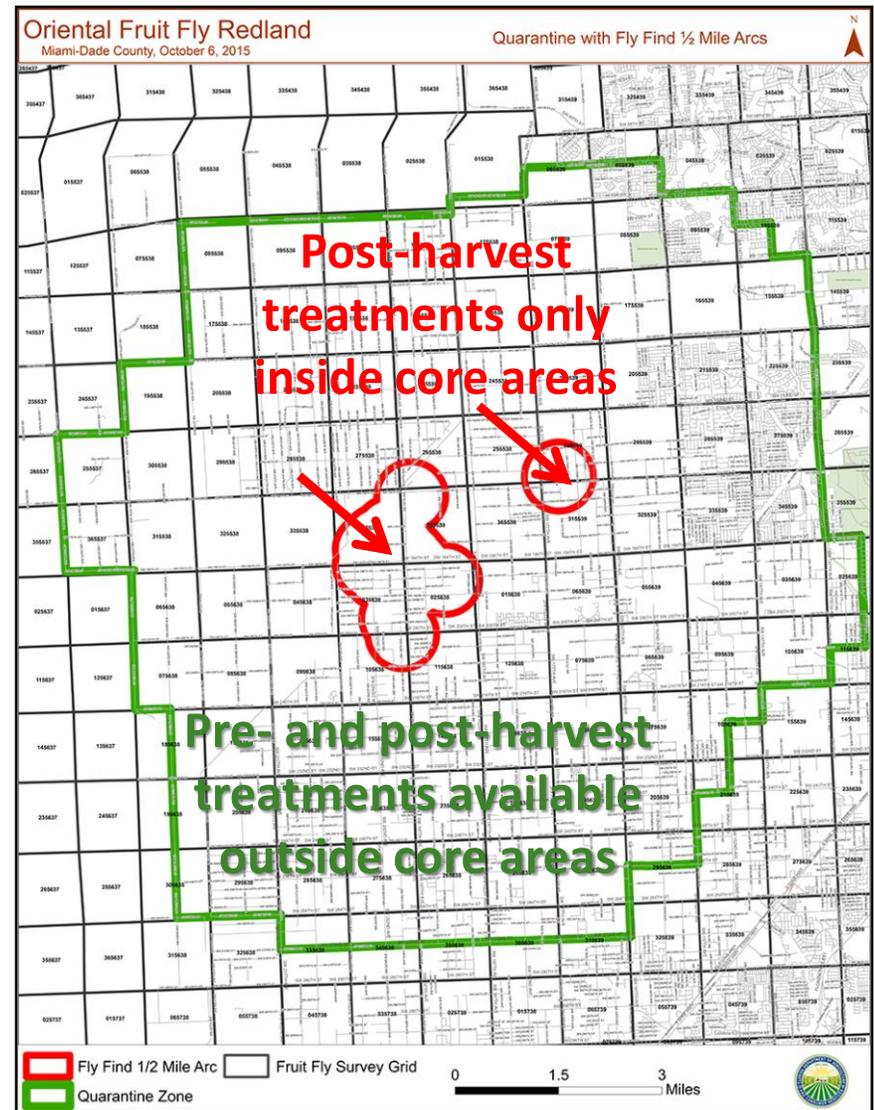
Commodities Impacted

Avocado	1,118 Acres
Guava	78 Acres
Banana	28 Acres
Annona	22 Acres
Mamey	110 Acres
Sapodilla	45 Acres
Papaya	50 Acres
Lychee	110 Acres
Longan	110 Acres
Dragon Fruit	110 Acres



Quarantine Requirements

- Inside ½-mile arc around positive finds post-harvest treatment only (many crops do not tolerate post-harvest options)
 - **Fumigation**
 - **Irradiation**
- Within quarantine, but outside core areas, pre- and post-harvest treatment options available
 - **30-day pre-harvest treatment as outlined in compliance agreement**



Eradication Program Stats

- Incident Command established August 26, 2015
- **120 Personnel assigned**
 - 94 state
 - 26 federal
- Eradication currently estimated for 2/24/16 (if no additional fly found)
- **Program costs**
 - \$800,000 thru 11/1/15



Requesting \$3 million (from USDA) to accomplish eradication



Thank You!



THE FLORIDA SENATE
APPEARANCE RECORD

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

Oct 20, 2015

Meeting Date

Bill Number (if applicable)

Topic Florida Forest Service

Amendment Barcode (if applicable)

Name Jim Karels

Job Title State Forester

Address PL 10 The Capitol

Phone 850 617 7700

Street

Tallahassee FL 32399

Email Jim.Karels@freshfromFlorida.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Dept. of Agriculture & Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

Bill Number (if applicable)

Topic Animal Pest + Disease Response

Amendment Barcode (if applicable)

Name Dr Mike Short

Job Title State Veterinarian / Director Division Animal Industry

Address PL 10 The Capitol

Phone 850 617 7700

Street

Tallahassee FL 32399

City

State

Zip

Email Mike.short@FreshFromFlorida.com

Speaking: For Against Information

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

Representing FDACS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

Bill Number (if applicable)

Topic Plant Pest and Disease

Amendment Barcode (if applicable)

Name Dr. Trevor Smith

Job Title Director Division of Plant Industry

Address PL 10 The Capitol

Phone 850 617 7100

Street

Tallahassee

City

FL

State

32399

Zip

Email Trevor.Smith@freshfromflorida.com

Speaking: For Against Information

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

Representing FDACS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on
General Government
Banking and Insurance
Reapportionment
Rules
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE

Deputy Majority Leader
24th District

October 20, 2015

The Honorable Senator Alan Hays, Chairman
Senate Appropriations Subcommittee on General Government
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Hays:

I respectfully request to be excused from today's meeting of the Senate Appropriations Subcommittee on General Government. Unfortunately, previously-scheduled business will prevent me from attending today, and I greatly appreciate your understanding. Thank you in advance for your consideration of this request to be excused.

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

Sincerely,

Tom Lee
Florida State Senator
24th District

cc: Jamie DeLoach, Staff Director; Lisa Waddell, Administrative Assistant

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

