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# Agriculture & Natural Resources Appropriations Subcommittee

January 13, 2016  
10:00 AM – 12:00 Noon  
Reed Hall

## Meeting Packet



# The Florida House of Representatives

## Appropriations Committee

### Agriculture & Natural Resources Appropriations Subcommittee

Steve Crisafulli  
Speaker

Ben Albritton  
Chair

January 13, 2016

#### AGENDA

10:00 AM – 12:00 PM

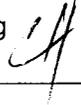
Reed Hall

- I. Call to Order/Roll Call
- II. HB 351 Contaminated Sites by Drake
- III. HB 7007 Department of Agriculture & Consumer Services by Raburn
- IV. HB 7013 Fish & Wildlife Conservation Commission by Combee
- V. Closing/Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 351 Contaminated Sites  
**SPONSOR(S):** Drake  
**TIED BILLS:** IDEN./SIM. BILLS: SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee		Helping 	Massengale 
3) State Affairs Committee			

### SUMMARY ANALYSIS

Contaminated sites are any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment. Brownfield sites are generally abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or perceived environmental contamination.

“Global Risk-Based Corrective Action” or “Global RBCA” requires risk-based corrective action (RBCA) to be applied to all contaminated sites in Florida, except if program specific cleanup requirements apply. RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds. RBCA utilizes site-specific data, modeling results, risk assessment studies, institutional controls, engineering controls, or any combination thereof to provide for a flexible site-specific cleanup process that reflects the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment. Persons responsible for site rehabilitation must follow the Department of Environmental Protection’s (DEP’s) RBCA procedure when rehabilitating a contaminated site.

This bill amends the Global RBCA and brownfield program specific cleanup statutes to:

- Add a definition of “background concentration” to include concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. Currently, DEP may not require site rehabilitation to achieve a contamination target level (CTL) for any contaminant more stringent than the naturally occurring background contamination;
- Require DEP rules to include protocols for long-term natural attenuation for site rehabilitation;
- Require DEP to consider the interactive effects of contaminants, including additives, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task;
- Create an exception when applying state water quality standards if it is shown that the contaminants do not cause or contribute to the exceedance of applicable surface water quality criteria;
- Allow the use of risk assessment modeling and probabilistic risk assessment to create site-specific alternative CTLs; and
- Allow the use of alternative CTLs without institutional controls if certain conditions exist.

The bill appears to have an insignificant negative fiscal impact on the state, which can be absorbed within existing resources; an indeterminate positive fiscal impact on the private sector; and no fiscal impact on local governments. See Fiscal Analysis & Economic Impact Statement for more detail.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Contaminated sites are any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.<sup>1</sup> Prior to 2003, Florida used risk based corrective action (RBCA) (pronounced “Rebecca”) at contaminated sites under the following Department of Environmental Protection (DEP) programs: the Petroleum Restoration Program, the Brownfield Program, and the Drycleaning Facility Restoration Program (collectively “program sites”).<sup>2</sup> The program sites made up approximately 90 percent of all of the contaminated sites in Florida.<sup>3</sup>

RBCA is a process that bases remedial action for contaminated sites on potential human health effects resulting from exposure to chemical compounds.<sup>4</sup> RBCA utilizes site-specific data, modeling results, risk assessment studies, institutional controls (such as deed restrictions limiting future use to industrial), engineering controls (such as placing an impervious surface over contaminated soils to prevent human exposure), or any combination thereof.<sup>5</sup>

DEP managed non-program sites under the Contamination Assessment Plan/Remedial Action Plan process (CAP/RAP) set forth in the Model Corrective Action for Contaminated Site Cases guidance document.<sup>6</sup> These sites were required to be remediated to default cleanup target levels (CTLs).<sup>7</sup> A CTL is the concentration of a contaminant identified by an applicable analytical test method, in the medium of concern (e.g., soil or water), at which a site rehabilitation program is deemed complete.<sup>8</sup> DEP developed the CTLs based on human health and aesthetic factors.<sup>9</sup> Aesthetic considerations include altered taste, odor, or color of the water.<sup>10</sup> This approach offered little flexibility to provide site-specific remediation strategies, was inefficient,<sup>11</sup> and created a significant expense.<sup>12</sup>

##### Global RBCA

In 2003, the Legislature created s. 376.30701, F.S., commonly referred to as “Global Risk-Based Corrective Action” or “Global RBCA,” which required RBCA to be applied to all contaminated sites in Florida to meet CTLs.<sup>13</sup> Chapter 62-777, F.A.C., provides the default CTLs and a methodology for RBCA.<sup>14</sup>

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<sup>1</sup> Section 376.301(10), F.S.

<sup>2</sup> Charles F. Mills III, *Global RBCA: Its Implementation, Foundation in Risk-Based Theory, and Implications*, 22 J. Land Use & Envtl. L. 101, 116 (Fall 2006).

<sup>3</sup> Id. at 117.

<sup>4</sup> Id. at 102.

<sup>5</sup> Ralph A. DeMeo, Michael P. Petrovich, Christopher M. Teal, *Risk-Based Corrective Action In Florida: How Is It Working?*, the Florida Bar Journal, January 2015, at 47.

<sup>6</sup> Mills, *supra* note 2, at 118. In 2005, the Fifth District Court of Appeals found this guidance document to be an unpromulgated rule, and therefore invalid. *Kerper v. Department of Environmental Protection*, 894 So.2d 1006 (Fla. 5th DCA 2005).

<sup>7</sup> DeMeo, *supra* note 5, at 47.

<sup>8</sup> Section 376.301(7), F.S.

<sup>9</sup> DEP, *Technical Report: Development of Cleanup Target Levels (CTLs) For Chapter 62-777, F.A.C.*, at 7, incorporated by reference in rule 62-777.100, F.A.C.

<sup>10</sup> Id.

<sup>11</sup> DeMeo, *supra* note 5, at 47.

<sup>12</sup> Mills, *supra* note 2, at 133.

<sup>13</sup> Id. at 102.

<sup>14</sup> Id. at 118.

Global RBCA does not apply to contaminated sites subject to the risk-based corrective action cleanup criteria established for the petroleum, brownfields, and drycleaning programs.<sup>15</sup> These programs provide financial and regulatory incentives to facilitate cleanup, and are subject to RBCA criteria established for the specific program.<sup>16</sup>

In 2005, DEP adopted rules to implement Global RBCA.<sup>17</sup> The goal was to provide for a flexible site-specific cleanup process that reflected the intended use of the property following cleanup, while maintaining adequate protection of human health, safety, and the environment.<sup>18</sup> In 2013, DEP consolidated the contamination site cleanup criteria for petroleum contamination,<sup>19</sup> drycleaning solvents,<sup>20</sup> brownfield cleanup,<sup>21</sup> and all other contaminated sites<sup>22</sup> into the Global RBCA rule chapter.<sup>23</sup>

The ultimate goal for any contaminated site is for DEP to issue it a “No Further Action” (NFA) order. Upon discovery of a contaminant, DEP must be notified.<sup>24</sup> The person responsible for site rehabilitation (responsible party) must commence site assessment within 60 days of discovery of a discharge to determine the extent of contamination and facilitate selection of an appropriate remediation strategy.<sup>25</sup> This includes establishing any background concentrations of contaminations.<sup>26</sup> Background concentrations are concentrations of contaminants that are naturally occurring in the groundwater, surface water, soil, or sediment in the vicinity of the site.<sup>27</sup> DEP cannot require site rehabilitation to achieve a CTL for any contaminant more stringent than the naturally occurring background contamination.<sup>28</sup>

Once a responsible party completes a site assessment, it has three Risk Management Options (RMOs) available to perform site rehabilitation to achieve a NFA order. Under the RMO options, the responsible party must either rehabilitate the site to the default CTLs established in ch. 62-777, F.A.C., or to the alternative CTLs established through a risk assessment. Responsible parties may choose to create their own alternative CTLs when present and future use of the site and site exposure characteristics differ greatly from those utilized to calculate the default CTLs such that the default CTLs are overly conservative or not conservative enough.<sup>29</sup>

Under RMO I, DEP will issue a NFA order without institutional controls or without institutional and engineering controls if the exposure point concentration (EPC) for all detected chemicals do not exceed the less stringent of their corresponding default residential CTLs or their background concentration.<sup>30</sup> Under RMO II, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed default commercial/industrial CTLs or alternative CTLs adjusted for site-specific geologic or hydrogeologic conditions.<sup>31</sup> Under RMO III, DEP will grant a NFA order, subject to institutional controls, if the EPCs for all detected chemicals do not exceed alternative CTLs adjusted for site-specific exposure scenarios determined in the exposure assessment.<sup>32</sup>

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<sup>15</sup> Section 376.30701(1)(b), F.S.

<sup>16</sup> See ss. 376.3071, 376.7078, and 376.83, F.S.

<sup>17</sup> DeMeo, *supra* note 5, at 47.

<sup>18</sup> *Id.*

<sup>19</sup> Former ch. 62-770, F.A.C.

<sup>20</sup> Former ch. 62-782, F.A.C.

<sup>21</sup> Former ch. 62-785, F.A.C.

<sup>22</sup> Chapter 62-780, F.A.C.

<sup>23</sup> Notice of Rule Development, 39 Fla. Admin. R. 105 (May 30, 2013).

<sup>24</sup> Rule 62-780.210, F.A.C.

<sup>25</sup> Rule 62-780.600, F.A.C.

<sup>26</sup> Rule 62-780.600(3)(d), F.A.C.

<sup>27</sup> Rule 62-780.200(3), F.A.C.

<sup>28</sup> Section 376.30701(2)(g) and (i), F.S.

<sup>29</sup> DEP, *supra* note 9, at 43-44.

<sup>30</sup> Mills, *supra* note 2, at 125; rule 62-780.680(1), F.A.C.

<sup>31</sup> *Id.*; rule 62-780.680(2), F.A.C.

<sup>32</sup> *Id.*; rule 62-780.680(3), F.A.C.

Under each RMO, responsible parties may use several methods to rehabilitate the site to achieve a NFA order. Section 376.30701(2), F.S., requires DEP's rule to include protocols for natural attenuation as a method for site rehabilitation. Natural attenuation allows natural processes to contain the spread of contamination and reduce the concentrations of contaminants in contaminated groundwater and soil.<sup>33</sup> Natural attenuation processes may include sorption, biodegradation, chemical reactions with subsurface materials, diffusion, dispersion, and volatilization.<sup>34</sup> This practice may be used depending on individual site characteristics, current and projected use of the land and groundwater, the exposed population, the location of the contamination plume, the degree and extent of contamination, the rate of migration of the plume, the apparent or potential rate of degradation of contaminants through natural attenuation, and the potential for further migration in relation to the site's property boundary.<sup>35</sup>

Natural attenuation monitoring is allowable if:

- Free product is not present or free product removal is not feasible;
- Contaminated soil is not present in the unsaturated zone;
- Contaminations present in the groundwater above background concentrations or applicable CTLs are not migrating beyond the temporary point of compliance or vertically;
- The characteristics of the contaminant and its transformation products are conducive to natural attenuation; and
- One of the following is met:
  - The contaminated site is anticipated to meet NFA criteria in 5 years or less as a result of natural attenuation, the background concentrations or applicable CTLs are not exceeded at the temporary point of compliance, and contaminant concentrations do not meet certain criteria; or
  - The appropriateness of natural attenuation is demonstrated by:
    - A technical evaluation of the groundwater and soil;
    - A scientific evaluation of the contamination plume migration, an estimate of the annual reduction in contaminant concentrations, and the estimated time to meet NFA; and
    - A life-cycle cost analysis of remedial alternatives.<sup>36</sup>

### Brownfield Redevelopment Act

A brownfield is real property, generally abandoned, idled, or underused industrial and commercial property, where expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.<sup>37</sup> In 1995, the Environmental Protection Agency (EPA) created the Brownfields Program to manage contaminated property through site remediation and redevelopment.<sup>38</sup> EPA's Brownfields Program provides grants and technical assistance to communities, states, tribes, and other stakeholders, giving them the resources they need to prevent, assess, safely clean up, and sustainably reuse brownfields.<sup>39</sup>

In 1997, the Legislature enacted the Brownfields Redevelopment Act (Act).<sup>40</sup> The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of

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<sup>33</sup> Section 376.301(24), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Rule 62-780.690(1), F.A.C.

<sup>36</sup> *Id.*

<sup>37</sup> Section 288.107(1)(b), F.S.; EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

<sup>38</sup> EPA, *Brownfield Overview and Definition*, <http://www2.epa.gov/brownfields/brownfield-overview-and-definition> (last visited November 6, 2015).

<sup>39</sup> EPA, *Brownfields*, <http://www2.epa.gov/brownfields> (last visited November 6, 2015).

<sup>40</sup> Chapter 97-173, Laws of Florida.

brownfield sites to improve public health and reduce environmental hazards.<sup>41</sup> 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.<sup>42</sup> Since inception of the Act, 78 contaminated sites have been cleaned up, more than 75,000 confirmed and projected direct and indirect jobs have been created, and \$2.7 billion in capital investment is projected in designated brownfield areas.<sup>43</sup>

### Effect of Proposed Changes

This bill makes several revisions to the Global RBCA and Brownfield program specific cleanup statutes.

The bill amends ss. 376.301 and 376.79, F.S., to add a definition for “background concentration.” This definition includes concentrations of contaminants that are naturally occurring or the result of anthropogenic (human) impacts unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. The bill also makes conforming changes to remove references to “naturally occurring” in front of “background concentration.”

Currently, DEP may not require a responsible party performing site rehabilitation to achieve a CTL for any contaminant more stringent than the background contamination. DEP’s rule only includes naturally occurring concentrations of contaminants in its definition of “background concentration.” Under the proposed change, human-created contamination may be treated as background contamination as well as naturally occurring contaminants. The change is similar to the EPA’s policy for addressing background concentrations. In certain situations, the EPA will not require rehabilitation below naturally occurring or anthropogenic background concentrations.<sup>44</sup> The EPA guidance requires that the anthropogenic background contamination be unrelated to the release of hazardous substances at the contaminated site.<sup>45</sup> Under the proposed change, responsible parties would only be required to rehabilitate their contaminated sites for the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation.

The bill defines “long-term natural attenuation” to mean natural attenuation approved by DEP as a site rehabilitation program task that lasts more than five years. The bill also amends subsections 376.30701(2) and 376.81(1), F.S., to require DEP’s Global RBCA rules to include protocols for long-term natural attenuation.<sup>46</sup>

The bill amends paragraphs 376.30701(2)(e) and 376.81(1)(e), F.S., to require DEP to consider the interactive effects of contaminants, including additive, synergistic, and antagonistic effects when determining what constitutes a rehabilitation program task.<sup>47</sup>

The bill amends subparagraphs 376.30701(2)(g)2. and 376.81(1)(g)2., F.S., to create an exception when applying state water quality standards in determining what constitutes a rehabilitation program task. Currently, the statute requires that when surface waters are exposed to contaminated groundwater, the more protective groundwater or surface water standard CTL must be applied. The bill

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<sup>41</sup> DEP, Florida Brownfields Revelopment Act – Annual Report p. 4, [http://www.dep.state.fl.us/waste/quick\\_topics/publications/wc/brownfields/AnnualReport/2015/2014-15\\_FDEP\\_Annual.pdf](http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2015/2014-15_FDEP_Annual.pdf) (last visited November 6, 2015).

<sup>42</sup> Section 376.82, F.S.

<sup>43</sup> DEP, *supra* note 41, at 2.

<sup>44</sup> See EPA, *Transmittal of Policy Statement: “Role of Background in CERCLA Cleanup Program” OSWER 9285.6-07P* (May 2002), available at [http://rais.ornl.gov/documents/bkgpol\\_jan01.pdf](http://rais.ornl.gov/documents/bkgpol_jan01.pdf) (last visited November 5, 2015); EPA, *Guidance for Comparing Background and Chemical Concentrations in Soil for CERCLA Sites OSWER 9285.7-41* (September 2002), available at [https://dec.alaska.gov/spar/csp/guidance\\_forms/docs/background.pdf](https://dec.alaska.gov/spar/csp/guidance_forms/docs/background.pdf) (last visited November 5, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> Rule 62-780.690, F.A.C., limits natural attenuation to a five-year period. However, the rule permits natural attenuation for a longer period if the appropriateness of natural attenuation is demonstrated through technical and scientific evaluation.

<sup>47</sup> Rule 62-780.650(1)(c)3., F.A.C., allows this methodology when creating a risk characterization as part of a risk assessment.

waives this requirement when it has been demonstrated that contaminants do not cause or contribute to the exceedance of the applicable surface water criteria.

The bill amends subparagraphs 376.30701(2)(g)3., 376.30701(2)(i)3., 376.81(1)(g)3., and 376.81(1)(i)3., F.S., to allow the use of risk assessment modeling and probabilistic risk assessment (PRA) to create site-specific alternative CTLs. PRA 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.<sup>48</sup> This method is different from the point estimate risk assessment for single values because it uses multiple variables.<sup>49</sup> The EPA uses this new method of risk assessment when evaluating risk at contaminated sites it regulates.<sup>50</sup>

The bill also amends subparagraph 376.30701(2)(g)3., F.S., to allow the use of alternative CTLs without institutional controls if:

- The only CTLs exceeded are the groundwater CTLs derived from nuisance, organoleptic,<sup>51</sup> or aesthetic considerations;
- Concentrations of all contaminants meet the state water quality standards or the minimum criteria, based on the protection of human health, public safety, and the environment;
- All of the established groundwater CTLs for the contaminated site are met at the property boundary;
- The responsible party demonstrated that the contaminants will not migrate beyond the property boundary at concentrations that exceed the groundwater CTLs established for the contaminated site;
- 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 property owner does not object to the NFA proposal to DEP or the local pollution control program.

A brownfield contaminated site may already use alternative CTLs without institutional controls if they meet the criteria above.<sup>52</sup>

Lastly, the bill amends ss. 196.1995(3), 287.0595(1)(a), and 288.1175(5)(c), F.S., to correct cross references.

## B. SECTION DIRECTORY:

- Section 1.** Amending s. 376.301, F.S., relating to definitions used in ss. 376.30-376.317, 376.70, and 376.75, F.S.
- Section 2.** Amending s. 376.30701, F.S., relating to application of RBCA principles to contaminated sites.
- Section 3.** Amending s. 376.79, F.S., relating to brownfields redevelopment definitions.
- Section 4.** Amending s. 376.81, F.S., relating to brownfield site and brownfield areas contamination cleanup criteria.
- Section 5.** Amending s. 196.1195, F.S., correcting a cross reference.

<sup>48</sup> EPA, *Risk Assessment Guidance for Superfund: Volume III – Part A, Process for Conducting Probabilistic Risk Assessment at 1-3* (December 2001) available at <http://www2.epa.gov/risk/risk-assessment-guidance-superfund-rags-volume-iii-part> (last visited November 5, 2015).

<sup>49</sup> *Id.* at 1-7.

<sup>50</sup> *See Id.* Rule 62-780.650(3), F.A.C., allows the use of PRA to perform risk assessment when establishing alternative CTLs.

<sup>51</sup> “Organoleptic” means pertaining to, or perceived by, a sensory organ (i.e., color, taste, or odor). Rule 62-780.200(28), F.A.C.

<sup>52</sup> Section 376.81(1)(g)3., F.S.

**Section 6.** Amending s. 287.0595, F.S., correcting a cross reference.

**Section 7.** Amending s. 288.1175, F.S., correcting a cross reference.

**Section 8.** Providing an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill appears to have an insignificant negative fiscal impact on DEP because the department will likely need to revise their rules as a result of the changes in the bill. The impact can be absorbed by existing agency resources.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will likely have an indeterminate positive economic impact on persons or entities that must rehabilitate a contaminated site. The amounts and types of contaminants, as well as the underlying geology, vary at each site resulting in a wide range of costs associated with site rehabilitation. However, property owners will no longer be required to rehabilitate a site for background concentrations caused by human activities unrelated to the discharge of pollutants or hazardous substances at the contaminated site undergoing rehabilitation. Further, these property owners will not be required to use institutional controls when an alternative CTL is used for site remediation in certain situations. Therefore, there will likely be a reduced cost associated with site cleanup.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DEP has sufficient rulemaking authority to amend ch. 62-780, F.A.C., to conform to changes made in the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Other Comments: Applicability

The changes in the bill primarily apply to waste cleanup sites and brownfield cleanup sites. The contaminated site cleanup criteria for petroleum contamination sites and drycleaning contamination sites are found in subsections 376.3071(5) and 376.3078(4), F.S., respectively. Thus, subsections 376.3071(5) and 376.3078(4), F.S., may need to be amended to apply the new criteria to all contaminated sites in Florida.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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  
 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  
 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

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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~~  
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 is~~  
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  
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  
 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  
 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

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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  
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  
 225 | established pursuant to subparagraph 1. are met at the property  
 226 | boundary;

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

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

234 |       f. The real property owner does not object to the "No

235 Further Action" proposal to the department or the local  
 236 pollution control program.

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

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

258 1. In establishing soil cleanup target levels for human  
 259 exposure to each contaminant found in soils from the land  
 260 surface to 2 feet below land surface, the department shall apply

261 the following, as appropriate: calculations using a lifetime  
 262 cancer risk level of 1.0E-6; a hazard index of 1 or less; and  
 263 the best achievable detection limit. However, the department may  
 264 ~~shall~~ not require site rehabilitation to achieve a cleanup  
 265 target level for an individual contaminant that is more  
 266 stringent than the site-specific, ~~naturally occurring~~ background  
 267 concentration for that contaminant. Institutional controls or  
 268 other methods shall be used to prevent human exposure to  
 269 contaminated soils more than 2 feet below the land surface. Any  
 270 removal of such institutional controls shall require such  
 271 contaminated soils to be remediated.

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

285 3. Using risk-based corrective action principles, the  
 286 department shall approve alternative cleanup target levels in

287 conjunction with institutional and engineering controls, if  
 288 needed, based upon an applicant's demonstration, using site-  
 289 specific or other relevant data and information, risk assessment  
 290 modeling results, including results from probabilistic risk  
 291 assessment modeling, risk assessment studies, risk reduction  
 292 techniques, or a combination thereof, that human health, public  
 293 safety, and the environment are protected to the same degree as  
 294 provided in subparagraphs 1. and 2.

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

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

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

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

320 (13) "Long-term natural attenuation" means natural  
 321 attenuation approved by the department as a site rehabilitation  
 322 program task for a period of more than 5 years.

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

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

327 (1) It is the intent of the Legislature to protect the  
 328 health of all people under actual circumstances of exposure. By  
 329 July 1, 2001, the secretary of the department shall establish  
 330 criteria by rule for the purpose of determining, on a site-  
 331 specific basis, the rehabilitation program tasks that comprise a  
 332 site rehabilitation program and the level at which a  
 333 rehabilitation program task and a site rehabilitation program  
 334 may be deemed completed. In establishing the rule, the  
 335 department shall apply, to the maximum extent feasible, a risk-  
 336 based corrective action process to achieve protection of human  
 337 health and safety and the environment in a cost-effective manner  
 338 based on the principles set forth in this subsection. The rule

339 must prescribe a phased risk-based corrective action process  
 340 that is iterative and that tailors site rehabilitation tasks to  
 341 site-specific conditions and risks. The department and the  
 342 person responsible for brownfield site rehabilitation are  
 343 encouraged to establish decision points at which risk management  
 344 decisions will be made. The department shall provide an early  
 345 decision, when requested, regarding applicable exposure factors  
 346 and a risk management approach based on the current and future  
 347 land use at the site. The rule must ~~shall also~~ include protocols  
 348 for the use of natural attenuation, including long-term natural  
 349 attenuation where site conditions warrant, the use of  
 350 institutional and engineering controls, and the issuance of "no  
 351 further action" letters. The criteria for determining what  
 352 constitutes a rehabilitation program task or completion of a  
 353 site rehabilitation program task or site rehabilitation program  
 354 must:

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

361 (b) Establish the point of compliance at the source of the  
 362 contamination. However, the department may ~~is authorized to~~  
 363 temporarily move the point of compliance to the boundary of the  
 364 property, or to the edge of the plume when the plume is within

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365 | the property boundary, while cleanup, including cleanup through  
366 | natural attenuation processes in conjunction with appropriate  
367 | monitoring, is proceeding. The department may ~~also is~~  
368 | ~~authorized~~, pursuant to criteria provided for in this section,  
369 | ~~to~~ temporarily extend the point of compliance beyond the  
370 | property boundary with appropriate monitoring, if such extension  
371 | is needed to facilitate natural attenuation or to address the  
372 | current conditions of the plume, provided human health, public  
373 | safety, and the environment are protected. When temporarily  
374 | extending the point of compliance beyond the property boundary,  
375 | it cannot be extended further than the lateral extent of the  
376 | plume at the time of execution of the brownfield site  
377 | rehabilitation agreement, if known, or the lateral extent of the  
378 | plume as defined at the time of site assessment. Temporary  
379 | extension of the point of compliance beyond the property  
380 | boundary, as provided in this paragraph, must include actual  
381 | notice by the person responsible for brownfield site  
382 | rehabilitation to local governments and the owners of any  
383 | property into which the point of compliance is allowed to extend  
384 | and constructive notice to residents and business tenants of the  
385 | property into which the point of compliance is allowed to  
386 | extend. Persons receiving notice pursuant to this paragraph  
387 | shall have the opportunity to comment within 30 days of receipt  
388 | of the notice.

389 |       (c) Ensure that the site-specific cleanup goal is that all  
390 | contaminated brownfield sites and brownfield areas ultimately

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391 | achieve the applicable cleanup target levels provided in this  
392 | section. In the circumstances provided below, and after  
393 | constructive notice and opportunity to comment within 30 days  
394 | from receipt of the notice to local government, to owners of any  
395 | property into which the point of compliance is allowed to  
396 | extend, and to residents on any property into which the point of  
397 | compliance is allowed to extend, the department may allow  
398 | concentrations of contaminants to temporarily exceed the  
399 | applicable cleanup target levels while cleanup, including  
400 | cleanup through natural attenuation processes in conjunction  
401 | with appropriate monitoring, is proceeding, if human health,  
402 | public safety, and the environment are protected.

403 |       (d) Allow brownfield site and brownfield area  
404 | rehabilitation programs to include the use of institutional or  
405 | engineering controls, where appropriate, to eliminate or control  
406 | the potential exposure to contaminants of humans or the  
407 | environment. The use of controls must be preapproved by the  
408 | department and only after constructive notice and opportunity to  
409 | comment within 30 days from receipt of notice is provided to  
410 | local governments, to owners of any property into which the  
411 | point of compliance is allowed to extend, and to residents on  
412 | any property into which the point of compliance is allowed to  
413 | extend. When institutional or engineering controls are  
414 | implemented to control exposure, the removal of the controls  
415 | must have prior department approval and must be accompanied by  
416 | the resumption of active cleanup, or other approved controls,

417 unless cleanup target levels under this section have been  
 418 achieved.

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

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

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

434 1. Cleanup target levels for each contaminant found in  
 435 groundwater shall be the applicable state water quality  
 436 standards. Where such standards do not exist, the cleanup target  
 437 levels for groundwater shall be based on the minimum criteria  
 438 specified in department rule. The department shall apply the  
 439 following, as appropriate, in establishing the applicable  
 440 cleanup target levels: calculations using a lifetime cancer risk  
 441 level of 1.0E-6; a hazard index of 1 or less; the best  
 442 achievable detection limit; and nuisance, organoleptic, and

443 aesthetic considerations. However, the department may ~~shall~~ not  
 444 require site rehabilitation to achieve a cleanup target level  
 445 for any individual contaminant which is more stringent than the  
 446 site-specific, ~~naturally occurring~~ background concentration for  
 447 that contaminant.

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

458 3. Using risk-based corrective action principles, the  
 459 department shall approve alternative cleanup target levels in  
 460 conjunction with institutional and engineering controls, if  
 461 needed, based upon an applicant's demonstration, using site-  
 462 specific or other relevant data and information, risk assessment  
 463 modeling results, including results from probabilistic risk  
 464 assessment modeling, risk assessment studies, risk reduction  
 465 techniques, or a combination thereof, that human health, public  
 466 safety, and the environment are protected to the same degree as  
 467 provided in subparagraphs 1. and 2. Where a state water quality  
 468 standard is applicable, a deviation may not result in the

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

484 a. The only cleanup target levels exceeded are the  
485 groundwater cleanup target levels derived from nuisance,  
486 organoleptic, or aesthetic considerations;

487 b. Concentrations of all contaminants meet the state water  
488 quality standards or the minimum criteria, based on the  
489 protection of human health, provided in subparagraph 1.;

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

493 d. The person responsible for brownfield site  
494 rehabilitation has demonstrated that the contaminants will not

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495 migrate beyond the property boundary at concentrations exceeding  
496 the groundwater cleanup target levels established pursuant to  
497 subparagraph 1.;

498 e. The property has access to and is using an offsite  
499 water supply and no unplugged private wells are used for  
500 domestic purposes; and

501 f. The real property owner provides written acceptance of  
502 the "no further action" proposal to the department or the local  
503 pollution control program.

504 (h) Provide for the department to issue a "no further  
505 action order," with conditions, including, but not limited to,  
506 the use of institutional or engineering controls where  
507 appropriate, when alternative cleanup target levels established  
508 pursuant to subparagraph (g)3. have been achieved, or when the  
509 person responsible for brownfield site rehabilitation can  
510 demonstrate that the cleanup target level is unachievable within  
511 available technologies. Before ~~Prior to~~ issuing such an order,  
512 the department shall consider the feasibility of an alternative  
513 site rehabilitation technology at in the brownfield site ~~area~~.

514 (i) Establish appropriate cleanup target levels for soils.

515 1. In establishing soil cleanup target levels for human  
516 exposure to each contaminant found in soils from the land  
517 surface to 2 feet below land surface, the department shall apply  
518 the following, as appropriate: calculations using a lifetime  
519 cancer risk level of 1.0E-6; a hazard index of 1 or less; and  
520 the best achievable detection limit. However, the department may

521 ~~shall~~ not require site rehabilitation to achieve a cleanup  
 522 target level for an individual contaminant which is more  
 523 stringent than the site-specific, ~~naturally occurring~~ background  
 524 concentration for that contaminant. Institutional controls or  
 525 other methods shall be used to prevent human exposure to  
 526 contaminated soils more than 2 feet below the land surface. Any  
 527 removal of such institutional controls shall require such  
 528 contaminated soils to be remediated.

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

542         3. Using risk-based corrective action principles, the  
 543 department shall approve alternative cleanup target levels in  
 544 conjunction with institutional and engineering controls, if  
 545 needed, based upon an applicant's demonstration, using site-  
 546 specific or other relevant data and information, risk assessment

547 modeling results, including results from probabilistic risk  
 548 assessment modeling, risk assessment studies, risk reduction  
 549 techniques, or a combination thereof, that human health, public  
 550 safety, and the environment are protected to the same degree as  
 551 provided in subparagraphs 1. and 2.

552 (2) The department shall require source removal, as a risk  
 553 reduction measure, if warranted and cost-effective. Once source  
 554 removal at a site is complete, the department shall reevaluate  
 555 the site to determine the degree of active cleanup needed to  
 556 continue. Further, the department shall determine if the  
 557 reevaluated site qualifies for monitoring only or if no further  
 558 action is required to rehabilitate the site. If additional site  
 559 rehabilitation is necessary to reach "no further action" status,  
 560 the department is encouraged to utilize natural attenuation  
 561 monitoring, including long-term natural attenuation and  
 562 monitoring, where site conditions warrant.

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

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

570 196.1995 Economic development ad valorem tax exemption.—

571 (3) The board of county commissioners or the governing  
 572 authority of the municipality that calls a referendum within its

573 total jurisdiction to determine whether its respective  
 574 jurisdiction may grant economic development ad valorem tax  
 575 exemptions may vote to limit the effect of the referendum to  
 576 authority to grant economic development tax exemptions for new  
 577 businesses and expansions of existing businesses located in an  
 578 enterprise zone or a brownfield area, as defined in s. 376.79(5)  
 579 ~~s. 376.79(4)~~. If an area nominated to be an enterprise zone  
 580 pursuant to s. 290.0055 has not yet been designated pursuant to  
 581 s. 290.0065, the board of county commissioners or the governing  
 582 authority of the municipality may call such referendum prior to  
 583 such designation; however, the authority to grant economic  
 584 development ad valorem tax exemptions does not apply until such  
 585 area is designated pursuant to s. 290.0065. The ballot question  
 586 in such referendum shall be in substantially the following form  
 587 and shall be used in lieu of the ballot question prescribed in  
 588 subsection (2):

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

597  
 598 ....Yes—For authority to grant exemptions.

599           ....No-Against authority to grant exemptions.

600           Section 6. Paragraph (a) of subsection (1) of section  
601 287.0595, Florida Statutes, is amended to read:

602           287.0595 Pollution response action contracts; department  
603 rules.-

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

607           (a) Procedures for determining the qualifications of  
608 responsible potential vendors prior to advertisement for and  
609 receipt of bids, proposals, or replies for pollution response  
610 action contracts, including procedures for the rejection of  
611 unqualified vendors. Response actions are those activities  
612 described in s. 376.301(39) ~~s. 376.301(37)~~.

613           Section 7. Paragraph (c) of subsection (5) of section  
614 288.1175, Florida Statutes, is amended to read:

615           288.1175 Agriculture education and promotion facility.-

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

624           (c) The location of the facility in a brownfield site as

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625 defined in s. 376.79(4) ~~s. 376.79(3)~~, a rural enterprise zone as  
626 defined in s. 290.004, an agriculturally depressed area as  
627 defined in s. 570.74, or a county that has lost its agricultural  
628 land to environmental restoration projects.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7007      PCB ANRS 16-01      Department of Agriculture and Consumer Services  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Raburn  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Harrington
1) Agriculture & Natural Resources Appropriations Subcommittee		Lolley <i>fl</i>	Massengale <i>SM</i>
2) State Affairs Committee			

### SUMMARY ANALYSIS

The bill addresses a number of issues relating to the powers and duties of the Department of Agriculture and Consumer Services (DACS), including, but not limited to:

- Changing the procedure to obtain and renew a pest control operator's certificate and eliminating a late charge.
- Changing the deadline to submit a recertification application for the limited certification for urban landscape commercial fertilizer application and eliminating the \$50 per month late charge for late recertification.
- Adding dietary supplements to the list of possibly adulterated foods.
- Adding allergen information labeling requirements to the list of possibly misbranded foods.
- Authorizing DACS to sponsor "events" (not just breakfasts, luncheons, or dinners) to promote agriculture and agricultural business products.
- Authorizing DACS to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, copyrights, and other rights or similar interests.
- Authorizing DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services.
- Removing the requirement for DACS to provide staff and meeting space for the Florida Agriculture Center and Horse Park Authority.
- Amending membership requirements for the Florida Agricultural Promotional Campaign Advisory Council.
- Removing the requirement that DACS notify a property owner that a plant infested or infected with plant pests or noxious weeds has been found on their property if the plant is infested with pests or noxious weeds that are determined to be widely established in Florida; thus, not requiring the owner to destroy or remove the plant.
- Modifying the reporting period for fertilizer tonnage sales from monthly to quarterly and changing the reporting requirement from 30 days following the reporting period instead of 15 days.
- Preempting regulatory authority for commercial feed and feedstuff to DACS.
- Changing the powers and duties of the Soil and Water Conservation Districts to reflect the district practices.
- Eliminating Watershed Improvement Districts.
- Eliminating the Florida Forest Service's power to dedicate its land for use by the public as a park.
- Adding definitions for "school breakfast program," "summer nutrition program," and "universal school breakfast program" to specify that they are the programs authorized by federal law.
- Authorizing DACS to implement the Farmer's Market Nutrition Program for Supplemental Nutrition Program for Women, Children and Infants.
- Creating a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program.
- Eliminating the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment.

The bill appears to have an insignificant negative fiscal impact on the state, no fiscal impact on local governments, and a positive fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 11/17/2015

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Pest Control Operator's Certification Application Fee**

###### Present Situation

Each location of each licensed pest control business must have a certified operator in charge that is registered with the Department of Agriculture and Consumer Services (DACS).<sup>1</sup> This person must be certified for the particular category of pest control engaged in at that location and may be in charge of one or more categories if they are certified in those categories.<sup>2</sup> A certified operator may not be in charge of the performance of pest control activities at more than one business location for a licensee except during a temporary absence.<sup>3</sup> To become a certified operator, an individual must pass an examination and satisfy specified education and experience requirements.<sup>4</sup>

Each person seeking to be a certified operator must pay a \$300 application fee to take the exam.<sup>5</sup> Once that person passes the exam, he or she must then receive an original certificate before engaging in pest control work.<sup>6</sup> To obtain the original certificate, the individual must pay a \$150 issuance fee.<sup>7</sup>

###### Effect of Proposed Changes

The bill amends s. 482.111, F.S., to eliminate the issuance fee and associated application deadlines. Instead, DACS must issue a pest control operator's certificate to an individual who completes an application for examination, pays the examination fee, and passes the examination. DACS indicated that its online capabilities eliminated the need to have an extra step to issue an original certificate and will speed up the certification process.<sup>8</sup>

##### **Limited Certification for Urban Landscape Commercial Fertilizer Application**

###### Present Situation

The Department of Environmental Protection and the Institute of Food and Agricultural Sciences must provide training and testing programs in urban landscape best management practices.<sup>9</sup> Persons who receive a certificate demonstrating successful completion of such training may apply to DACS to receive limited certification for urban landscape commercial fertilizer application.<sup>10</sup> Individuals who hold such certification are not subject to additional local testing.<sup>11</sup>

Section 482.1562, F.S., sets forth the application requirements to receive the limited certification. Beginning January 1, 2014, all persons applying commercial fertilizer to an urban landscape must be certified by DACS. Individuals who hold the limited certification must apply for recertification at least 90 days before the expiration of the certification. If the certification application is late, the applicant must pay a \$50 per month late charge in addition to the renewal fee.<sup>12</sup>

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<sup>1</sup> Section 482.111(6)(a), F.S.

<sup>2</sup> Id.

<sup>3</sup> Section 482.111(6)(c), F.S.

<sup>4</sup> Section 482.132, F.S.

<sup>5</sup> Section 482.141, F.S.; rule 5E-14.123(4), F.A.C.

<sup>6</sup> Section 482.111, F.S.

<sup>7</sup> Id.; rule 5E-14.132(3), F.A.C.

<sup>8</sup> DACS FISCAL Memo (August 18, 2015).

<sup>9</sup> Section 403.9338(1), F.S.

<sup>10</sup> Section 403.9338(2), F.S.

<sup>11</sup> Id.

<sup>12</sup> Section 482.1562, F.S.

### Effect of the Proposed Changes

The bill amends s. 482.1562(5), F.S., to change the deadline to submit a recertification application from 90 days before expiration of the current certification to every four years from the date of issuance. The bill eliminates the \$50 per month charge for late recertification. The bill also grants a grace period not to exceed 30 days after expiration for which a person can obtain recertification without having to go through the initial application process.

## **Florida Food Safety Act**

### Present Situation

The Florida Food Safety Act (act) is designed to:

- Promote public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandizing deceit, flowing from intrastate commerce in food;
- Provide uniform legislation so far as practical with federal regulations; and
- Promote uniform administration and enforcement of federal and state food safety laws.<sup>13</sup>

Under the act, individuals may not sell food that is adulterated, adulterate food, or receive food in commerce that is adulterated.<sup>14</sup> These prohibitions are similar to federal law.<sup>15</sup> The following are examples when food is deemed adulterated:

- Food that bears or contains any poisonous or deleterious substance which may render it injurious to health;
- Food that bears or contains any added poisonous or added deleterious substance; a food additive; or a color additive, which is unsafe;
- Food that is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe;
- Food that is or bears or contains any food additive which is unsafe;
- Food that consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance;
- Food that has been produced, prepared, packed, or held under insanitary conditions;
- Food that is the product of a diseased animal or an animal which has died other than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse;
- Food whose container is composed, in whole or in part, of any poisonous or deleterious substance;
- Food where any valuable constituent has been in whole or in part omitted or abstracted therefrom;
- Food where any substance has been substituted wholly or in part therefor;
- Food where damage or inferiority has been concealed in any manner; and
- Food where any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.<sup>16</sup>

Also under the act, individuals may not sell food that is misbranded, misbrand food, or receive food in commerce that is misbranded.<sup>17</sup> These prohibitions are similar to federal law.<sup>18</sup> The following are examples of food that is deemed misbranded:

- The food's label is false or misleading in any particular;
- The food is offered for sale under the name of another food;

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<sup>13</sup> Section 500.02, F.S.

<sup>14</sup> Section 500.04, F.S.

<sup>15</sup> 21 U.S.C. 331.

<sup>16</sup> Section 500.10, F.S.

<sup>17</sup> Section 500.04, F.S.

<sup>18</sup> 21 U.S.C. 331.

- The food is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words “imitation” and, immediately thereafter, the name of the food imitated;
- The food’s container is so made, formed, or filled as to be misleading;
- If any word, statement, or other information required by or under authority of the Food Safety Act to appear on the label or labeling is not prominently placed thereon with conspicuousness;
- Unless the food’s label bears:
  - The common or usual name of the food, if any; and
  - If it is fabricated from two or more ingredients, the common or usual name of each ingredient and, if the food purports to be a beverage containing vegetable or fruit juice, a statement placed with appropriate prominence on the information panel specifying the total percentage of such vegetable or fruit juice contained in the food;
- Food that bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact;
- Food that is offered for sale and its label or labeling does not comply with federal law pertaining to nutrition information;
- Food that is offered for sale and its label or labeling does not comply with the requirements of federal law pertaining to nutritional content claims and health claims; or
- Bottled water and its label bears a corporate name, brand name, or trademark containing the word “spring,” “springs,” “well,” “artesian well,” “natural,” or any derivative of those words without stating on the label the source of the water in typeface at least equal to the size of the typeface of the corporate name, brand name, or trademark, if the source of the water is different from the source indicated in the corporate name, brand name, or trademark.<sup>19</sup>

DACS may inspect food that may be adulterated or misbranded;<sup>20</sup> seize food that is adulterated or misbranded;<sup>21</sup> suspend permits of those who sell food that is adulterated or misbranded, adulterate or misbrand food, or receive food in commerce that is adulterated or misbranded;<sup>22</sup> and impose a fine for adulterated or misbranded food.<sup>23</sup>

#### Effect of Proposed Changes

The bill amends s. 500.03, F.S., to add a definition for the term “vehicle” in order to recognize the various modes of transportation that service food establishments, and to be consistent with the federal rules implementing the Food Safety Modernization Act. Currently, the Florida Food Safety Act does not define the term.

The bill amends s. 500.03, F.S., to add “dietary supplements” as defined in 21 U.S.C. 321(ff)(1) and (2) to the definition of “food.” Under 21 U.S.C. 321(ff)(1) and (2), the term “dietary supplement” means:

- A product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients:
  - A vitamin;
  - A mineral;
  - An herb or other botanical;
  - An amino acid;
  - A dietary substance for use by man to supplement the diet by increasing the total dietary intake; or
  - A concentrate, metabolite, constituent, extract, or combination of any ingredient described above;
- A product that:
  - Is intended for ingestion

<sup>19</sup> Section 500.11, F.S.

<sup>20</sup> Section 500.147(1), F.S.

<sup>21</sup> Section 500.173, F.S.

<sup>22</sup> Section 500.12(4), F.S.

<sup>23</sup> Section 500.121, F.S.

- Is not represented for use as a conventional food or as a sole item of a meal or the diet; and
- Is labeled as a dietary supplement.

The bill amends s. 500.10, F.S., to include foods transported under certain conditions to be adulterated. The change also adds dietary supplements in the list of foods that could possibly be adulterated and sets forth criteria to determine if it is adulterated. The criteria to identify a dietary supplement as adulterated are similar to the criteria in the federal Food Safety Act.<sup>24</sup>

The bill amends s. 500.11, F.S., to include failing to properly label food with allergen information on the list of foods that could possibly be misbranded by referencing federal law. Under federal law, food that contains allergens must be labeled if the food is not a raw agricultural commodity and it is, or it contains an ingredient that bears or contains, a major food allergen. The label must:

- Include the word “contains,” followed by the name of the food source from which the major food allergen is derived, is printed immediately after or is adjacent to the list of ingredients (in a type size no smaller than the type size used in the list of ingredients); or
- Include the common or usual name of the major food allergen in the list of ingredients is followed in parentheses by the name of the food source from which the major food allergen is derived, except that the name of the food source is not required when:
  - The common or usual name of the ingredient uses the name of the food source from which the major food allergen is derived; or
  - The name of the food source from which the major food allergen is derived appears elsewhere in the ingredient list.<sup>25</sup>

## **Powers and Organization of the Department of Agriculture and Consumer Services**

### Present Situation

The Legislature granted DACS various powers to regulate and promote Florida agriculture, protect the environment, safeguard consumers, and ensure the safety of food. Many of these powers and the organization of DACS can be found in chapter 570, F.S., such as:

- DACS may stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products by sponsoring trade breakfasts, luncheons, and dinners that will assist in the promotion and marketing of Florida’s agricultural and agricultural business products to the consuming public.<sup>26</sup>
- DACS’ Division of Administration possesses the power to provide electronic data processing and management information systems support for DACS.<sup>27</sup>
- DACS must deposit fees and fines collected under the Structural Pest Control Act into the Pest Control Trust Fund.<sup>28</sup> DACS may use this money to carry out the provisions of the Structural Pest Control Act, educate the pest control industry, or support research or education in pest control.<sup>29</sup>
- DACS’ Division of Marketing must enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S. (regulating livestock markets).<sup>30</sup>

DACS does not possess the authority to secure or hold a trademark. Any agency created by statute does not have the inherent power to acquire, secure, enjoy, use, enforce, or dispose of patents,

<sup>24</sup> 21 U.S.C. 342(f).

<sup>25</sup> 21 U.S.C. 343(w).

<sup>26</sup> Section 570.07(20), F.S.

<sup>27</sup> Section 570.30(5), F.S.

<sup>28</sup> Section 482.2401, F.S.

<sup>29</sup> Id.; s. 570.441, F.S.

<sup>30</sup> Section 570.53, F.S.

trademarks, copyrights, or other rights or similar interests.<sup>31</sup> Rather, such powers must be granted by the Legislature, either expressly or by necessary implication.<sup>32</sup>

### Effect of Proposed Changes

The bill grants DACS certain powers and moves other powers to different divisions within DACS.

These changes include:

- Amending paragraph (20)(c) of s. 570.07, F.S., to grant DACS the power to sponsor “events,” in addition to breakfasts, luncheons, and dinners, to stimulate, encourage, and foster the production and consumption of agricultural and agricultural business products;
- Adding subsection (44) to s. 570.07, F.S., to grant DACS the power to acquire, secure, enjoy, use, enforce, and dispose of all patents, trademarks, and copyrights and other rights or similar interests (currently the Department of State may hold the patent, trademark and copyright and the Attorney General’s Office may enforce those rights). According to DACS, as the “Fresh From Florida” trademark becomes more popular, it needs the authority to take immediate action to stop its misuse;<sup>33</sup>
- Creating s. 570.68, F.S., to create an Office of Agriculture Technology Services to provide electronic data processing and management information systems support for DACS;
- Amending s. 570.441, F.S., to authorize DACS to use money deposited in the Pest Control Trust Fund to carry out any of the powers of the Division of Agricultural Environmental Services, not just the Structural Pest Control Act (ch. 482, F.S.). The powers of the Division of Agricultural and Environmental Services include state mosquito control program coordination; agricultural pesticide registration, testing, and regulation; pest control regulation; and feed, seed, and fertilizer production inspection and testing. This authorization expires June 30, 2019; and
- Amending s. 570.53, F.S., to remove the power to enforce the provisions of ss. 604.15 through 604.34, F.S., (regulating dealers in agricultural products) and ss. 534.47 through 534.53, F.S., (regulating livestock markets) from the Division of Marketing and Development. The bill grants the power to regulate dealers in agricultural products to the Division of Consumer Services. According to DACS, moving the program to the Division of Consumer Services, which already handles a number of similar programs, will create efficiencies by streamlining department processes.<sup>34</sup>

## **Florida Agriculture Center and Horse Park**

### Present Situation

In 1994, the Florida Legislature created the Florida Agriculture Center and Horse Park (Florida Horse Park) in order to provide Florida with a unique tourist experience for visitors and residents.<sup>35</sup> The Florida Horse Park is situated on 500 acres located south of Ocala. Numerous events occur at the Florida Horse Park throughout the year including rodeos, dressage, polo, obstacle challenges, dog shows, and trail rides.<sup>36</sup> A 21-member group appointed by the Commissioner of Agriculture called the Florida Agriculture Center and Horse Park Authority (Authority) oversees the management of the park.<sup>37</sup> DACS is currently required to provide administrative and staff support services for the meetings

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<sup>31</sup> *Florida Virtual School v. K12, Inc.*, 148 So.3d 97, 99 (Fla. 2014).

<sup>32</sup> *Id.* The following entities may hold trademarks: Department of Health, s. 20.43(8), F.S., Department of Management Services, s. 282.702(5), F.S., Department of State, s. 286.021, F.S., Department of Transportation, s. 334.049, F.S., Water Management Districts, s. 373.608, F.S., Department of Law Enforcement, s. 943.146, F.S., and State Universities, s. 1004.23, F.S.

<sup>33</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 6 (January 19, 2015).

<sup>34</sup> *Id.*

<sup>35</sup> Section 570.681, F.S.

<sup>36</sup> Florida Agriculture Center and Horse Park Authority, *Welcome to the Florida Horse Park*, <http://flhorsepark.com/> (last visited September 15, 2015).

<sup>37</sup> Section 570.685, F.S.

of the Authority, and to provide suitable space in the offices of the department for the meetings and the storage of records of the Authority.<sup>38</sup>

#### Effect of Proposed Changes

The bill amends s. 570.685, F.S., to authorize DACS to provide administrative and staff support services for the meetings of the Authority, and to provide suitable space in the offices at DACS for the meetings and the storage of records of the Authority.

### **Florida Agricultural Promotion Campaign**

#### Present Situation

DACS possesses the power to establish and coordinate the Florida Agricultural Promotional Campaign (FAPC), also known as the “Fresh From Florida” campaign.<sup>39</sup> This campaign is intended to increase consumer awareness and expand the market for Florida’s agricultural products.<sup>40</sup> Florida agricultural producers may voluntarily join FAPC. FAPC members may use the “Fresh From Florida” logos, participate in industry trade shows at a reduced cost, receive point-of-purchase materials, have access to trade leads, receive the “Fresh From Florida” magazine and industry newsletter, tie in to supermarket promotions that feature Florida products in newspaper and store circular advertisements, and receive a farm sign customized with the member’s business name.<sup>41</sup>

Currently, DACS must designate an employee to serve on the Advertising Interagency Coordinating Council.<sup>42</sup> This council no longer exists.

In addition, DACS is authorized to adopt rules related to the FAPC, including rules pertaining to negotiating and entering into contracts with advertising agencies.<sup>43</sup>

Lastly, the Legislature created the 15-member Florida Agricultural Promotional Campaign Advisory Council to provide advice to DACS.<sup>44</sup> The membership must include:

- Six members representing agricultural producers, shippers, or packers;
- Three members representing agricultural retailers;
- Two members representing agricultural associations;
- One member representing a wholesaler of agricultural products;
- One member representing consumers; and
- One member representing DACS.<sup>45</sup>

#### Effect of Proposed Changes

The bill amends ss. 571.24, 571.27, and 571.28, F.S., regarding the FAPC to:

- Specify that the intent of the marketing brand is to serve as a marketing program to promote Florida agriculture commodities, value added products, and agricultural related businesses and is not a food safety or traceability program. The purpose of this provision is to avoid the misconception that the brand indicates that food has been inspected by DACS for safety;
- Eliminate the requirement for DACS to designate an employee to be a member of the Advertising Interagency Coordinating Council, since this council no longer exists;

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<sup>38</sup> Section 570.685(4)(b), F.S.

<sup>39</sup> Section 571.24, F.S.

<sup>40</sup> Section 571.22, F.S.

<sup>41</sup> Florida Department of Agricultural and Consumer Services, *Join “Fresh From Florida,”*

<http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Agriculture-Industry/Join-Fresh-From-Florida>. (last visited September 15, 2015).

<sup>42</sup> Section 571.24(8), F.S.

<sup>43</sup> Section 571.27, F.S.

<sup>44</sup> Section 571.28(1), F.S.

<sup>45</sup> *Id.*

- Eliminate the power to adopt rules related to negotiating and entering into contracts with advertising agencies. Such rules are already adopted by the Department of Management Services in ch. 60A-1, F.A.C.; and
- Change the membership requirements for the Florida Agricultural Promotional Campaign Advisory Council. The bill strikes the requirement that there be a specific number of council members from each industry category while maintaining the overall number of members and staggered terms.

## **Reporting Requirements for Agricultural Fertilizer**

### Present Situation

Any person who guarantees a fertilizer and distributes fertilizer (licensee) in Florida must pay an inspection fee of \$1 per ton of fertilizer sold in the state.<sup>46</sup> DACS uses this fee to fund the fertilizer inspection program.<sup>47</sup> Before distributing a fertilizer, each licensee must apply to DACS, report monthly the tonnage of fertilizer sold, and pay the inspection fee.<sup>48</sup> The monthly reports and inspection fees must be made before the 15th day of the month succeeding the month covered by the report.<sup>49</sup> Any licensee who fails to report all fertilizer sold each month is subject to a penalty of 10 percent or \$25,<sup>50</sup> whichever is greater, and must secure with DACS a surety bond or certificate of deposit.<sup>51</sup> Further, failure to make an accurate statement of tonnage or to pay the inspection fee may constitute cause for revocation of the license and also for cancellation of all registrations on file for the licensee.<sup>52</sup>

### Effect of Proposed Changes

The bill amends paragraph 576.041(2)(b), F.S., to change the fertilizer reporting requirement from monthly to quarterly; authorize use of DACS's website to report tonnage of fertilizer sold; and change the reporting deadline from 15 days to 30 days following the close of the reporting period.

DACS indicated these changes are necessary to take full advantage of its web-based reporting tool and align Florida's tonnage reporting requirement with other states.<sup>53</sup> Further, DACS indicated these changes will decrease the potential penalties that licensees could incur for late reporting and increase compliance.<sup>54</sup>

## **Commercial Feed and Feedstuff Preemption**

### Present Situation

"Commercial feed" is all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a feed for animals other than humans, except:

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.<sup>55</sup>

<sup>46</sup> Section 576.041(1), F.S.; rule 5E-1.012(1), F.A.C.

<sup>47</sup> Id.

<sup>48</sup> Section 576.041(2), F.S.

<sup>49</sup> Section 576.041(2)(b), F.S.

<sup>50</sup> Section 576.041(4), F.S.

<sup>51</sup> Rule 5E-1.012(4), F.A.C.

<sup>52</sup> Section 576.041(5), F.S.

<sup>53</sup> DACS, *2016 Proposals—Agricultural Environmental Services (Additional Item) Short title: Modify Chapter 576.041 F.S. modification of required tonnage reporting period*, p. 1 (October 1, 2015).

<sup>54</sup> Id.

<sup>55</sup> Section 580.031(2), F.S.

“Feedstuff” is edible materials, other than commercial feed, that are distributed for animal consumption and that contribute energy or nutrients, or both, to an animal diet.<sup>56</sup>

DACS regulates commercial feed and feedstuff for quality, safety, labeling requirements, and standards.<sup>57</sup> A distributor of commercial feed must obtain a master registration<sup>58</sup> and place on file a copy of the label for each brand of feed to be distributed in Florida.<sup>59</sup>

#### Effect of Proposed Changes

The bill creates s. 580.0365, F.S., to preempt the regulatory authority for commercial feed and feedstuff to DACS.

### **Removal and Destruction of Infected and Infested Plants**

#### Present Situation

The Division of Plant Industry must order the removal and destruction of any plant or plant product infested or infected with plant pests or noxious weeds.<sup>60</sup> A “plant pest” is any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or their reproductive parts, or viruses, or any organisms similar to or allied with any of the foregoing, including any genetically engineered organisms, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or plant parts or any processed, manufactured, or other plant products.<sup>61</sup> A “noxious weed” is any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida or have a negative impact on the plant species protected under s. 581.185, F.S. (endangered, threatened, or commercially exploited native plants).<sup>62</sup> The Division of Plant Industry may take these actions in order to stop the introduction and dissemination of plants or pests that may threaten Florida’s agriculture industry.

The Director of the Division of Plant Industry must provide notice to the owner or the person having charge of the premises when DACS finds an infested or infected plant or plant product.<sup>63</sup> Within 10 days of the notice, the owner or person in charge must treat as directed or remove and destroy the infested or infected plant or plant product.<sup>64</sup> If the owner or person in charge does not, DACS may treat as directed or remove and destroy the infested or infected plant or plant product.<sup>65</sup>

#### Effect of Proposed Changes

The bill amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. According to DACS, there are times when it is unnecessary for the owner to treat or destroy the plant, but DACS lacks the discretion not to give notice to the owner that they must destroy any infested plants or plant products.<sup>66</sup>

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<sup>56</sup> Section 580.031(10), F.S.

<sup>57</sup> Section 580.036, F.S.

<sup>58</sup> Section 580.041, F.S.

<sup>59</sup> Section 580.051, F.S.

<sup>60</sup> Section 581.181(1), F.S.

<sup>61</sup> Section 581.011(26), F.S.

<sup>62</sup> Section 581.011(19), F.S.

<sup>63</sup> Section 581.181(1), F.S.

<sup>64</sup> Id.

<sup>65</sup> Section 581.181(2), F.S.

<sup>66</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

## Soil and Water Conservation Districts

### Present Situation

Faced with the problems of the Dust Bowl in the 1930's, the federal government passed the Standard State Soil Conservation Districts Law (model law) in 1936.<sup>67</sup> Drafters of the model law intended to decentralize federal soil erosion control efforts in a form of cooperative federalism that relied on individual districts to achieve national and local objectives.<sup>68</sup> The model law proposed that state legislatures delegate broad power to the districts through the use of both "project" and "regulatory" power.<sup>69</sup> Project power granted local districts the power to carry out conservation measures with the assistance of federal funding and technical oversight.<sup>70</sup> Regulatory powers granted districts the power to adopt local land use regulations.<sup>71</sup> By 1947, all of the states enacted soil and water conservation district programs.<sup>72</sup> These programs favored the project powers of the soil and water conservation districts, but were reluctant to grant regulatory powers.<sup>73</sup> Thus, soil and water conservation districts often failed to utilize the full extent of their regulatory powers.<sup>74</sup>

Florida adopted much of the model law in 1937.<sup>75</sup> The Legislature recognized farms, forests, and grazing lands as among Florida's basic assets in need of protection from improper land use techniques that cause erosion.<sup>76</sup> It found erosion reduced the productivity of land, harmed water resources, injured wildlife, caused flooding, and destroyed infrastructure.<sup>77</sup> Thus, corrective measures were required to prevent erosion and conserve, develop, and utilize soil and water resources.<sup>78</sup> The Legislature intended for soil and water conservation districts (SWCDs) to control and prevent soil erosion; prevent floodwater and sediment damage; further conservation, development, and utilization of soil and water resources; preserve natural resources; control floods; prevent impairment of dams and reservoirs; assist in maintaining the navigability of rivers and harbors; preserve wildlife; protect the tax base; protect public lands; and protect and promote the health, safety and general welfare of the people of this state.<sup>79</sup> Currently, there are 58 SWCDs in Florida.<sup>80</sup>

DACS oversees the SWCDs.<sup>81</sup> DACS may:

- Receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the SWCDs;<sup>82</sup>
- Audit the SWCDs;<sup>83</sup>
- Seeks assistance in implementing its powers;<sup>84</sup>
- Offer assistance to the SWCD supervisors;<sup>85</sup>
- Keep the SWCDs aware of the activities of the other SWCDs and facilitate the interchange of advice and experience;<sup>86</sup>

<sup>67</sup> Jess Phelps, *A Vision Of The New Deal Unfulfilled? Soil and Water Conservation Districts and Land Use Regulation*, 11 Drake J. Agric. L. 353, 354 & 357 (2006).

<sup>68</sup> Id. at 355 & 360

<sup>69</sup> Id. at 355.

<sup>70</sup> Id. at 355 & 361.

<sup>71</sup> Id. at 362.

<sup>72</sup> Id. at 364.

<sup>73</sup> Id.

<sup>74</sup> Id. at 368.

<sup>75</sup> Chapter 18144, 1937, Laws of Florida.

<sup>76</sup> Section 582.02, F.S.

<sup>77</sup> Section 582.03, F.S.

<sup>78</sup> Section 582.04, F.S.

<sup>79</sup> Section 582.05, F.S.

<sup>80</sup> Email from DACS dated September 15, 2015.

<sup>81</sup> Section 582.055(1), F.S.

<sup>82</sup> Section 582.055(2), F.S.

<sup>83</sup> Section 582.055(3), F.S.

<sup>84</sup> Section 582.055(4), F.S.

<sup>85</sup> Section 582.08(1), F.S.

<sup>86</sup> Section 582.08(2), F.S.

- Coordinate the programs of the several SWCDs;<sup>87</sup>
- Secure cooperation of other governmental entities in the work of the SWCDs;<sup>88</sup>
- Disseminate information throughout the state about the activities and programs of the SWCDs,<sup>89</sup> and
- Employ an administrative officer and other staff to oversee the SWCDs.<sup>90</sup>

Within DACS, the Soil and Water Conservation Council (council) consists of seven members who have previously been involved in soil and water conservation and agriculture.<sup>91</sup> The council may:

- Consider and study the entire field relating to its area of responsibility;
- Consider all matters submitted to it by the commissioner or the division directors;
- Submit proposed legislation and rules to the commissioner;
- Advise and consult with the commissioner and the division directors of the department, at their request or upon its own initiative, regarding the promulgation, administration, and enforcement of all laws and rules relating to its area of responsibility; and
- Suggest policies and practices for the conduct of DACS business which shall be duly considered by the commissioner or division directors.<sup>92</sup>

When 10 percent of land owners within a territory propose to form a SWCD, they must file a petition with DACS.<sup>93</sup> DACS must then publish notice of a hearing to consider the desirability and necessity of a SWCD, the appropriate boundaries of a SWCD, and all other relevant questions.<sup>94</sup> If DACS determines that a SWCD is necessary based on the facts presented at the hearing, it must then propose the boundaries of the district,<sup>95</sup> determine if operating the district is administratively practicable and feasible,<sup>96</sup> and hold a referendum of all the land owners in the proposed district whether it is appropriate to form a SWCD.<sup>97</sup> DACS must publish the results of the referendum and may proceed to form the SWCD if a majority of the votes cast are in favor of creating the district.<sup>98</sup> The Department of State must certify the formation of the SWCD and record the certification and application within its records.<sup>99</sup> The SWCD is presumed established upon proof of the certificate filed with the Department of State.<sup>100</sup> After the district is formed, land owners may petition to add or remove territory within a SWCD in the same manner as the petition to form a district.<sup>101</sup>

Each SWCD must have five supervisors.<sup>102</sup> Elections of district supervisors must be held every two years in a manner consistent with general election laws.<sup>103</sup> Supervisors serve four-year terms.<sup>104</sup> The supervisors and districts possess the power to:

- Conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages and publish its results;

<sup>87</sup> Section 582.08(3), F.S.

<sup>88</sup> Section 582.08(4), F.S.

<sup>89</sup> Section 582.08(5), F.S.

<sup>90</sup> Section 582.09, F.S.

<sup>91</sup> Section 582.06(1), F.S.

<sup>92</sup> Section 582.06(2), F.S.

<sup>93</sup> Section 582.10(1), F.S.

<sup>94</sup> Section 582.11, F.S.

<sup>95</sup> Id.

<sup>96</sup> Section 582.12, F.S.

<sup>97</sup> Id.

<sup>98</sup> Section 582.14, F.S.

<sup>99</sup> Section 582.15, F.S.

<sup>100</sup> Section 582.17, F.S.

<sup>101</sup> Section 582.16, F.S.

<sup>102</sup> Section 582.19, F.S.

<sup>103</sup> Section 582.18, F.S.

<sup>104</sup> Section 582.19(2), F.S. Two supervisors must serve a two year term when the SWCD is initially formed.

- Conduct projects to demonstrate soil conservation methods, erosion prevention and control methods, works for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water;
- Carry out flood prevention and control measures;
- Provide financial aid to carry out erosion control and prevention operations and works for flood prevention;
- Provide financial aid for the conservation, development and utilization, of soil and water resources and the disposal of water within the district's boundaries;
- Acquire real or personal property, maintain such property, receive income from such property, or sell such property to further the goals and duties of the SWCD;
- Construct, improve, operate, and maintain structures;
- Develop a comprehensive plan to conserve soil and water resources, control and prevent erosion, prevent floods, conserve and develop water resources, dispose of water, and control artesian wells;
- Takeover, by purchase, lease, or otherwise, and administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, or act as an agent for the federal government to perform such projects; and
- Perform other administrative duties as necessary to perform its powers.<sup>105</sup>

SWCDs may adopt land use regulations to conserve soil and soil resources, and to prevent and control soil erosion.<sup>106</sup> The supervisors must publish notice of a referendum to adopt such regulations and make copies of such regulations available.<sup>107</sup> The supervisors may not adopt the proposed regulations unless a majority of the voting land owners approve.<sup>108</sup> All owners and occupiers of land within a district must obey adopted land use regulations.<sup>109</sup> A similar referendum must be held to amend, supplement, or repeal such regulations.<sup>110</sup>

SWCDs may enforce their land use regulations in circuit court.<sup>111</sup> The SWCD supervisors must serve on a board of adjustment to hear and consider petitions for relief from land use regulations.<sup>112</sup> The board of adjustment may grant a petition for variance if it determines the petitioner is suffering a great personal difficulty or unnecessary hardship.<sup>113</sup>

Within each SWCD, owners may petition to form a watershed improvement district for the development and execution of plans and projects for works to control and prevent soil erosion, prevent floods, conserve, develop, and utilize soil and water resources, dispose of water, develop fish and wildlife or recreational, preserve and protect land and water resources, and protect and promote the health, safety, and general welfare of the people of this state.<sup>114</sup> The SWCD supervisors must publish notice of and hold a hearing on the practicability and feasibility of the proposed watershed improvement district.<sup>115</sup> If they determine there is a need for a watershed improvement district, the supervisors must define its boundaries.<sup>116</sup> Once approved by DACS, the supervisors must hold a referendum of land owners within the proposed watershed improvement district about whether the operation of the proposed district is administratively practicable and feasible.<sup>117</sup> The supervisors must then consider the

<sup>105</sup> Section 582.20, F.S.

<sup>106</sup> Section 582.21(1), F.S.

<sup>107</sup> Id.

<sup>108</sup> Section 582.21(2), F.S.

<sup>109</sup> Id.

<sup>110</sup> Section 582.21(3), F.S.

<sup>111</sup> Section 582.23, F.S.

<sup>112</sup> Section 582.24, F.S.

<sup>113</sup> Section 582.26, F.S.

<sup>114</sup> Sections 582.331 and 582.34, F.S.

<sup>115</sup> Section 582.35, F.S.

<sup>116</sup> Id.

<sup>117</sup> Section 582.36, F.S.

result of the referendum and may form the watershed improvement district if a majority of the land area voted to create the district.<sup>118</sup> Once the supervisors decide to form the watershed improvement district, they must certify its formation with DACS and furnish the certification to the clerk of courts.<sup>119</sup> Land owners may petition to have the land added, removed, and transferred between watershed improvement districts.<sup>120</sup>

Thirty days after formation of the watershed improvement district, three individuals must be elected to a board of directors.<sup>121</sup> Directors must own land within the district and be nominated by 10 of their fellow land owners.<sup>122</sup> Directors serve three year terms.<sup>123</sup>

Watershed improvement districts may exercise powers under the supervision of the SWCD to:

- Exercise the powers of the SWCD;
- Levy ad valorem taxes for the purposes of the watershed improvement district;
- Acquire land to accomplish the goals of the district;
- Borrow money and issue bonds; and
- Construct, improve, operate, and maintain such structures and works as may be necessary to perform its duties.<sup>124</sup>

Watershed improvement districts may not raise more taxes than necessary to fund their operations and may not exceed three mills.<sup>125</sup> The county property appraisers impose and assess this property tax.<sup>126</sup>

There are currently no watershed improvement districts in Florida.

A SWCD may be discontinued or dissolved if:

- Two-thirds of the lands owners vote in a referendum to discontinue the district;<sup>127</sup>
- The Soil and Water Conservation Council determines that continued operation of the district is not administratively practicable or feasible;<sup>128</sup>
- DACS' inspector general determines that the SWCD failed to comply with financial auditing and reporting requirements;<sup>129</sup> or
- The supervisors of the SWCD adopt a resolution and DACS accepts that that the continued operation of the district is not administratively practicable and feasible.<sup>130</sup>

DACS must publish notice of dissolution in a newspaper of general circulation for two weeks and state that any comments or objections to the proposed certification, or any claims against the assets of the district, must be filed with the department clerk not later than 60 days after the date of last publication.<sup>131</sup>

A watershed improvement district may be discontinued if owners of not less than 25 percent of the land area file a petition to discontinue the watershed improvement district, a referendum is held, and a majority of the voters vote to discontinue the district.<sup>132</sup>

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<sup>118</sup> Section 582.37, F.S.

<sup>119</sup> Section 582.38, F.S.

<sup>120</sup> Section 582.40, F.S.

<sup>121</sup> Section 582.41(2), F.S.

<sup>122</sup> Section 582.41(1), F.S.

<sup>123</sup> Section 582.41(2), F.S.

<sup>124</sup> Sections 582.43 and 582.46, F.S.

<sup>125</sup> Section 582.44, F.S.

<sup>126</sup> Id.

<sup>127</sup> Section 582.30(2), F.S.

<sup>128</sup> Section 582.30(3)(a), F.S.

<sup>129</sup> Section 582.30(3)(b), F.S.

<sup>130</sup> Section 582.30(3)(c), F.S.

<sup>131</sup> Section 582.30(4), F.S.

<sup>132</sup> Section 582.48, F.S.

### Effect of Proposed Changes

The bill amends several sections of ch. 582, F.S., to eliminate powers and duties not used by SWCDs or powers and duties exercised by other arms of government. Specifically the bill:

- Amends s. 582.01, F.S., to amend the definition of “due notice” to require notification in a newspaper of general circulation seven days in advance of an event, and eliminate the definition of “administrative officer”;
- Amends s. 582.02, F.S., to update the legislative policy to emphasize the purpose of SWCDs is to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices;
- Repeals ss. 582.03, 582.04, and 582.05, F.S., to recognize that many of the goals and responsibilities of SWCDs are no longer necessary because they are performed by the Department of Environmental Protection, the water management districts, and DACS;
- Amends s. 582.055, F.S., to update DACS’s powers in relation to SWCDs to reflect its current practices, ensure DACS possesses the power to work with SWCD to receive state/federal assistance, grant DACS the power to create and dissolve SWCDs, grant DACS rulemaking powers to implement the chapter, and combine this section with s. 582.08, F.S., which is being repealed;
- Amends s. 582.06, F.S., to grant the Soil and Water Conservation Council the authority to review requests to create or dissolve SWCD and the ability to review and provide a recommendation, at the request of the governor, whether a SWCD supervisor should be removed because of neglect of duty;
- Repeals s. 582.09, F.S., to eliminate the administrative officer of soil and water conservation. According to DACS, the Officer of Agricultural Water Policy performs the administrative officer’s duty;<sup>133</sup>
- Amends s. 582.16, F.S., to change the procedure changing a boundary of the district to be the same as forming a district;
- Repeals s. 582.17, F.S., because proof of establishment of a SWCD can be demonstrated by showing compliance with the procedures of ss. 582.10 through 582.15, F.S.;
- Amends s. 582.20, F.S., to change or eliminate the powers of the SWCDs and their supervisors because they are not used by SWCDs or are powers exercised by other arms of government. The SWCDs will now emphasis research relating to soil and water resources, conducting and promoting best management practices, providing agricultural assistance in form of materials and equipment, provide training, and coordinate with other governmental entities to meet its goals and duties;
- Repeals s. 582.21, F.S., to eliminate the SWCDs’ ability to adopt land use regulations. Municipalities and counties largely control land use under their authorities in Chapters 125 and 163, F.S. The Department of Environmental Protection and the water management districts do possess some regulatory authority for erosion control in s. 373.414, F.S.;
- Repeals ss. 582.22, 582.23, 582.24, 582.25, and 582.26, F.S., which set forth what must be in SWCD land use regulations, how SWCD land use regulations are enforced, and the procedure to vary from SWCD land use regulations because SWCDs will no longer have the ability to adopt land use regulations;
- Amends s. 582.29, F.S., to conform to other changes made in the bill; and
- Repeals ss. 582.331, 582.34, 582.35, 582.36, 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44, 582.45, 582.46, 582.47, 582.48, and 582.49, F.S., to eliminate watershed improvement districts. These districts performed many of the same functions as SWCDs, which as discussed above are also performed by other arms of government. Further, SWCDs will no

<sup>133</sup> DACS, *Supporting Information for Proposed Legislative Edits to: Chapter 582 Soil and Water Conservation*, p. 1 (August 19, 2015).

longer be authorized to have sub-entities with the power to levy ad valorem taxes. There are currently no watershed improvement districts in Florida.

## **Parks on Florida Forest Service Land**

### Present Situation

The Florida Forest Service may dedicate its land for use by the public as a park.<sup>134</sup> These lands must be subject to the rules and regulations adopted by DEP's Division of Recreation and Parks.<sup>135</sup>

### Effect of Proposed Changes

The bill repeals s. 589.26, F.S., to eliminate the Florida Forest Service's power to dedicate its land for use by the public as a park. According to DACS, the Florida Forest Service does not have any state parks or manage land for "park purposes."<sup>136</sup>

## **School Nutrition Program**

### Present Situation

The National School Lunch Program (NSLP) is a federally funded program that assists schools and other agencies in providing nutritious meals to children at reasonable prices. In addition to financial assistance, the NSLP provides donated commodity foods to help reduce lunch program costs.

Chapter 595, F.S., authorizes DACS to coordinate with the federal government to use federal and state funding to provide school nutrition programs. The Legislature declared that it is the policy of the state to provide standards for school food and nutrition services and to require each school district to establish and maintain an appropriate school food and nutrition service program consistent with the nutritional needs of students.<sup>137</sup>

Schools must apply through DACS and complete certain requirements<sup>138</sup> prior to the operation of a school nutrition program. Once approved, DACS will reimburse schools for each lunch and breakfast meal served provided they meet established state and federal regulations.

Currently, DACS must make a reasonable effort to ensure that any school designated as a "severe need school" receives the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served.<sup>139</sup> Further, DACS may advance funds from the school nutrition program's annual appropriation to sponsors in order to implement the school nutrition program.<sup>140</sup> There is no restriction on when or for which program the funds may be advanced.

Each school district must implement a school breakfast program that makes breakfast meals available to all students in each elementary school.<sup>141</sup> School districts must offer universal school breakfast programs (a no-cost program) in schools in which 80 percent or more of the students are eligible for free or reduced-price meals.<sup>142</sup> There is no exception to these requirements.

Each school must, to the maximum extent practicable, make breakfast meals available to students at an alternative site location.<sup>143</sup>

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<sup>134</sup> Section 589.26, F.S.

<sup>135</sup> Id.

<sup>136</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>137</sup> Section 595.403, F.S.

<sup>138</sup> Requirements found in s. 595.405, F.S.

<sup>139</sup> Section 595.404(5), F.S.

<sup>140</sup> Section 595.404(12), F.S.

<sup>141</sup> Section 595.405(2), F.S.

<sup>142</sup> Id.

<sup>143</sup> Id.

The Legislature encourages school districts to provide universal free school breakfast meals to all students.<sup>144</sup> The school may approve or disapprove a universal free school breakfast only after receiving public testimony concerning the proposed policy at two or more regular meetings.<sup>145</sup>

Each school district is required to sponsor a summer nutrition program that operates a site either:

- Within 5 miles of at least one elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals and for the duration of 35 consecutive days; or
- Within 10 miles of each elementary school at which 50 percent or more of the students are eligible for free or reduced-price school meals.<sup>146</sup>

DACS must conduct, supervise, and administer all commodity distribution services related to the school nutrition program that will be carried on using federal or state funds, or funds from any other source, or commodities received and distributed from the United States or any of its agencies.<sup>147</sup> DACS must cooperate fully with the federal government in order to assure it receives the benefit of all federal financial allotments and assistance possible to carry out the school nutrition program.<sup>148</sup>

### Effect of Proposed Changes

The bill includes the following revisions to the School Nutrition Program:

- Amends s. 595.402, F.S., to add definitions for “school breakfast program,” “summer nutrition program,” and “universal school breakfast program” to specify that they are the programs authorized by federal law;
- Changes the term “school district” to “district school board”;
- Amends subsection 595.404(2), F.S., to authorize DACS to implement the Farmer’s Market Nutrition Program (FMNP) for Supplemental Nutrition Program for Women, Children and Infants (SNAP-WIC);<sup>149</sup>
- Amends subsection 595.404(6), F.S., to create a duty to provide to a “severe need school” the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. This is consistent with the federal requirement in 7 CFR 220.9. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled;<sup>150</sup>
- Amends subsection 595.404(10), F.S., to authorize DACS to adopt rules for the farmer’s market nutrition program;
- Amends subsection 595.404(13), F.S., to specify that funds from the school nutrition program may only be advanced to the sponsors of Summer Food Service Programs. This is consistent with the federal requirement in 7 CFR 225.9. According to DACS, the bill will have no economic or substantive effect on any interest groups or stakeholders, and will remove ambiguities from the statute that could potentially result in misinterpretation and misapplication of the law;<sup>151</sup>
- Creates subsection 595.404(14), F.S., to authorize DACS to collect and publish data from multiple sources on food purchased by sponsors through the Florida Farm to School Program and other school food and nutrition service programs;

<sup>144</sup> Section 595.405(4), F.S.

<sup>145</sup> Id.

<sup>146</sup> Section 595.407(2), F.S.

<sup>147</sup> Section 595.408(1), F.S.

<sup>148</sup> Section 595.408(2), F.S.

<sup>149</sup> SNAP-WIC provides federal grants to states for supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to age five who are found to be at nutritional risk. Women, infants (over 4 months old), and children that have been certified to receive WIC program benefits or who are on a waiting list for WIC certification are eligible to participate in the FMNP. State agencies may serve some or all of these categories. A variety of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs may be purchased with FMNP coupons. State agencies can limit sales to specific foods grown within state borders to encourage FMNP recipients to support the farmers in their own States. United States Department of Agriculture, Farmers’ Market Nutrition Program (FMNP) FMNP Contacts, <http://www.fns.usda.gov/fmnp/fmnp-contacts>. (last visited September 10, 2015).

<sup>150</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 9 (January 19, 2015).

<sup>151</sup> Id. at 10.

- Creates subsection 595.404(15), F.S., to authorize DACS to enter into agreements with federal or state agencies to coordinate and cooperate in the implementation of nutrition programs;
- Amends s. 595.406, F.S., to change the name of the “Florida Farm Fresh Schools Program” to “Florida Farm to School Program”;
- Creates subsection 595.406(3), F.S., to authorize DACS to recognize sponsors who purchase at least 10 percent of the food they serve from the Florida Farm to School Program;
- Amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just elementary schools. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly.<sup>152</sup> Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate.<sup>153</sup> Since schools participating in the summer nutrition program are reimbursed directly by the federal government, the department has indicated that the proposed change will have a minimal impact on school districts and local governments.<sup>154</sup>
- Amends paragraph 595.407(2)(a), F.S., to remove the requirement that each school district provide reduced-price school meals during the summer for 35 consecutive days and replace it with the requirement for each school district provide reduced-price school meals during the summer for 35 days between the end of one school year and the beginning of the next. School districts may exclude holidays and weekends;
- Amends s. 595.408, F.S., to change the term “commodity” to “food” to be consistent with federal statutes; and
- Amends s. 595.501, F.S., to remove “school district” from the phrase “any person, sponsor, or school district” because the definition of “sponsor” is inclusive of “school districts.”<sup>155</sup>

## Financial Assurance Requirements for Dealers in Agricultural Products and Grain Dealers

### Present Situation

Any individual or business entity who wishes to be a dealer in agricultural products<sup>156</sup> must receive a license from DACS and deliver a bond or certificate of deposit to DACS in favor of the Commissioner of Agriculture.<sup>157</sup> This financial assurance requirement is essentially a third-party beneficiary contract to protect individuals who are harmed when conducting business with dealers in agricultural products who fail to pay for products.<sup>158</sup>

Individuals claiming to be damaged by an agricultural products dealer by any breach of the conditions of a bond or certificate of deposit assignment or agreement may file a complaint with DACS.<sup>159</sup> DACS must investigate these complaints and determine if a complaint should be filed against the agricultural products dealer in order to seek damages.<sup>160</sup> To file the complaint, the aggrieved party must file three complaint affidavits or notarizations. If the aggrieved party files the complaint by electronic transmission or facsimile, the original affidavits and original notarizations must be filed with DACS by

<sup>152</sup> DACS Agency Analysis of 2015 PCB ANRS 15-01, p. 11 (January 19, 2015).

<sup>153</sup> Id.

<sup>154</sup> Email from Jonathan Rees, Deputy Director Office of Legislative Affairs, Department of Agriculture and Consumer Services, Summer Nutrition Program/Fiscal Impact, March 26, 2015.

<sup>155</sup> Section 595.402(5), F.S.

<sup>156</sup> A “dealer in agricultural products” is any person or business entity, whether itinerant or domiciled within this state, engaged in Florida in the business of purchasing, receiving, or soliciting agricultural products from the producer or the producer’s agent or representative for resale or processing for sale; acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis; or acting as a negotiating broker between the producer or the producer’s agent or representative and the buyer. Section 604.15(2), F.S.

<sup>157</sup> Sections 604.17, 604.19, and 604.20, F.S.

<sup>158</sup> *In re Hallmark Builders, Inc.*, 205 B.R. 974, 975 (Bankr. M.D. Fla. 1996).

<sup>159</sup> Section 604.21(1)(a), F.S.

<sup>160</sup> Section 604.21(2), F.S.

the close of business of the tenth business day following the electronic transmission or facsimile filing.<sup>161</sup> If the agricultural products dealer fails to respond to the complaint, it waives its point of entry into the proceeding.<sup>162</sup>

Further, each grain dealer<sup>163</sup> doing business in Florida must maintain a liquid security in an amount equal to the value of grain which the grain dealer has received from grain producers and for which the producers have not received payment.<sup>164</sup> Each grain dealer must report to DACS monthly the value of grain it received from producers for which the producers have not received payment.<sup>165</sup> This report must include a statement showing the type and amount of security maintained to cover the grain dealer's liability to producers.<sup>166</sup>

#### Effect of Proposed Changes

The bill amends subsection 604.21(1), F.S., eliminating the requirement that a complainant file three complaint affidavits or notarizations. The bill also eliminates the requirement to file an original complaint with DACS if the complaint is submitted electronically.

Further, the bill amends s. 604.33, F.S., to eliminate the requirement that each grain dealer report monthly to DACS the value of grain it received from producers for which the producers have not received payment. DACS possess the authority to request this information if a complaint is filed or if malpractice is suspected.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 482.111, F.S., relating to a pest control operator's certificate.
- Section 2.** Amends s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.
- Section 3.** Amends s. 500.03, F.S., defining the term "vehicle."
- Section 4.** Amends s. 500.10, F.S., relating to foods deemed adulterated.
- Section 5.** Amends s. 500.11, F.S., relating to foods deemed misbranded.
- Section 6.** Amends s. 570.07, F.S., relating to the powers and duties of DACS.
- Section 7.** Amends s. 570.30, F.S., relating to the powers and duties of the Division of Administration.
- Section 8.** Amends s. 570.441, F.S., relating to the Pest Control Trust Fund.
- Section 9.** Amends s. 570.53, F.S., relating to the powers of the DACS Division of Marketing and Development.
- Section 10.** Amends s. 570.544, F.S., relating to the duties of the director of the Division of Consumer Services.

<sup>161</sup> Section 604.21(1)(d), F.S.

<sup>162</sup> Southeast Grove Management, Inc. v. McKiness, 578 So.2d 883, 886 (Fla. 1st DCA 1991).

<sup>163</sup> A "grain dealer" is any person engaged in this state in: (a) buying, receiving, selling, exchanging, negotiating, or processing for resale, or soliciting the sale, resale, exchange, or transfer of, grain purchased from the producer or the producer's agent or representative or received from the producer to be handled on a net return basis; or (b) receiving grain for storage. Section 604.15(6), F.S.

<sup>164</sup> Section 604.33, F.S.

<sup>165</sup> Id.

<sup>166</sup> Id.

- Section 11.** Creates s. 570.68, F.S., creating the Office of Agriculture Technology Services.
- Section 12.** Amends s. 570.681, F.S., relating to the Florida Agriculture Center and Horse Park.
- Section 13.** Amends s. 570.685, F.S., relating the Florida Agriculture Center and Horse Park Authority.
- Section 14.** Amends s. 571.24, F.S., relating to the FAPC and the Advertising Interagency Coordinating Council.
- Section 15.** Amends s. 571.27, F.S., removing obsolete provisions relating to the authority of DACS to adopt rules related to negotiating and entering into contracts with advertising agencies.
- Section 16.** Amends s. 571.28, F.S., revising membership requirements for the FAPC Advisory Council.
- Section 17.** Amends s. 576.041, F.S., relating to fertilizer inspection fees and records.
- Section 18.** Creates s. 580.0365, F.S., relating to preemption of regulatory authority over commercial feed and feedstuff.
- Section 19.** Amends s. 581.181, F.S., relating to plants or plant products infested with pest or noxious weeds.
- Section 20.** Amends s. 582.01, F.S., revising definitions.
- Section 21.** Amends s. 582.02, F.S., relating to legislative policy and findings and the purpose of SWCDs.
- Section 22.** Repeals s. 582.03, F.S., pertaining to consequences of soil erosion; s. 582.04, F.S., pertaining to appropriate corrective measures for soil conservation; and s. 582.05, F.S., pertaining to legislative policy for conservation.
- Section 23.** Amends s. 582.055, F.S., relating to the powers and duties of the DACS with regard to SWCDs.
- Section 24.** Amends s. 582.06, F.S., relating to the powers and duties of the Soil and Water Conservation Council.
- Section 25.** Repeals s. 582.08, F.S., pertaining to additional powers of DACS in relation to SWCDs and s. 582.09, F.S., pertaining to administrative officer of soil and water conservation.
- Section 26.** Amends s. 582.16, F.S., relating to SWCD boundaries.
- Section 27.** Repeals s. 582.17, F.S., pertaining to the establishment of SWCDs;
- Section 28.** Amends s. 582.20, F.S., relating to powers and duties of the SWCDs and supervisors.
- Section 29.** Repeals s. 582.21, F.S., pertaining to adoption of land use regulations of SWCDs; s. 582.22, F.S., pertaining to SWCD regulations and content; s. 582.23, F.S., pertaining to performance of work under the SWCD regulations; s. 582.24, F.S., pertaining to boards of adjustment for SWCDs; s. 582.25, F.S., pertaining to rules and procedures of the

board; and s. 582.26, F.S., pertaining to petitions to board to vary from SWCD regulations.

- Section 30.** Amends s. 582.29, F.S., relating to state agencies cooperating with SWCDs.
- Section 31.** Repeals s. 582.331, F.S., pertaining to establishment of watershed improvement districts within SWCDs; s. 582.34, F.S., pertaining to petition for establishment of watershed improvement districts; s. 582.35, F.S., pertaining to notice and hearing on petition to establish watershed improvement districts, determination of need for a watershed improvement district, and boundaries; s. 582.36, F.S., pertaining to determination of feasibility of proposed watershed improvement district and referendum; s. 582.37, F.S., pertaining to consideration of results of referendum on establishing watershed improvement district and declaration of organization of district; s. 582.38, F.S., pertaining to organization of watershed improvement district, certification to clerks of circuit courts, and limitation on tax rate; s. 582.39, F.S., pertaining to establishment of watershed improvement district situated in more than one SWCD; s. 582.40, F.S., pertaining to changes of district boundaries, additions, detachments, transfers of land from one district to another, and change of district name; s. 582.41, F.S., pertaining to the board of directors of the watershed improvement districts; s. 582.42, F.S., pertaining to officers, agents, and employees; surety bonds; annual audits of watershed improvement districts; s. 582.43, F.S., pertaining to the status and general powers of watershed improvement districts; s. 582.44, F.S., pertaining to watershed improvement districts levying taxes; s. 582.45, F.S., pertaining to the fiscal powers of the watershed improvement district's governing board; s. 582.46, F.S., pertaining to additional powers and authorities of watershed improvement districts; s. 582.47, F.S., pertaining to watershed improvement district to coordinating work with flood control districts; s. 582.48, F.S., pertaining to discontinuing watershed improvement district; and s. 582.49, F.S., pertaining to discontinuing of soil and water conservation district.
- Section 32.** Repeals s. 589.26, F.S., relating to the authority of the Florida Forest Service to dedicate its land for use by the public as a park.
- Section 33.** Amends s. 595.402, F.S., defining terms relating to the school food and nutrition service program.
- Section 34.** Amends s. 595.404, F.S., relating to DACS's powers for the school food and nutrition service programs.
- Section 35.** Amends s. 595.405, F.S., relating to school food and nutrition program requirements.
- Section 36.** Amends s. 595.406, F.S., to change the name of the "Florida Farm Fresh Schools Program" to "Florida Farm to School Program."
- Section 37.** Amends s. 595.407, F.S., relating to children's summer nutrition program.
- Section 38.** Amends s. 595.408, F.S., to change every instance of the word "commodity" to "food" to be consistent with the federal statutes.
- Section 39.** Amends s. 595.501, F.S., relating to penalties under ch. 595, F.S.
- Section 40.** Amends s. 595.601, F.S., correcting a cross-reference.
- Section 41.** Amends s. 604.21, F.S., revising affidavit requirements for agricultural products dealers.
- Section 42.** Amends s. 604.33, F.S., relating to grain dealer report.

**Section 43.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

##### Pest Control Operator's Certification Application Fee

The bill appears to have an insignificant negative fiscal impact on state government by eliminating the issuance fee to apply for a pest control operator's original certificate. DACS indicated that it expects the impact to be \$76,762 per year.<sup>167</sup>

##### Fee for Limited Certification for Urban Landscape Commercial Fertilizer Application

The bill appears to have an insignificant negative fiscal impact on state government revenues by eliminating a late fee for limited certification for urban landscape commercial fertilizer application. DACS indicated that it expects the impact to be minimal.<sup>168</sup>

#### 2. Expenditures:

##### Office of Agricultural Technology Services

The bill may have a negative fiscal impact associated with the creation of s. 570.68, F.S. This provision creates the Office of Agricultural Technology Services, under the supervision of a senior management class employee. Currently, the Chief Information Officer within the department is classified as a retiree that has been reemployed and not eligible to participate in a state administered retirement plan. The state contributes a set amount to the state retirement account for employees in these ineligible classes, despite their inability to participate. The current retirement contribution rate for an ineligible employee in a regular class is 4.31 percent, while the contribution rate for an ineligible employee in a senior management class is 17.07 percent. Changing the department's current Chief Information Officer to a senior management class would result in an additional state retirement contribution of \$12,402 from the salary and benefits appropriation category.

If the current Chief Information Officer were to leave and the position was filled at the same annual rate with an employee that was eligible to participate in state retirement, then the retirement contribution for this regular class employee would be 7.26 percent. In this scenario, changing the position to a senior management class would increase the contribution rate to 21.43 percent and result in \$13,722 in additional state retirement contributions.

In either scenario, DACS indicated it would manage these additional costs within existing salary and benefit appropriations.<sup>169</sup>

##### School Nutrition Programs

The bill amends subsection (5) of s. 595.404, F.S., to create a duty to provide to a "severe need school" the highest rate of reimbursement to which it is entitled under the federal school breakfast program for each breakfast meal served. According to DACS, the department currently provides the highest rate of reimbursement to which each severe need school is entitled. Therefore, the provision will have no economic or substantive effect.

Section 595.404(12), F.S., currently authorizes DACS to advance funds to program sponsors when requested. Historically, advances have only been given to participants in the Summer Food Service

<sup>167</sup> DACS, Agency analysis of 2016 House Bill 7007, p. 19 (November 16, 2015)

<sup>168</sup> Id.

<sup>169</sup> Id.

Program. Furthermore, the USDA only requires the department to provide an advancement of funds for participants in the Summer Food Service Program. The proposed statutory change clarifies that DACS will only advance funds when requested by sponsors of the Summer Food Service Program. According to DACS, the provision will have no economic or substantive effect on any interest groups or stakeholders.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

The bill amends s. 595.407, F.S., to specify that each school district must provide a summer nutrition program within 5 miles of at least one school that serves any combination of grades K through 5, not just an elementary school. This provision attempts to close a loophole where some K-8 or K-12 schools claimed they were not elementary schools, and therefore, did not have to comply. According to DACS, interpretation of this statute has varied greatly. Thus, the proposed change may require district school boards to adjust the location or increase the number of summer nutrition program sites they operate. Since schools participating in the summer nutrition program are reimbursed directly by the federal government, the department has indicated that the proposed change will have a minimal impact on school districts and local governments.<sup>170</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill amends s. 482.1562, F.S., to eliminate a late fee for limited certification for urban landscape commercial fertilizer application. This may have a positive impact on those who apply commercial fertilizer by eliminating a fee.

The bill amends s. 581.181, F.S., to create an exception from the destruction requirement for plant or plant products infested with pest or noxious weeds that are widely established in Florida and not regulated by DACS. This may have a positive impact on those who own plant or plant products infested with pest or noxious weeds by not requiring the owners to destroy them when they are widely established in Florida and not regulated by DACS.

The bill amends subsection 604.21(1), F.S., to eliminate the necessity for a complainant to submit three complaint affidavits or notarizations when an individual is damaged by an agricultural products dealer. This may have a positive impact on those individuals by eliminating the extra filings and speeding up the complaint process.

The bill amends s. 604.33, F.S., to eliminate monthly reports required from grain dealers. This may have a positive impact by eliminating the filing requirements.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

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<sup>170</sup> Email from Jonathan Rees, Deputy Director Office of Legislative Affairs, Department of Agriculture and Consumer Services, Summer Nutrition Program/Fiscal Impact, March 26, 2015.

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill eliminates the authority for DACS to adopt rules related to negotiating and entering into contracts with advertising agencies. The bill authorizes DACS and SWCD to adopt rules relating to the districts' powers and duties. The bill eliminates the authority for SWCDs to adopt rules related to land use.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



27 F.S.; removing electronic data processing and  
 28 management information systems support for the  
 29 department as a power and duty of the Division of  
 30 Administration; amending s. 570.441, F.S.; authorizing  
 31 the use of funds in the Pest Control Trust Fund for  
 32 activities of the Division of Agricultural  
 33 Environmental Services; amending s. 570.53, F.S.;  
 34 revising duties of the Division of Marketing and  
 35 Development to remove enforcement of provisions  
 36 relating to dealers in agricultural products; amending  
 37 s. 570.544, F.S.; revising duties of the director of  
 38 the Division of Consumer Services to include  
 39 enforcement of provisions relating to dealers in  
 40 agricultural products and grain dealers; creating s.  
 41 570.68, F.S.; authorizing the Commissioner of  
 42 Agriculture to create an Office of Agriculture  
 43 Technology Services; providing duties of the office;  
 44 amending s. 570.681, F.S.; revising legislative  
 45 findings with regard to the Florida Agriculture Center  
 46 and Horse Park; amending s. 570.685, F.S.;  
 47 authorizing, rather than requiring, the department to  
 48 provide administrative and staff support services,  
 49 meeting space, and record storage for the Florida  
 50 Agriculture Center and Horse Park Authority; amending  
 51 s. 571.24, F.S.; providing legislative intent for the  
 52 Florida Agricultural Promotional Campaign to serve as

53 a marketing program for certain purposes; removing an  
 54 obsolete provision relating to the designation of a  
 55 Division of Marketing and Development employee as a  
 56 member of the Advertising Interagency Coordinating  
 57 Council; amending s. 571.27, F.S.; removing obsolete  
 58 provisions relating to the authority of the department  
 59 to adopt rules for entering into contracts with  
 60 advertising agencies for services which are directly  
 61 related to the Florida Agricultural Promotional  
 62 Campaign; amending s. 571.28, F.S.; revising  
 63 provisions specifying membership criteria of the  
 64 Florida Agricultural Promotional Campaign Advisory  
 65 Council; amending s. 576.041, F.S.; revising the  
 66 frequency of fertilizer sales reports and the payment  
 67 of related inspection fees; providing for such reports  
 68 and fees to be made through the department's website;  
 69 revising the time by which such reports must be made  
 70 and fees must be paid; creating s. 580.0365, F.S.;

71 providing legislative intent with regard to regulation  
 72 of commercial feed and feedstuff; preempting  
 73 regulatory authority for commercial feed and feedstuff  
 74 to the department; amending s. 581.181, F.S.;

75 providing applicability of provisions requiring  
 76 treatment or destruction of infested or infected  
 77 plants and plant products; amending s. 582.01, F.S.;

78 revising definitions; amending s. 582.02, F.S.;

79 | revising legislative findings and intent with regard  
 80 | to the purpose of soil and water conservation  
 81 | districts; repealing s. 582.03, F.S., relating to the  
 82 | consequences of soil erosion; repealing s. 582.04,  
 83 | F.S., relating to appropriate corrective methods for  
 84 | conservation, development, and use of soil and water  
 85 | resources; repealing s. 582.05, F.S., relating to  
 86 | legislative policy for the conservation, development,  
 87 | and use of such resources; amending s. 582.055, F.S.;  
 88 | revising provisions relating to powers and duties of  
 89 | the department with regard to soil and water  
 90 | conservation districts; amending s. 582.06, F.S.;  
 91 | revising provisions relating to powers and duties of  
 92 | the Soil and Water Conservation Council; repealing s.  
 93 | 582.08, F.S., relating to additional powers of the  
 94 | department with regard to soil and water conservation  
 95 | districts; repealing s. 582.09, F.S., relating to the  
 96 | employment of an administrative officer of soil and  
 97 | water conservation; amending s. 582.16, F.S.; revising  
 98 | provisions for modifying soil and water conservation  
 99 | district boundaries; repealing s. 582.17, F.S.,  
 100 | relating to the presumption that districts are  
 101 | established in accordance with specified provisions;  
 102 | amending s. 582.20, F.S.; revising provisions relating  
 103 | to powers and duties of soil and water conservation  
 104 | districts and district supervisors; repealing s.

105 582.21, F.S., relating to the adoption of land use  
 106 regulations by soil and water conservation district  
 107 supervisors; repealing s. 582.22, F.S., relating to  
 108 the content of land use regulations adopted by soil  
 109 and water conservation district supervisors; repealing  
 110 s. 582.23, F.S., relating to the performance of work  
 111 under land use regulations adopted by soil and water  
 112 conservation district supervisors; repealing s.  
 113 582.24, F.S., relating to the board of adjustment;  
 114 repealing s. 582.25, F.S., relating to rules of  
 115 procedure of the board of adjustment; repealing s.  
 116 582.26, F.S., relating to petitions to the board of  
 117 adjustment for land use variances; amending s. 582.29,  
 118 F.S.; revising provisions directing state agencies and  
 119 other governmental subdivisions of the state that  
 120 manage publicly owned lands to cooperate with soil and  
 121 water conservation district supervisors in  
 122 implementing district programs and operations;  
 123 repealing s. 582.331, F.S., relating to the  
 124 establishment of a watershed improvement district  
 125 within a soil and water conservation district;  
 126 repealing s. 582.34, F.S., relating to the petition  
 127 for establishment of a watershed improvement district  
 128 within a soil and water conservation district;  
 129 repealing s. 582.35, F.S., relating to notice and  
 130 hearing on petition for establishment of a watershed

131 improvement district within a soil and water  
 132 conservation district and determination of need for  
 133 such district; repealing s. 582.36, F.S., relating to  
 134 determination of feasibility and referendum for a  
 135 watershed improvement district within a soil and water  
 136 conservation district; repealing s. 582.37, F.S.,  
 137 relating to consideration of referendum results for  
 138 determination of feasibility and declaration of  
 139 organization of a watershed improvement district  
 140 within a soil and water conservation district;  
 141 repealing s. 582.38, F.S., relating to organization of  
 142 a watershed improvement district within a soil and  
 143 water conservation district; repealing s. 582.39,  
 144 F.S., relating to establishment of a watershed  
 145 improvement district situated in more than one soil  
 146 and water conservation district; repealing s. 582.40,  
 147 F.S., relating to change of district boundaries  
 148 including additions, detachments, transfers of land  
 149 from one district to another, and change of district  
 150 name; repealing s. 582.41, F.S., relating to the board  
 151 of directors of a soil and water conservation  
 152 district; repealing s. 582.42, F.S., relating to  
 153 officers, agents, and employees of a watershed  
 154 improvement district within a soil and water  
 155 conservation district and issuance of surety bonds by,  
 156 and annual audits of, such district; repealing s.

157 | 582.43, F.S., relating to the power of a watershed  
 158 | improvement district within a soil and water  
 159 | conservation district to levy taxes and to construct,  
 160 | operate, improve, and maintain works of improvement in  
 161 | such district and to obtain necessary lands or  
 162 | interests therein; repealing s. 582.44, F.S., relating  
 163 | to procedures for a watershed improvement district  
 164 | within a soil and water conservation district to levy  
 165 | taxes; repealing s. 582.45, F.S., relating to the  
 166 | fiscal power of the board of directors of a watershed  
 167 | improvement district within a soil and water  
 168 | conservation district to issue bonds; repealing s.  
 169 | 582.46, F.S., relating to additional powers of the  
 170 | board of directors of a watershed improvement district  
 171 | within a soil and water conservation district;  
 172 | repealing s. 582.47, F.S., relating to the authority  
 173 | of a watershed improvement district within a soil and  
 174 | water conservation district to coordinate work with  
 175 | flood control districts; repealing s. 582.48, F.S.,  
 176 | relating to discontinuance of a watershed improvement  
 177 | district within a soil and water conservation  
 178 | district; repealing s. 582.49, F.S., relating to  
 179 | discontinuance of a soil and water conservation  
 180 | district; repealing s. 589.26, F.S., relating to the  
 181 | authority of the Florida Forest Service to dedicate  
 182 | and reserve state park lands for public use; amending

183 s. 595.402, F.S.; defining terms relating to school  
 184 food and nutrition service programs; conforming a  
 185 reference to changes made by the act; amending s.  
 186 595.404, F.S.; revising powers and duties of the  
 187 department with regard to school food and nutrition  
 188 programs; authorizing the department to conduct,  
 189 supervise, and administer a farmers' market nutrition  
 190 program for certain purposes; directing the department  
 191 to collect and publish data on food purchased through  
 192 specified programs; authorizing the department to  
 193 enter into agreements with federal and state agencies  
 194 to implement nutrition programs; amending s. 595.405,  
 195 F.S.; revising requirements for school nutrition  
 196 programs; providing for breakfast meals to be  
 197 available to all students in schools that serve  
 198 specified grade levels; conforming a reference to  
 199 changes made by the act; amending s. 595.406, F.S.;  
 200 renaming the "Florida Farm Fresh Schools Program" as  
 201 the "Florida Farm to School Program"; authorizing the  
 202 department to establish by rule a recognition program  
 203 for certain sponsors; amending s. 595.407, F.S.;  
 204 revising provisions of the children's summer nutrition  
 205 program to include certain schools that serve  
 206 specified grade levels; revising provisions relating  
 207 to the duration of the program; authorizing school  
 208 districts to exclude holidays and weekends; amending

209 s. 595.408, F.S.; conforming references to changes  
 210 made by the act; amending s. 595.501, F.S.; requiring  
 211 entities to complete corrective action plans required  
 212 by the department or a federal agency to be in  
 213 compliance with school food and nutrition service  
 214 programs; amending s. 595.601, F.S.; correcting a  
 215 cross-reference; amending s. 604.21, F.S.; revising  
 216 affidavit requirements for an agricultural products  
 217 dealer who files a complaint against another such  
 218 dealer; amending s. 604.33, F.S.; removing provisions  
 219 requiring grain dealers to submit monthly reports;  
 220 authorizing, rather than requiring, the department to  
 221 make at least one spot check annually of each grain  
 222 dealer; providing an effective date.

223

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

225

226 Section 1. Subsections (1) and (7) of section 482.111,  
 227 Florida Statutes, are amended to read:

228 482.111 Pest control operator's certificate.—

229 (1) The department shall issue a pest control operator's  
 230 certificate to each individual who qualifies under this chapter.  
 231 Before issuance of an original certificate, an individual must  
 232 complete an application for examination, pay the examination fee  
 233 required under s. 482.141, and pass the examination. Before  
 234 engaging in pest control work, each certified operator must be

235 | certified as provided in this section. ~~Application must be made~~  
 236 | ~~and the issuance fee must be paid to the department for the~~  
 237 | ~~original certificate within 60 days after the postmark date of~~  
 238 | ~~written notification of passing the examination. During a period~~  
 239 | ~~of 30 calendar days following expiration of the 60-day period,~~  
 240 | ~~an original certificate may be issued; however, a late issuance~~  
 241 | ~~charge of \$50 shall be assessed and must be paid in addition to~~  
 242 | ~~the issuance fee. An original certificate may not be issued~~  
 243 | ~~after expiration of the 30-day period, without reexamination.~~

244 |       (7) The fee for ~~issuance of an original certificate or the~~  
 245 | ~~renewal~~ of a certificate thereof shall be set by the department  
 246 | but may not be more than \$150 or less than \$75; however, until  
 247 | rules setting these fees are adopted by the department, the  
 248 | issuance fee and the renewal fee shall each be \$75.

249 |       Section 2. Subsections (5) and (6) of section 482.1562,  
 250 | Florida Statutes, are amended to read:

251 |       482.1562 Limited certification for urban landscape  
 252 | commercial fertilizer application.—

253 |       (5) An application for recertification must be made 4  
 254 | years after the date of issuance ~~at least 90 days before the~~  
 255 | ~~expiration~~ of the current certificate and be accompanied by:

256 |       (a) Proof of having completed the 4 classroom hours of  
 257 | acceptable continuing education required under subsection (4).

258 |       (b) A recertification fee set by the department in an  
 259 | amount of at least \$25 but not more than \$75. Until the fee is  
 260 | set by rule, the fee for certification is \$25.

261           (6) ~~A late renewal charge of \$50 per month shall be~~  
 262 ~~assessed 30 days after the date the application for~~  
 263 ~~recertification is due and must be paid in addition to the~~  
 264 ~~renewal fee. Unless timely recertified, a certificate~~  
 265 ~~automatically expires 90 days after the recertification date.~~  
 266 Upon expiration, or after a grace period that does not exceed 30  
 267 days after expiration, a certificate may be issued only upon  
 268 reapplying in accordance with subsection (3).

269           Section 3. Paragraph (n) of subsection (1) of section  
 270 500.03, Florida Statutes, is amended, and paragraph (cc) is  
 271 added to that subsection, to read:

272           500.03 Definitions; construction; applicability.—

273           (1) For the purpose of this chapter, the term:

274           (n) "Food" includes:

275           1. Articles used for food or drink for human consumption;

276           2. Chewing gum;

277           3. Articles used for components of any such article; ~~and~~

278           4. Articles for which health claims are made, which claims

279 are approved by the Secretary of the United States Department of

280 Health and Human Services and which claims are made in

281 accordance with s. 343(r) of the federal act, and which are not

282 considered drugs solely because their labels or labeling contain

283 health claims; and

284           5. Dietary supplements as defined in 21 U.S.C. s.

285 321(ff)(1) and (2).

286

287 The term includes any raw, cooked, or processed edible  
 288 substance; ice; any beverage; or any ingredient used, intended  
 289 for use, or sold for human consumption.

290 (cc) "Vehicle" means a mode of transportation or mobile  
 291 carrier used to transport food from one location to another,  
 292 including, but not limited to, carts, cycles, vans, trucks,  
 293 cars, trains and railway transport, and aircraft and watercraft  
 294 transport.

295 Section 4. Paragraph (f) of subsection (1) of section  
 296 500.10, Florida Statutes, is amended, and subsections (5) and  
 297 (6) are added to that section, to read:

298 500.10 Food deemed adulterated.—A food is deemed to be  
 299 adulterated:

300 (1)

301 (f) If it has been produced, prepared, packed,  
 302 transported, or held under insanitary conditions whereby it may  
 303 become contaminated with filth, or whereby it may have been  
 304 rendered diseased, unwholesome, or injurious to health;

305 (5) If a dietary supplement or its ingredients present a  
 306 significant risk of illness or injury due to:

307 (a) The recommended or suggested conditions of use on the  
 308 product labeling; or

309 (b) The failure to provide conditions of use on the  
 310 product labeling.

311 (6) If it contains an ingredient for which there is  
 312 inadequate information to provide reasonable assurance that such

313 | ingredient does not present a significant risk of illness or  
 314 | injury.

315 | Section 5. Paragraph (m) of subsection (1) of section  
 316 | 500.11, Florida Statutes, is amended to read:

317 | 500.11 Food deemed misbranded.—

318 | (1) A food is deemed to be misbranded:

319 | (m) If it is offered for sale and its label or labeling  
 320 | does not comply with the requirements of 21 U.S.C. s. 343(q) or  
 321 | 21 U.S.C. s. 343(w) pertaining to nutrition or allergen  
 322 | information.

323 | Section 6. Paragraph (c) of subsection (20) of section  
 324 | 570.07, Florida Statutes, is amended, and subsection (44) is  
 325 | added to that section, to read:

326 | 570.07 Department of Agriculture and Consumer Services;  
 327 | functions, powers, and duties.—The department shall have and  
 328 | exercise the following functions, powers, and duties:

329 | (20)

330 | (c) To sponsor events, trade breakfasts, luncheons, and  
 331 | dinners and distribute promotional materials and favors in  
 332 | connection with meetings, conferences, and conventions of  
 333 | dealers, buyers, food editors, and merchandising executives that  
 334 | will assist in the promotion and marketing of Florida's  
 335 | agricultural and agricultural business products to the consuming  
 336 | public.

337 |

338 | The department is authorized to receive and expend donations

339 | contributed by private persons for the purpose of covering costs  
 340 | associated with the above described activities.

341 |       (44) The department may, in its own name:

342 |           (a) Perform all things necessary to secure letters of  
 343 | patent, copyrights, and trademarks on any work products of the  
 344 | department and enforce its rights therein.

345 |           (b) License, lease, assign, or otherwise give written  
 346 | consent to any person, firm, or corporation for the manufacture  
 347 | or use of such department work products on a royalty basis or  
 348 | for such other consideration as the department deems proper.

349 |           (c) Take any action necessary, including legal action, to  
 350 | protect such department work products against improper or  
 351 | unlawful use or infringement.

352 |           (d) Enforce the collection of any sums due to the  
 353 | department for the manufacture or use of such department work  
 354 | products by another party.

355 |           (e) Sell any of such department work products and execute  
 356 | all instruments necessary to consummate any such sale.

357 |           (f) Do all other acts necessary and proper for the  
 358 | execution of powers and duties conferred upon the department by  
 359 | this section, including adopting rules, as necessary, in order  
 360 | to administer this section.

361 |       Section 7. Subsection (5) of section 570.30, Florida  
 362 | Statutes, is amended to read:

363 |       570.30 Division of Administration; powers and duties.—The  
 364 | Division of Administration shall render services required by the

365 department and its other divisions, or by the commissioner in  
 366 the exercise of constitutional and cabinet responsibilities,  
 367 that can advantageously and effectively be centralized and  
 368 administered and any other function of the department that is  
 369 not specifically assigned by law to some other division. The  
 370 duties of this division include, but are not limited to:

371 ~~(5) Providing electronic data processing and management~~  
 372 ~~information systems support for the department.~~

373 Section 8. Subsection (4) is added to section 570.441,  
 374 Florida Statutes, to read:

375 570.441 Pest Control Trust Fund.—

376 (4) In addition to the uses authorized under subsection  
 377 (2), moneys collected or received by the department under  
 378 chapter 482 may be used to carry out the provisions of s.  
 379 570.44. This subsection expires June 30, 2019.

380 Section 9. Subsection (2) of section 570.53, Florida  
 381 Statutes, is amended to read:

382 570.53 Division of Marketing and Development; powers and  
 383 duties.—The powers and duties of the Division of Marketing and  
 384 Development include, but are not limited to:

385 ~~(2) Enforcing the provisions of ss. 604.15-604.34, the~~  
 386 ~~dealers in agricultural products law, and ss. 534.47-534.53.~~

387 Section 10. Subsection (2) of section 570.544, Florida  
 388 Statutes, is amended to read:

389 570.544 Division of Consumer Services; director; powers;  
 390 processing of complaints; records.—

391 (2) The director shall supervise, direct, and coordinate  
 392 the activities of the division and shall, under the direction of  
 393 the department, enforce the provisions of ss. 604.15-604.34 and  
 394 chapters 472, 496, 501, 507, 525, 526, 527, 531, 539, 559, 616,  
 395 and 849.

396 Section 11. Section 570.68, Florida Statutes, is created  
 397 to read:

398 570.68 Office of Agriculture Technology Services.—The  
 399 commissioner may create an Office of Agriculture Technology  
 400 Services under the supervision of a senior manager exempt under  
 401 s. 110.205 in the Senior Management Service. The office shall  
 402 provide electronic data processing and agency information  
 403 technology services to support and facilitate the functions,  
 404 powers, and duties of the department.

405 Section 12. Section 570.681, Florida Statutes, is amended  
 406 to read:

407 570.681 Florida Agriculture Center and Horse Park;  
 408 legislative findings.—It is the finding of the Legislature that:

409 ~~(1) Agriculture is an important industry to the State of~~  
 410 ~~Florida, producing over \$6 billion per year while supporting~~  
 411 ~~over 230,000 jobs.~~

412 ~~(1)(2)~~ Equine and other agriculture-related industries  
 413 will strengthen and benefit each other with the establishment of  
 414 a statewide agriculture and horse facility.

415 ~~(2)(3)~~ The A Florida Agriculture Center and Horse Park  
 416 provides ~~will provide~~ Florida with a unique tourist experience

417 for visitors and residents, thus generating taxes and additional  
 418 dollars for the state.

419 ~~(3)(4)~~ Promoting the Florida Agriculture Center and Horse  
 420 Park as a joint effort between the state and the private sector  
 421 allows ~~will allow~~ this facility to use ~~utilize~~ experts and  
 422 generate revenue from many areas to ensure the success of this  
 423 facility.

424 Section 13. Paragraphs (b) and (c) of subsection (4) of  
 425 section 570.685, Florida Statutes, are amended to read:

426 570.685 Florida Agriculture Center and Horse Park  
 427 Authority.—

428 (4) The authority shall meet at least semiannually and  
 429 elect a chair, a vice chair, and a secretary for 1-year terms.

430 (b) The department may provide ~~shall be responsible for~~  
 431 ~~providing~~ administrative and staff support services relating to  
 432 the meetings of the authority and may ~~shall~~ provide suitable  
 433 space in the offices of the department for the meetings and the  
 434 storage of records of the authority.

435 (c) In conducting its meetings, the authority shall use  
 436 accepted rules of procedure. The secretary shall keep a complete  
 437 record of the proceedings of each meeting, which shows ~~record~~  
 438 ~~shall show~~ the names of the members present and the actions  
 439 taken. These records shall be kept on file with the department,  
 440 and such records and other documents regarding matters within  
 441 the jurisdiction of the authority shall be subject to inspection  
 442 by members of the authority.

443 Section 14. Section 571.24, Florida Statutes, is amended  
 444 to read:

445 571.24 Purpose; duties of the department.—The purpose of  
 446 this part is to authorize the department to establish and  
 447 coordinate the Florida Agricultural Promotional Campaign. The  
 448 Legislature intends for the Florida Agricultural Promotional  
 449 Campaign to serve as a marketing program to promote Florida  
 450 agricultural commodities, value-added products, and  
 451 agricultural-related businesses and not a food safety or  
 452 traceability program. The duties of the department shall  
 453 include, but are not limited to:

454 (1) Developing logos and authorizing the use of logos as  
 455 provided by rule.

456 (2) Registering participants.

457 (3) Assessing and collecting fees.

458 (4) Collecting rental receipts for industry promotions.

459 (5) Developing in-kind advertising programs.

460 (6) Contracting with media representatives for the purpose  
 461 of dispersing promotional materials.

462 (7) Assisting the representative of the department who  
 463 serves on the Florida Agricultural Promotional Campaign Advisory  
 464 Council.

465 ~~(8) Designating a division employee to be a member of the~~  
 466 ~~Advertising Interagency Coordinating Council.~~

467 (8) ~~(9)~~ Adopting rules pursuant to ss. 120.536(1) and  
 468 120.54 to implement the provisions of this part.

469        (9)~~(10)~~ Enforcing and administering the provisions of this  
 470 part, including measures ensuring that only Florida agricultural  
 471 or agricultural based products are marketed under the "Fresh  
 472 From Florida" or "From Florida" logos or other logos of the  
 473 Florida Agricultural Promotional Campaign.

474        Section 15. Section 571.27, Florida Statutes, is amended  
 475 to read:

476        571.27 Rules.—The department is authorized to adopt rules  
 477 that implement, make specific, and interpret the provisions of  
 478 this part, ~~including rules for entering into contracts with~~  
 479 ~~advertising agencies for services which are directly related to~~  
 480 ~~the Florida Agricultural Promotional Campaign. Such rules shall~~  
 481 ~~establish the procedures for negotiating costs with the offerors~~  
 482 ~~of such advertising services who have been determined by the~~  
 483 ~~department to be qualified on the basis of technical merit,~~  
 484 ~~creative ability, and professional competency. Such~~  
 485 ~~determination of qualifications shall also include consideration~~  
 486 ~~of the provisions in s. 287.055(3), (4), and (5).~~ The department  
 487 is further authorized to determine, by rule, the logos or  
 488 product identifiers to be depicted for use in advertising,  
 489 publicizing, and promoting the sale of Florida agricultural  
 490 products or agricultural-based products in the Florida  
 491 Agricultural Promotional Campaign. The department may also adopt  
 492 rules consistent ~~not inconsistent~~ with the provisions of this  
 493 part as in its judgment may be necessary for participant  
 494 registration, renewal of registration, classes of membership,

495 application forms, and ~~as well as~~ other forms and enforcement  
 496 measures ensuring compliance with this part.

497 Section 16. Subsection (1) of section 571.28, Florida  
 498 Statutes, is amended to read:

499 571.28 Florida Agricultural Promotional Campaign Advisory  
 500 Council.—

501 (1) ORGANIZATION.—There is ~~hereby~~ created within the  
 502 department the Florida Agricultural Promotional Campaign  
 503 Advisory Council, to consist of 15 members appointed by the  
 504 Commissioner of Agriculture for 4-year staggered terms. The  
 505 membership shall include: 13 ~~six~~ members representing  
 506 agricultural producers, shippers, ~~or~~ packers, ~~three members~~  
 507 ~~representing agricultural~~ retailers, ~~two members representing~~  
 508 agricultural associations, and wholesalers ~~one member~~  
 509 ~~representing a wholesaler~~ of agricultural products, one member  
 510 representing consumers, and one member representing the  
 511 department. Initial appointment of the council members shall be  
 512 four members to a term of 4 years, four members to a term of 3  
 513 years, four members to a term of 2 years, and three members to a  
 514 term of 1 year.

515 Section 17. Subsection (2) of section 576.041, Florida  
 516 Statutes, is amended to read:

517 576.041 Inspection fees; records.—

518 (2) ~~Before the distribution of a fertilizer,~~ Each licensee  
 519 shall ~~make application upon a form provided by the department to~~  
 520 report to the department quarterly ~~monthly~~ the tonnage of

521 fertilizer sold in the state and pay ~~make payment~~ of the  
 522 inspection fee. The continuance of a license is conditioned upon  
 523 the applicant's:

524 (a) Maintaining records and a bookkeeping system that will  
 525 accurately indicate the tonnage of fertilizer sold by the  
 526 licensee; and

527 (b) Consent to examination of the business records and  
 528 books by the department to verify ~~for a verification~~ of the  
 529 correctness of tonnage reports and the payment of inspection  
 530 fees. Tonnage reports ~~of sales~~ and payment of inspection fees  
 531 ~~fee~~ shall be made quarterly through the department's website or  
 532 monthly on forms provided ~~furnished~~ by the department and  
 533 submitted within 30 days after the close of the reporting period  
 534 ~~on or before the fifteenth day of the month succeeding the month~~  
 535 ~~covered by the reports.~~

536 Section 18. Section 580.0365, Florida Statutes, is created  
 537 to read:

538 580.0365 Preemption of regulatory authority over  
 539 commercial feed and feedstuff.—It is the intent of the  
 540 Legislature to eliminate duplication of regulation over  
 541 commercial feed and feedstuff. Notwithstanding any other  
 542 provision of law, the authority to regulate, inspect, sample,  
 543 and analyze any commercial feed or feedstuff distributed in this  
 544 state and to exercise the powers and duties of regulation in  
 545 this chapter, including the power to assess any penalties  
 546 provided for violation of this chapter, is preempted to the

547 department.

548 Section 19. Subsection (3) is added to section 581.181,  
549 Florida Statutes, to read:

550 581.181 Notice of infection of plants; destruction.—

551 (3) This section does not apply to plants or plant  
552 products infested with pests or noxious weeds that are  
553 determined to be widely established within the state and are not  
554 specifically regulated under rules adopted by the department or  
555 under any other provision of law.

556 Section 20. Section 582.01, Florida Statutes, is amended  
557 to read:

558 582.01 Definitions.—~~As~~ ~~Wherever~~ ~~used~~ ~~or~~ ~~referred~~ ~~to~~ ~~in~~  
559 ~~this chapter,~~ the term ~~unless a different meaning clearly~~  
560 ~~appears from the context:~~

561 ~~(3)(a) "Department" means the Department of Agriculture~~  
562 ~~and Consumer Services.~~

563 (1)(e) "Commissioner" means the Commissioner of  
564 Agriculture.

565 (2)(b) "Council" means the Soil and Water Conservation  
566 Council.

567 (3) "Department" means the Department of Agriculture and  
568 Consumer Services.

569 (4)(1) "District" ~~or "soil conservation district"~~ or "soil  
570 and water conservation district" means a governmental  
571 subdivision of this state, and a body corporate and politic,  
572 organized in accordance with the provisions of this chapter, for

573 the purpose, with the powers, and subject to the provisions set  
 574 forth in this chapter. The term "district" ~~or "soil conservation~~  
 575 ~~district,"~~ when used in this chapter, means and includes a "soil  
 576 and water conservation district." All districts ~~heretofore or~~  
 577 ~~hereafter~~ organized under this chapter shall be known as soil  
 578 and water conservation districts and shall have all the powers  
 579 set out herein.

580 (5)~~(7)~~ "Due notice," in addition to notice required  
 581 pursuant to the provisions of chapter 120, means notice  
 582 published ~~at least twice, with an interval of~~ at least 7 days  
 583 ~~before the event between the two publication dates,~~ in a  
 584 newspaper or other publication of general circulation within the  
 585 appropriate area ~~or, if no such publication of general~~  
 586 ~~circulation be available, by posting at a reasonable number of~~  
 587 ~~conspicuous places within the appropriate area, such posting to~~  
 588 ~~include, where possible, posting at public places where it may~~  
 589 ~~be customary to post notices concerning county or municipal~~  
 590 ~~affairs generally. At any hearing held pursuant to such notice,~~  
 591 ~~at the time and place designated in such notice, adjournment may~~  
 592 ~~be made from time to time without the necessity of renewing such~~  
 593 ~~notice for such adjourned dates.~~

594 (6)~~(5)~~ "Land occupier" or "occupier of land" means a  
 595 ~~includes any person, other than the owner, who~~ possesses ~~shall~~  
 596 ~~be in possession of~~ any lands lying within a district organized  
 597 under the provisions of this chapter, whether as lessee, renter,  
 598 tenant, or otherwise.

599 (7)(4) "Landowner" or "owner of land" means a ~~includes any~~  
 600 person who holds ~~shall hold~~ legal or equitable title to any  
 601 lands lying within a district organized under the provisions of  
 602 this chapter.

603 (8)(6) "Qualified elector" means a ~~includes any~~ person  
 604 qualified to vote in general elections under the constitution  
 605 and laws ~~statutes~~ of this state.

606 (9)(2) "Supervisor" means a member ~~one of the members~~ of  
 607 the governing body of a district who is, elected in accordance  
 608 with the provisions of this chapter.

609 ~~(8) "Administrative officer" means the administrative~~  
 610 ~~officer of soil and water conservation created by s. 582.09.~~

611 Section 21. Section 582.02, Florida Statutes, is amended  
 612 to read:

613 582.02 Legislative policy and findings; purpose of  
 614 districts ~~lands a basic asset of state.-~~

615 (1) It is the policy of the Legislature to promote the  
 616 appropriate and efficient use of soil and water resources,  
 617 protect water quality, prevent floodwater and sediment damage,  
 618 preserve wildlife, protect public lands, and protect and promote  
 619 the health, safety, and general welfare of the people of this  
 620 state.

621 (2) The Legislature finds that the farm, forest, and  
 622 grazing lands; green spaces; recreational areas; and natural  
 623 areas of the state are among the basic assets of the state and  
 624 the conservation ~~preservation~~ of these lands is necessary to

625 | protect and promote the health, safety, and general welfare of  
 626 | its people and is in the public interest; ~~improper land use~~  
 627 | ~~practices have caused and have contributed to, and are now~~  
 628 | ~~causing and contributing to a progressively more serious erosion~~  
 629 | ~~of the farm and grazing lands of this state by fire, wind and~~  
 630 | ~~water; the breaking of natural grass, plant, and forest cover~~  
 631 | ~~has interfered with the natural factors of soil stabilization,~~  
 632 | ~~causing loosening of soil and exhaustion of humus, and~~  
 633 | ~~developing a soil condition that favors erosion; the top soil is~~  
 634 | ~~being burned, washed and blown out of fields and pastures; there~~  
 635 | ~~has been an accelerated washing of sloping fields; these~~  
 636 | ~~processes of erosion by fire, wind and water speed up with~~  
 637 | ~~removal of absorptive topsoil, causing exposure of less~~  
 638 | ~~absorptive and less protective but more erosive subsoil; failure~~  
 639 | ~~by any landowner or occupier to conserve the soil and control~~  
 640 | ~~erosion upon her or his lands causes destruction by burning,~~  
 641 | ~~washing and blowing of soil and water from her or his lands onto~~  
 642 | ~~other lands and makes the conservation of soil and control~~  
 643 | ~~erosion of such other lands difficult or impossible.~~

644 |       (3) The Legislature further finds that to ensure the  
 645 | preservation of the state's farm, forest, and grazing lands;  
 646 | green spaces; recreational areas; and natural areas, and to  
 647 | conserve, protect, and use soil and water resources, it is  
 648 | necessary that appropriate land and water resources protection  
 649 | practices be implemented.

650 |       (4) The purpose of the soil and water conservation

651 districts is to provide assistance, guidance, and education to  
 652 landowners, land occupiers, the agricultural industry, and the  
 653 general public in implementing land and water resource  
 654 protection practices. The Legislature intends for soil and water  
 655 conservation districts to work in conjunction with federal,  
 656 state, and local agencies in all matters that implement the  
 657 provisions of this chapter.

658 Section 22. Sections 582.03, 582.04, and 582.05, Florida  
 659 Statutes, are repealed.

660 Section 23. Subsections (5) through (9) are added to  
 661 section 582.055, Florida Statutes, to read:

662 582.055 Powers and duties of the Department of Agriculture  
 663 and Consumer Services; rules.-

664 (5) The department may offer such assistance as may be  
 665 appropriate to the supervisors of soil and water conservation  
 666 districts and facilitate communication and cooperation between  
 667 districts.

668 (6) The department may seek the cooperation and assistance  
 669 of any federal, state, or county agencies in the work of such  
 670 districts, including the receipt and expenditure of state,  
 671 federal, and other funds or contributions.

672 (7) The department may disseminate information throughout  
 673 the state concerning the activities, research, and programs of  
 674 the soil and water conservation districts and encourage the  
 675 formation of such districts in areas where their organization is  
 676 desirable.

677       (8) The department may create or dissolve a soil and water  
 678 conservation district pursuant to the provisions of this  
 679 chapter.

680       (9) The department may adopt rules, as necessary, to  
 681 implement the provisions of this chapter.

682       Section 24. Subsection (2) of section 582.06, Florida  
 683 Statutes, is amended to read:

684       582.06 Soil and Water Conservation Council; powers and  
 685 duties.-

686       (2) POWERS AND DUTIES; MEETINGS; PROCEDURES; RECORDS.-

687       (a) The meetings, powers and duties, procedures, and  
 688 recordkeeping of the Soil and Water Conservation Council shall  
 689 be conducted pursuant to s. 570.232.

690       (b) The council shall accept and review requests for  
 691 creating or dissolving soil and water conservation districts and  
 692 shall, by a majority vote, recommend, by resolution, to the  
 693 commissioner that a district be created or dissolved pursuant to  
 694 the request, or that the request be denied.

695       (c) When requested by the Governor or a district, the  
 696 council shall provide a recommendation to the Governor whether  
 697 to remove a supervisor for neglect of duty or malfeasance in  
 698 office only after notice, hearing, and thorough review.

699       Section 25. Sections 582.08 and 582.09, Florida Statutes,  
 700 are repealed.

701       Section 26. Section 582.16, Florida Statutes, is amended  
 702 to read:

703           582.16 Change of district boundaries ~~Addition of territory~~  
 704 ~~to district or removal of territory therefrom.~~ Requests for  
 705 increasing or reducing the boundaries of ~~Petitions for including~~  
 706 ~~additional territory or removing territory within~~ an existing  
 707 district may be filed with the department ~~Department of~~  
 708 ~~Agriculture and Consumer Services,~~ and the department shall  
 709 follow the proceedings provided ~~for~~ in this chapter to create a  
 710 district ~~in the case of petitions to organize a district shall~~  
 711 ~~be observed in the case of petitions for such inclusion or~~  
 712 ~~removal. The department shall prescribe the form for such~~  
 713 ~~petition, which shall be as nearly as may be in the form~~  
 714 ~~prescribed in this chapter for petitions to organize a district.~~  
 715 ~~If the petition is signed by a majority of the landowners of~~  
 716 ~~such area, no referendum need be held. In referenda upon~~  
 717 ~~petitions for such inclusions or removals, all owners of land~~  
 718 ~~lying within the proposed area to be added or removed shall be~~  
 719 ~~eligible to vote.~~

720           Section 27. Section 582.17, Florida Statutes, is repealed.

721           Section 28. Section 582.20, Florida Statutes, is amended  
 722 to read:

723           582.20 Powers of districts and supervisors.—A soil and  
 724 water conservation district organized under the provisions of  
 725 this chapter shall constitute a governmental subdivision of this  
 726 state, and a public body corporate and politic, exercising  
 727 public powers, and such district and the supervisors thereof,  
 728 shall have the following powers, in addition to others granted

729 | in other sections of this chapter:

730 |       (1) To conduct surveys, studies ~~investigations~~, and  
 731 | research relating to ~~the character of soil and water resources~~  
 732 | and erosion and floodwater and sediment damages, to the  
 733 | ~~conservation, development and utilization of soil and water~~  
 734 | ~~resources and the disposal of water, and to the preventive and~~  
 735 | ~~control measures and works of improvement needed;~~ to publish and  
 736 | disseminate the results of such surveys, studies ~~investigations~~,  
 737 | ~~or research, and related information;~~ and to disseminate  
 738 | ~~information concerning such preventive and control measures and~~  
 739 | ~~works of improvement; provided, however, that in order to avoid~~  
 740 | ~~duplication of research activities, no district shall initiate~~  
 741 | ~~any research program except in cooperation with the government~~  
 742 | ~~of this state or any of its agencies, or with the United States~~  
 743 | ~~or any of its agencies;~~

744 |       (2) To conduct agricultural best management practices  
 745 | demonstration ~~demonstrational~~ projects and projects for the  
 746 | conservation, protection, and restoration of soil and water  
 747 | resources:

- 748 |           (a) Within the district's boundaries;
- 749 |           (b) Within another district's boundaries, subject to the  
 750 | other district's approval;

- 751 |           (c) In areas within the district's boundaries, territory  
 752 | ~~within another district's boundaries subject to the other~~  
 753 | ~~district's approval, or territory not contained within any~~  
 754 | ~~district's boundaries on lands owned or controlled by this state~~

755 or any of its agencies, with the cooperation of the agency  
 756 administering and having jurisdiction thereof; or  
 757 (d) On, ~~and on~~ any other lands within the district's  
 758 boundaries, ~~territory~~ within another district's boundaries  
 759 subject to the other district's approval, or ~~territory~~ not  
 760 contained within any district's boundaries upon obtaining the  
 761 consent of the owner or occupier ~~and occupiers~~ of the ~~such~~ lands  
 762 or the necessary rights or interests in such lands, ~~in order to~~  
 763 ~~demonstrate by example the means, methods, and measures by which~~  
 764 ~~soil and soil resources may be conserved, and soil erosion in~~  
 765 ~~the form of soil blowing and soil washing may be prevented and~~  
 766 ~~controlled, and works of improvement for flood prevention or the~~  
 767 ~~conservation, development and utilization of soil and water~~  
 768 ~~resources, and the disposal of water may be carried out;~~  
 769 ~~(3) To carry out preventive and control measures and works~~  
 770 ~~of improvement for flood prevention or the conservation,~~  
 771 ~~development and utilization of soil and water resources, and the~~  
 772 ~~disposal of water within the district's boundaries, territory~~  
 773 ~~within another district's boundaries subject to the other~~  
 774 ~~district's approval, or territory not contained within any~~  
 775 ~~district's boundaries, including, but not limited to,~~  
 776 ~~engineering operations, methods of cultivation, the growing of~~  
 777 ~~vegetation, changes in use of land, and the measures listed in~~  
 778 ~~s. 582.04 on lands owned or controlled by this state or any of~~  
 779 ~~its agencies, with the cooperation of the agency administering~~  
 780 ~~and having jurisdiction thereof, and on any other lands within~~

781 ~~the district's boundaries, territory within another district's~~  
 782 ~~boundaries subject to the other district's approval, or~~  
 783 ~~territory not contained within any district's boundaries upon~~  
 784 ~~obtaining the consent of the owner and the occupiers of such~~  
 785 ~~lands or the necessary rights or interests in such lands;~~  
 786 (3)(4) To cooperate, or enter into agreements with, ~~and~~  
 787 ~~within the limits of appropriations duly made available to it by~~  
 788 ~~law, to furnish financial or other aid to,~~ any special district,  
 789 municipality, county, water management district, state or  
 790 federal agency, governmental or otherwise, or ~~any~~ owner or  
 791 occupier of lands within the district's boundaries, ~~territory~~  
 792 within another district's boundaries subject to the other  
 793 district's approval, or ~~territory~~ not contained within any  
 794 district's boundaries in furtherance of the purposes and  
 795 provisions of this chapter ~~, in the carrying on of erosion~~  
 796 ~~control or prevention operations and works of improvement for~~  
 797 ~~flood prevention or the conservation, development and~~  
 798 ~~utilization, of soil and water resources and the disposal of~~  
 799 ~~water within the district's boundaries, territory within another~~  
 800 ~~district's boundaries subject to the other district's approval,~~  
 801 ~~or territory not contained within any district's boundaries,~~  
 802 ~~subject to such conditions as the supervisors may deem necessary~~  
 803 ~~to advance the purposes of this chapter;~~  
 804 (4)(5) To obtain options upon and to acquire, by purchase,  
 805 exchange, lease, gift, grant, bequest, devise or otherwise, any  
 806 property, real or personal, or rights or interests therein; to

807 maintain, administer, and improve any properties acquired, to  
 808 receive income from such properties and to expend such income in  
 809 carrying out the purposes and provisions of this chapter; and to  
 810 sell, lease, or otherwise dispose of any of its property or  
 811 interests therein in furtherance of the purposes and ~~the~~  
 812 provisions of this chapter;

813 (5)~~(6)~~ To make available, on such terms as it shall  
 814 prescribe, to any owner or occupier of lands ~~landowners and~~  
 815 ~~occupiers~~ within the district's boundaries, ~~territory~~ within  
 816 another district's boundaries subject to the other district's  
 817 approval, or ~~territory~~ not contained within any district's  
 818 boundaries, ~~agricultural and engineering machinery and~~  
 819 ~~equipment, fertilizer, seeds and seedlings,~~ and such other  
 820 material or equipment, that ~~as~~ will assist such landowners and  
 821 occupiers to carry on operations upon their lands for the  
 822 conservation and protection of soil and water resources ~~and for~~  
 823 ~~the prevention or control of soil erosion and for flood~~  
 824 ~~prevention or the conservation, development and utilization, of~~  
 825 ~~soil and water resources and the disposal of water;~~

826 (6)~~(7)~~ To construct, improve, operate and maintain such  
 827 structures as may be necessary or convenient for the performance  
 828 of any of the operations authorized in this chapter;

829 (7)~~(8)~~ To provide, or assist in providing, training and  
 830 education programs that further the purposes and provisions of  
 831 this chapter ~~develop comprehensive plans for the conservation of~~  
 832 ~~soil and water resources and for the control and prevention of~~

833 ~~soil erosion and for flood prevention or the conservation,~~  
 834 ~~development and utilization of soil and water resources, and the~~  
 835 ~~disposal of water within the district's boundaries, territory~~  
 836 ~~within another district's boundaries subject to the other~~  
 837 ~~district's approval, or territory not contained within any~~  
 838 ~~district's boundaries, which plans shall specify in such detail~~  
 839 ~~as may be possible the acts, procedures, performances, and~~  
 840 ~~avoidances which are necessary or desirable for the effectuation~~  
 841 ~~of such plans, including the specification of engineering~~  
 842 ~~operations, methods of cultivation, the growing of vegetation,~~  
 843 ~~cropping programs, tillage practices, and changes in use of~~  
 844 ~~land; control of artesian wells; and to publish such plans and~~  
 845 ~~information and bring them to the attention of owners and~~  
 846 ~~occupiers of lands within the district's boundaries, territory~~  
 847 ~~within another district's boundaries subject to the other~~  
 848 ~~district's approval, or territory not contained within any~~  
 849 ~~district's boundaries;~~

850 ~~(9) To take over, by purchase, lease, or otherwise, and to~~  
 851 ~~administer any soil conservation, erosion control, erosion-~~  
 852 ~~prevention project, or any project for flood prevention or for~~  
 853 ~~the conservation, development and utilization of soil and water~~  
 854 ~~resources, and the disposal of water, located within the~~  
 855 ~~district's boundaries, territory within another district's~~  
 856 ~~boundaries subject to the other district's approval, or~~  
 857 ~~territory not contained within any district's boundaries,~~  
 858 ~~undertaken by the United States or any of its agencies, or by~~

859 ~~this state or any of its agencies; to manage as agent of the~~  
 860 ~~United States or any of its agencies, or of the state or any of~~  
 861 ~~its agencies, any soil conservation, erosion control, erosion-~~  
 862 ~~prevention, or any project for flood prevention or for the~~  
 863 ~~conservation, development, and utilization of soil and water~~  
 864 ~~resources, and the disposal of water within the district's~~  
 865 ~~boundaries, territory within another district's boundaries~~  
 866 ~~subject to the other district's approval, or territory not~~  
 867 ~~contained within any district's boundaries; to act as agent for~~  
 868 ~~the United States, or any of its agencies, or for the state or~~  
 869 ~~any of its agencies, in connection with the acquisition,~~  
 870 ~~construction, operation or administration of any soil-~~  
 871 ~~conservation, erosion control, erosion prevention, or any~~  
 872 ~~project for flood prevention or for the conservation,~~  
 873 ~~development and utilization of soil and water resources, and the~~  
 874 ~~disposal of water within the district's boundaries, territory~~  
 875 ~~within another district's boundaries subject to the other~~  
 876 ~~district's approval, or territory not contained within any~~  
 877 ~~district's boundaries; to accept donations, gifts, and~~  
 878 ~~contributions in money, services, materials, or otherwise, from~~  
 879 ~~the United States or any of its agencies, or from this state or~~  
 880 ~~any of its agencies, or from others, and to use or expend such~~  
 881 ~~moneys, services, materials or other contributions in carrying~~  
 882 ~~on its operations;~~

883       (8) ~~(10)~~ To sue and be sued in the name of the district; to  
 884 have a seal, which seal shall be judicially noticed; to have

885 | perpetual succession unless terminated as provided in this  
 886 | chapter; to make and execute contracts and other instruments  
 887 | necessary or convenient to the exercise of its powers; upon a  
 888 | majority vote of the supervisors of the district, to borrow  
 889 | money and to execute promissory notes and other evidences of  
 890 | indebtedness in connection therewith, and to pledge, mortgage,  
 891 | and assign the income of the district and its personal property  
 892 | as security therefor, the notes and other evidences of  
 893 | indebtedness to be general obligations only of the district and  
 894 | in no event to constitute an indebtedness for which the faith  
 895 | and credit of the state or any of its revenues are pledged; ~~to~~  
 896 | ~~make, amend, and repeal rules and regulations not inconsistent~~  
 897 | ~~with this chapter to carry into effect its purposes and powers.~~

898 | ~~(11) As a condition to the extending of any benefits under~~  
 899 | ~~this chapter to, or the performance of work upon, any lands not~~  
 900 | ~~owned or controlled by this state or any of its agencies, the~~  
 901 | ~~supervisors may require contributions in money, services,~~  
 902 | ~~materials, or otherwise to any operations conferring such~~  
 903 | ~~benefits, and may require landowners and occupiers to enter into~~  
 904 | ~~and perform such agreements or covenants as to the permanent use~~  
 905 | ~~of such lands as will tend to prevent or control erosion and~~  
 906 | ~~prevent floodwater and sediment damages thereon;~~

907 | (9) To use, in coordination with the applicable county or  
 908 | counties, the services of the county agricultural agents and the  
 909 | facilities of their offices, if practicable and feasible. The  
 910 | supervisors may also employ additional permanent and temporary

911 staff, as needed, and determine their qualifications, duties,  
 912 and compensation. The supervisors may delegate to the chair, to  
 913 one or more supervisors, or to employees such powers and duties  
 914 as they may deem proper, consistent with the provisions of this  
 915 chapter. The supervisors shall furnish to the department, upon  
 916 request, copies of rules, orders, contracts, forms, and other  
 917 documents that the district has adopted or used, and any other  
 918 information concerning the district's activities, that the  
 919 department may require in the performance of its duties under  
 920 this chapter;

921 (10) To adopt rules to implement the provisions of this  
 922 chapter; and

923 (11) To request that the Governor remove a supervisor for  
 924 neglect of duty or malfeasance in office by adoption of a  
 925 resolution at a public meeting. If the district believes there  
 926 is a need for a review of the request, the district may request  
 927 that the council, by resolution, review its request to the  
 928 Governor and provide the Governor with a recommendation.

929  
 930 ~~(12) Any provision~~ No provisions with respect to the  
 931 acquisition, operation, or disposition of property by public  
 932 bodies of this state does not apply ~~shall be applicable~~ to a  
 933 district organized under this chapter unless specifically so  
 934 stated by hereunder ~~unless the Legislature shall specifically so~~  
 935 ~~state~~. The property and property rights of every kind and nature  
 936 acquired by any district organized under the provisions of this

937 | chapter are ~~shall be~~ exempt from state, county, and other  
 938 | taxation.

939 |       Section 29. Sections 582.21, 582.22, 582.23, 582.24,  
 940 | 582.25, and 582.26, Florida Statutes, are repealed.

941 |       Section 30. Section 582.29, Florida Statutes, is amended  
 942 | to read:

943 |       582.29 State agencies to cooperate.—Agencies of this state  
 944 | that ~~which shall~~ have jurisdiction over, or are ~~be~~ charged with,  
 945 | the administration of any state-owned lands, and of any county,  
 946 | or other governmental subdivision of the state, that ~~which shall~~  
 947 | have jurisdiction over, or are ~~be~~ charged with the  
 948 | administration of, any county-owned or other publicly owned  
 949 | lands, ~~lying within the boundaries of any district organized~~  
 950 | ~~under this chapter, the boundaries of another district subject~~  
 951 | ~~to that district's approval, or territory not contained within~~  
 952 | ~~the boundaries of any district organized under this chapter,~~  
 953 | shall cooperate to the fullest extent with the supervisors of  
 954 | such districts in the implementation ~~effectuation~~ of programs  
 955 | and operations undertaken by the supervisors under the  
 956 | provisions of this chapter. The supervisors of such districts  
 957 | shall be given free access to enter and perform work upon such  
 958 | publicly owned lands. ~~The provisions of land use regulations~~  
 959 | ~~adopted shall be in all respects observed by the agencies~~  
 960 | ~~administering such publicly owned lands.~~

961 |       Section 31. Sections 582.331, 582.34, 582.35, 582.36,  
 962 | 582.37, 582.38, 582.39, 582.40, 582.41, 582.42, 582.43, 582.44,

963 582.45, 582.46, 582.47, 582.48, 582.49, Florida Statutes, are  
 964 repealed.

965 Section 32. Section 589.26, Florida Statutes, is repealed.

966 Section 33. Subsections (4) and (5) of section 595.402,  
 967 Florida Statutes, are renumbered as subsections (5) and (6),  
 968 respectively, and new subsections (4), (7), and (8) are added to  
 969 that section, to read:

970 595.402 Definitions.—As used in this chapter, the term:

971 (4) "School breakfast program" means a program authorized  
 972 by section 4 of the Child Nutrition Act of 1966, as amended, and  
 973 administered by the department.

974 (7) "Summer nutrition program" means one or more of the  
 975 programs authorized under 42 U.S.C. s. 1761.

976 (8) "Universal school breakfast program" means a program  
 977 that makes breakfast available at no cost to all students  
 978 regardless of their household income.

979 Section 34. Section 595.404, Florida Statutes, is amended  
 980 to read:

981 595.404 School food and other nutrition programs ~~service~~  
 982 ~~program~~; powers and duties of the department.—The department has  
 983 the following powers and duties:

984 (1) To conduct, supervise, and administer the program that  
 985 will be carried out using federal or state funds, or funds from  
 986 any other source.

987 (2) To conduct, supervise, and administer a farmers'  
 988 market nutrition program to provide participants in the Special

989 Supplemental Nutrition Program for Women, Infants, and Children  
 990 (WIC) with locally grown fruits and vegetables that will be  
 991 carried out using federal or state funds, or funds from any  
 992 other source.

993 (3)~~(2)~~ To fully cooperate with the United States  
 994 Government and its agencies and instrumentalities so that the  
 995 department may receive the benefit of all federal financial  
 996 allotments and assistance possible to carry out the purposes of  
 997 this chapter.

998 (4)~~(3)~~ To implement and adopt by rule, as required,  
 999 federal regulations ~~to maximize federal assistance for the~~  
 1000 ~~program.~~

1001 (5)~~(4)~~ To act as agent of, or contract with, the Federal  
 1002 Government, another state agency, any county or municipal  
 1003 government, or sponsor for the administration of the program,  
 1004 including the distribution of funds provided by the Federal  
 1005 Government to support the program.

1006 (6)~~(5)~~ To provide ~~make a reasonable effort to ensure that~~  
 1007 ~~any school designated as a "severe need school" receives the~~  
 1008 highest rate of reimbursement to which it is entitled under 42  
 1009 U.S.C. s. 1773 for each breakfast meal served.

1010 (7)~~(6)~~ To develop and propose legislation necessary to  
 1011 implement the program, encourage the development of innovative  
 1012 school food and nutrition services, and expand participation in  
 1013 the program.

1014 (8)~~(7)~~ To annually allocate among the sponsors, as

1015 applicable, funds provided from the school breakfast supplement  
 1016 in the General Appropriations Act based on each district's total  
 1017 number of free and reduced-price breakfast meals served.

1018 (9)~~(8)~~ To employ such persons as are necessary to perform  
 1019 its duties under this chapter.

1020 (10)~~(9)~~ To adopt rules covering the administration,  
 1021 operation, and enforcement of the program and the farmers'  
 1022 market nutrition program, as well as to implement the provisions  
 1023 of this chapter.

1024 (11)~~(10)~~ To adopt and implement an appeal process by rule,  
 1025 as required by federal regulations, for applicants and  
 1026 participants under the programs implemented pursuant to this  
 1027 chapter program, notwithstanding ss. 120.569 and 120.57-120.595.

1028 (12)~~(11)~~ To assist, train, and review each sponsor in its  
 1029 implementation of the program.

1030 (13)~~(12)~~ To advance funds from the program's annual  
 1031 appropriation to a summer nutrition program sponsor ~~sponsors~~,  
 1032 when requested, in order to implement the provisions of this  
 1033 chapter and in accordance with federal regulations.

1034 (14) To collect data on food purchased through the  
 1035 programs defined and described in ss. 595.402(3) and 595.406,  
 1036 and to publish that data annually.

1037 (15) To enter into agreements with federal or state  
 1038 agencies to coordinate and cooperate in the implementation of  
 1039 nutrition programs.

1040 Section 35. Section 595.405, Florida Statutes, is amended

1041 to read:

1042 595.405 School nutrition program requirements ~~for school~~  
 1043 ~~districts and sponsors.~~

1044 (1) Each ~~school~~ district school board shall consider the  
 1045 recommendations of the district school superintendent and adopt  
 1046 policies to provide for an appropriate food and nutrition  
 1047 ~~service~~ program for students consistent with federal law and  
 1048 department rules.

1049 (2) Each ~~school~~ district school board shall implement  
 1050 school breakfast programs that make breakfast meals available to  
 1051 all students in each elementary school that serves any  
 1052 combination of grades kindergarten through 5. ~~Universal school~~  
 1053 ~~breakfast programs shall be offered in schools in which 80~~  
 1054 ~~percent or more of the students are eligible for free or~~  
 1055 ~~reduced-price meals. Each school shall, to the maximum extent~~  
 1056 ~~practicable, make breakfast meals available to students at an~~  
 1057 ~~alternative site location, which may include, but need not be~~  
 1058 ~~limited to, alternative breakfast options as described in~~  
 1059 ~~publications of the Food and Nutrition Service of the United~~  
 1060 ~~States Department of Agriculture for the federal School~~  
 1061 ~~Breakfast Program.~~

1062 (3) Each ~~school~~ district school board must annually set  
 1063 prices for breakfast meals at rates that, combined with federal  
 1064 reimbursements and state allocations, are sufficient to defray  
 1065 costs of school breakfast programs without requiring allocations  
 1066 from the district's operating funds, except if the district

1067 school board approves lower rates.

1068 ~~(4) Each school district is encouraged to provide~~  
 1069 ~~universal, free school breakfast meals to all students in each~~  
 1070 ~~elementary, middle, and high school. Each school district shall~~  
 1071 ~~approve or disapprove a policy, after receiving public testimony~~  
 1072 ~~concerning the proposed policy at two or more regular meetings,~~  
 1073 ~~which makes universal, free school breakfast meals available to~~  
 1074 ~~all students in each elementary, middle, and high school in~~  
 1075 ~~which 80 percent or more of the students are eligible for free~~  
 1076 ~~or reduced-price meals.~~

1077 (4)(5) Each elementary, middle, and high school operating  
 1078 a breakfast program shall make a breakfast meal available if a  
 1079 student arrives at school on the school bus less than 15 minutes  
 1080 before the first bell rings and shall allow the student at least  
 1081 15 minutes to eat the breakfast.

1082 (5) Each district school board is encouraged to provide  
 1083 universal, free school breakfast meals to all students in each  
 1084 elementary, middle, and high school. A universal school  
 1085 breakfast program shall be implemented in each school in which  
 1086 80 percent or more of the students are eligible for free or  
 1087 reduced-price meals, unless the district school board, after  
 1088 considering public testimony at two or more regularly scheduled  
 1089 board meetings, decides not to implement such a program in such  
 1090 schools.

1091 (6) To increase school breakfast and universal school  
 1092 breakfast program participation, each district school board

1093 must, to the maximum extent practicable, make breakfast meals  
 1094 available to students through alternative service models as  
 1095 described in publications of the Food and Nutrition Service of  
 1096 the United States Department of Agriculture for the federal  
 1097 School Breakfast Program.

1098 ~~(7)(6)~~ Each ~~school~~ district school board shall annually  
 1099 provide ~~to all students in each elementary, middle, and high~~  
 1100 ~~school~~ information prepared by the district's food service  
 1101 administration regarding available ~~its~~ school breakfast  
 1102 programs. The information shall be communicated through school  
 1103 announcements and ~~written~~ notices sent to all parents.

1104 ~~(8)(7)~~ A ~~school~~ district school board may operate a  
 1105 breakfast program providing for food preparation at the school  
 1106 site or in central locations with distribution to designated  
 1107 satellite schools, or any combination thereof.

1108 ~~(8)~~ ~~Each sponsor shall complete all corrective action~~  
 1109 ~~plans required by the department or a federal agency to be in~~  
 1110 ~~compliance with the program.~~

1111 Section 36. Section 595.406, Florida Statutes, is amended  
 1112 to read:

1113 595.406 Florida Farm to School ~~Fresh Schools~~ Program.—

1114 (1) In order to implement the Florida Farm to School ~~Fresh~~  
 1115 ~~Schools~~ Program, the department shall develop policies  
 1116 pertaining to school food services which encourage:

1117 (a) Sponsors to buy fresh and high-quality foods grown in  
 1118 this state when feasible.

1119 (b) Farmers in this state to sell their products to  
 1120 sponsors, school districts, and schools.

1121 (c) Sponsors to demonstrate a preference for competitively  
 1122 priced organic food products.

1123 (d) Sponsors to make reasonable efforts to select foods  
 1124 based on a preference for those that have maximum nutritional  
 1125 content.

1126 (2) The department shall provide outreach, guidance, and  
 1127 training to sponsors, schools, school food service directors,  
 1128 parent and teacher organizations, and students about the benefit  
 1129 of fresh food products from farms in this state.

1130 (3) The department may recognize sponsors who purchase at  
 1131 least 10 percent of the food they serve from the Florida Farm to  
 1132 School Program.

1133 Section 37. Subsection (2) of section 595.407, Florida  
 1134 Statutes, is amended to read:

1135 595.407 Children's summer nutrition program.—

1136 (2) Each school district shall develop a plan to sponsor  
 1137 or operate a summer nutrition program to operate sites in the  
 1138 school district as follows:

1139 (a) Within 5 miles of at least one ~~elementary~~ school that  
 1140 serves any combination of grades kindergarten through 5 at which  
 1141 50 percent or more of the students are eligible for free or  
 1142 reduced-price school meals ~~and~~ for the duration of 35  
 1143 ~~consecutive~~ days between the end of the school year and the  
 1144 beginning of the next school year. School districts may exclude

1145 holidays and weekends.

1146 (b) Within 10 miles of each ~~elementary~~ school that serves  
 1147 any combination of grades kindergarten through 5 at which 50  
 1148 percent or more of the students are eligible for free or  
 1149 reduced-price school meals, except as operated pursuant to  
 1150 paragraph (a).

1151 Section 38. Section 595.408, Florida Statutes, is amended  
 1152 to read:

1153 595.408 Food ~~Commodity~~ distribution services; department  
 1154 responsibilities and functions.-

1155 (1)(a) The department shall conduct, supervise, and  
 1156 administer all food ~~commodity~~ distribution services that will be  
 1157 carried on using federal or state funds, or funds from any other  
 1158 source, or food ~~commodities~~ received and distributed from the  
 1159 United States or any of its agencies.

1160 (b) The department shall determine the benefits each  
 1161 applicant or recipient of assistance is entitled to receive  
 1162 under this chapter, provided that each applicant or recipient is  
 1163 a resident of this state and a citizen of the United States or  
 1164 is an alien lawfully admitted for permanent residence or  
 1165 otherwise permanently residing in the United States under color  
 1166 of law.

1167 (2) The department shall cooperate fully with the United  
 1168 States Government and its agencies and instrumentalities so that  
 1169 the department may receive the benefit of all federal financial  
 1170 allotments and assistance possible to carry out the purposes of

1171 this chapter.

1172 (3) The department may:

1173 (a) Accept any duties with respect to food ~~commodity~~  
 1174 distribution services as are delegated to it by an agency of the  
 1175 Federal Government or any state, county, or municipal  
 1176 government.

1177 (b) Act as agent of, or contract with, the federal  
 1178 government, state government, or any county or municipal  
 1179 government in the administration of food ~~commodity~~ distribution  
 1180 services to secure the benefits of any public assistance that is  
 1181 available from the federal government or any of its agencies,  
 1182 and in the distribution of funds received from the federal  
 1183 government, state government, or any county or municipal  
 1184 government for food ~~commodity~~ distribution services within the  
 1185 state.

1186 (c) Accept from any person or organization all offers of  
 1187 personal services, food ~~commodities~~, or other aid or assistance.

1188 (4) This chapter does not limit, abrogate, or abridge the  
 1189 powers and duties of any other state agency.

1190 Section 39. Section 595.501, Florida Statutes, is amended  
 1191 to read:

1192 595.501 Penalties.—

1193 (1) When a corrective action plan is issued by the  
 1194 department or a federal agency, each sponsor is required to  
 1195 complete the corrective action plan to be in compliance with the  
 1196 program.

1197           (2) Any person ~~or~~ sponsor, ~~or school district~~ that  
 1198 violates any provision of this chapter or any rule adopted  
 1199 thereunder or otherwise does not comply with the program is  
 1200 subject to a suspension or revocation of their agreement, loss  
 1201 of reimbursement, or a financial penalty in accordance with  
 1202 federal or state law, or both. This section does not restrict  
 1203 the applicability of any other law.

1204           Section 40. Section 595.601, Florida Statutes, is amended  
 1205 to read:

1206           595.601 Food and Nutrition Services Trust Fund.—Chapter  
 1207 99-37, Laws of Florida, recreated the Food and Nutrition  
 1208 Services Trust Fund to record revenue and disbursements of  
 1209 Federal Food and Nutrition funds received by the department as  
 1210 authorized in ss. 595.404 and 595.408 ~~s. 595.405~~.

1211           Section 41. Paragraphs (b) and (d) of subsection (1) and  
 1212 subsection (2) of section 604.21, Florida Statutes, are amended  
 1213 to read:

1214           604.21 Complaint; investigation; hearing.—

1215           (1)

1216           (b) To be considered timely filed, a complaint together  
 1217 with any required affidavit ~~affidavits or notarizations~~ must be  
 1218 received by the department within 6 months after the date of  
 1219 sale by electronic transmission, facsimile, regular mail,  
 1220 certified mail, or private delivery service. If the complaint is  
 1221 sent by a service other than electronic mail or facsimile, the  
 1222 mailing shall be postmarked or dated on or before the 6-month

1223 deadline to be accepted as timely filed.

1224 (d) A person, partnership, corporation, or other business  
 1225 entity filing a complaint shall submit to the department the  
 1226 following documents: a three completed complaint affidavit  
 1227 ~~affidavits~~ on a form provided by the department with an original  
 1228 signature of an owner, partner, general partner, or corporate  
 1229 officer and an original notarization ~~on each affidavit. If the~~  
 1230 ~~complaint is filed by electronic transmission or facsimile, the~~  
 1231 ~~original affidavits and original notarizations shall be filed~~  
 1232 ~~with the department not later than the close of business of the~~  
 1233 ~~tenth business day following the electronic transmission or~~  
 1234 ~~facsimile filing.~~ Attached to the each complaint affidavit shall  
 1235 be copies of all documents to support the complaint. Supporting  
 1236 documents may be copies of invoices, bills of lading, packing or  
 1237 shipping documents, demand letters, or any other documentation  
 1238 to support the claim. In cases in which there are multiple  
 1239 invoices being claimed, a summary list of all claimed invoices  
 1240 must accompany the complaint.

1241 (2) Upon the filing of a such complaint pursuant to this  
 1242 section in the manner herein provided, the department shall  
 1243 investigate the matters complained of and, whereupon, if, in the  
 1244 opinion of the department, the facts contained in the complaint  
 1245 warrant such action, the department shall serve notice of the  
 1246 ~~filing of~~ complaint to the dealer against whom the complaint has  
 1247 been filed at the last address of record. The Such notice shall  
 1248 be accompanied by a ~~true~~ copy of the complaint. A copy of the

1249 ~~such~~ notice and complaint shall also be served to the surety  
 1250 company, if any, that provided the bond for the dealer, which  
 1251 surety company shall become party to the action. The ~~Such~~ notice  
 1252 ~~of the complaint~~ shall inform the dealer of a reasonable time  
 1253 within which to answer the complaint by advising the department  
 1254 in writing that the allegations in the complaint are admitted or  
 1255 denied or that the complaint has been satisfied. The ~~Such~~ notice  
 1256 shall also inform the dealer and the surety company or financial  
 1257 institution of a right to a hearing on the complaint, if  
 1258 requested.

1259 Section 42. Section 604.33, Florida Statutes, is amended  
 1260 to read:

1261 604.33 Security requirements for grain dealers.—Each grain  
 1262 dealer doing business in the state shall maintain liquid  
 1263 security, in the form of grain on hand, cash, certificates of  
 1264 deposit, or other nonvolatile security that can be liquidated in  
 1265 10 days or less, or cash bonds, surety bonds, or letters of  
 1266 credit, that have been assigned to the department and that are  
 1267 conditioned to secure the faithful accounting for and payment to  
 1268 the producers for grain stored or purchased, in an amount equal  
 1269 to the value of grain which the grain dealer has received from  
 1270 grain producers for which the producers have not received  
 1271 payment. The bonds must be executed by the applicant as  
 1272 principal and by a surety corporation authorized to transact  
 1273 business in the state. The certificates of deposit and letters  
 1274 of credit must be from a recognized financial institution doing

1275 | business in the United States. ~~Each grain dealer shall report to~~  
 1276 | ~~the department monthly, on or before a date established by rule~~  
 1277 | ~~of the department, the value of grain she or he has received~~  
 1278 | ~~from producers for which the producers have not received payment~~  
 1279 | ~~and the types of transaction involved, showing the value of each~~  
 1280 | ~~type of transaction. The report shall also include a statement~~  
 1281 | ~~showing the type and amount of security maintained to cover the~~  
 1282 | ~~grain dealer's liability to producers.~~ The department may shall  
 1283 | make at least one spot check annually of each grain dealer to  
 1284 | determine compliance with the requirements of this section.  
 1285 |       Section 43. This act shall take effect July 1, 2016.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Appropriations Subcommittee  
 3 Representative Raburn offered the following:

**Amendment**

6 Remove lines 308-311 and insert:

7 product labeling;

8 (b) The failure to provide conditions of use on the  
 9 product labeling; or

10 (c) An ingredient for which there is

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Appropriations Subcommittee  
3 Representative Raburn offered the following:

**Amendment (with title amendment)**

Between lines 555 and 556, insert:

Section 20. Effective upon becoming law, section 581.189,  
Florida Statutes, is created to read:

581.189. Grove Removal or Vector Elimination (GROVE)

Program.—

(1) There is created within the Department of Agriculture  
and Consumer Services the Grove Removal or Vector Elimination  
Program, a cost-sharing program for the removal or destruction  
of abandoned citrus groves to eliminate the material harboring  
the citrus disease Huanglongbing, also known as citrus greening,  
and the vectors that spread the disease.

(2) For purposes of this section, the term:

## Amendment No. 2

18       (a) "Abandoned citrus grove" means a citrus grove that has  
19 minimal or no production value and is no longer economically  
20 viable as a commercial citrus grove.

21       (b) "Applicant" means the person that owns an abandoned  
22 citrus grove.

23       (c) "Eligible costs" means the costs, incurred after an  
24 application is selected for funding, of the removal or  
25 destruction of citrus trees and the elimination of any citrus  
26 greening vectors, as described in the removal or destruction  
27 plan in the funded application.

28       (d) "Funded application" means an application selected for  
29 cost-share funding pursuant to this section and rules adopted by  
30 the department.

31       (e) "Program" means the Grove Removal or Vector  
32 Elimination Program.

33       (3) The department shall adopt by rule the standards to be  
34 used in reviewing and ranking applications for cost-share  
35 funding under the program based on the following factors:

36       (a) The length of time the citrus groves have been  
37 abandoned.

38       (b) Whether the citrus groves are located within a Citrus  
39 Health Management Area.

40       (c) The proximity of the abandoned citrus groves to other  
41 citrus groves currently in production.

42       (4) An applicant may submit multiple applications for the  
43 program, but is eligible only for a maximum of \$125,000 in

Amendment No. 2

44 program cost-share funding in a given fiscal year. The  
45 department may award to each funded application a cost-share of  
46 up to 80 percent of eligible costs. The total amount of cost-  
47 share allocated under the program in each fiscal year may not  
48 exceed the amount specifically appropriated for the program for  
49 the fiscal year.

50 (5) An applicant seeking cost-share funding under the  
51 program must submit an application to the department by a date  
52 determined by department rule. The application must include, at  
53 minimum:

54 (a) The applicant's plan to remove or destroy citrus trees  
55 and any citrus greening vectors in the abandoned citrus grove.

56 (b) An affidavit from the applicant certifying that all  
57 information contained in the application is true and correct.

58 (c) All information determined by rule to be necessary for  
59 the department to determine eligibility for the program and rank  
60 applications.

61 (6) If the department determines that an application is  
62 incomplete, it may require the applicant to submit additional  
63 information within 10 days after such determination is made.

64 (7) Each fiscal year, the department shall review all  
65 complete applications received in accordance with its rules  
66 adopted pursuant to subsection (5). For each such complete  
67 submitted application, the department must rank the applications  
68 in accordance with the factors specified in subsection (3), and  
69 before selecting an application for funding, must conduct an

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70 inspection of the abandoned citrus grove that is the subject of  
71 the application.

72 (8) The department may deny an application, pursuant to  
73 chapter 120 for failure to comply with this section and  
74 department rules.

75 (9) If an application is selected for funding, the  
76 applicant must initiate and complete the removal or destruction  
77 of the citrus trees identified in the application within the  
78 time specified by department rule. The applicant's failure to  
79 initiate and complete the removal or destruction of the  
80 identified citrus trees within the time specified by the  
81 department results in the forfeiture of cost-share funding  
82 approved based on the application. Upon such occurrence, the  
83 department shall notify the next eligible applicant, based upon  
84 its ranking of applicants for the fiscal year, of the  
85 availability of cost-share funding. Such applicant, upon  
86 acceptance, may be awarded cost-share funding pursuant to this  
87 section, subject to available program funds.

88 (10) Upon completion of the scope of work identified in  
89 the funded application, the applicant must present proof of  
90 payment of removal or destruction costs to the department. Upon  
91 receipt of satisfactory proof of payment and satisfactory proof  
92 of the removal or destruction of the trees identified in the  
93 funded application, the department may issue payment to the  
94 applicant for the previously approved cost-share amount.

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95       (11) The department may adopt rules to implement and  
96 administer this section, including an application process and  
97 requirements, a ranking process of applications that is  
98 consistent with the factors specified in subsection (3), and the  
99 administration of the cost-share funding.

100       (13) The annual awarding of funding through the program is  
101 subject to specific legislative appropriation for this program.

102  
103       -----  
104                   **T I T L E   A M E N D M E N T**

105       Remove line 77 and insert:

106 plants and plant products; creating s. 581.189, F.S.; creating  
107 the Grove Removal or Vector Elimination (GROVE) Program;  
108 specifying the purpose of the program; defining terms; requiring  
109 the department to adopt rules for reviewing and ranking  
110 applications for cost-share funding to remove or destroy  
111 abandoned citrus groves; establishing per applicant award  
112 maximums; specifying that the total funds awarded in a fiscal  
113 year cannot exceed the amount specifically appropriated for the  
114 program; specifying application requirements; specifying how the  
115 department must process applications; specifying that  
116 noncompliance will result in forfeiture of cost-share funds;  
117 requiring the department to review and rank applications and to  
118 conduct an inspection; specifying grounds for denial of an  
119 application; requiring applicants selected for funding to timely  
120 initiate and complete removal of identified citrus trees in

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121 | accordance with their respective applications; providing the  
122 | process for making payments to applicants; authorizing the  
123 | department to adopt rules; specifying that funding for the  
124 | program is contingent upon specific appropriation by the  
125 | Legislature; amending s. 582.01, F.S.;



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7013      PCB ANRS 16-02      Fish and Wildlife Conservation Commission  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Combee  
**TIED BILLS:**            **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Gregory	Harrington
1) Agriculture & Natural Resources Appropriations Subcommittee		Massengale	Massengale 
2) State Affairs Committee			

### SUMMARY ANALYSIS

The bill relocates and amends provisions for recreational fish and wildlife violations for the Florida Fish and Wildlife Conservation Commission (FWC) to achieve consistency between the penalties and statutes, make the penalties meaningful, encourage compliance, and deter offenses. Specifically, the bill:

- Increases the fine for illegally taking game while trespassing from \$250 to \$500 per violation and adds all fish and wildlife to the list of species affected.
- Offers violators of recreational fishing and hunting licensing the new option of purchasing the respective license rather than paying the cost of the license in addition to the penalty, but not receiving the license.
- Increases the fine for repeat offenders for any noncriminal infraction within 3 years from \$100 to \$250.
- Reduces from a second degree misdemeanor violation to a noncriminal infraction the penalty for violations of rules or orders of the commission requiring reporting by people who hold alligator licenses or requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Decreases the penalty for failure to file required alligator reports from a second degree misdemeanor offense to a noncriminal infraction.
- Makes penalties for wildlife management areas on U.S. forests consistent with those of all other wildlife management areas.
- Increases the penalty for the sale, barter, or trade of tarpon from a second degree misdemeanor to a first degree misdemeanor to make it consistent with the penalty for rules that prohibit the sale of saltwater species.
- Deletes language prohibiting the altering or changing of a license or permit from the statutory section that prohibits the transfer of a license or permit or possession of a transferred license or permit. Instead, such actions will be treated as forging or counterfeiting a license or permit, punishable as a third degree felony.
- Authorizes spearfishing when allowed by FWC rule.
- Makes violations of rules or orders of the commission related to the unlawful use of *any* traps (unless otherwise provided) second degree misdemeanors.

In addition, the bill defines the term "fish and wildlife" to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.

It also authorizes, rather than requires, FWC to retain an administrative fee when collecting donations for Southeastern Guide Dogs, Inc.

The bill may have an insignificant positive fiscal impact on the FWC, an insignificant negative fiscal impact on the Clerks of Court, and an indeterminate fiscal impact on the private sector.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Florida Constitution provides that the Florida Fish and Wildlife Conservation Commission (FWC) must exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.<sup>1</sup> However, the Florida Constitution specifically provides that all licensing fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission must be prescribed by general law.<sup>2</sup>

Section 379.401, F.S., provides a four-tiered penalty structure for violations of FWC's recreational hunting, fishing, and trapping regulations.

##### Level 1 Violations

Individuals who violate the following commit a Level 1 violation:

- FWC rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by FWC.
- FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by FWC.
- FWC rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by FWC.
- FWC rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., relating to recreational license requirements to hunt, fish, and trap.
- Section 379.3581, F.S., relating to hunter safety course requirements.
- Section 379.3003, F.S., relating to deer hunting clothing requirements.<sup>3</sup>

Section 379.401, F.S., provides the following penalties for Level 1 violations:

Level 1 Violation	Type of Infraction	Civil Penalty
1 <sup>st</sup> offense for failure to possess the required license or permit under s. 379.354, F.S. <sup>4</sup>	Noncriminal	\$50 plus the cost of the license or permit
2 <sup>nd</sup> offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1 <sup>st</sup> offense <sup>5</sup>	Noncriminal	\$100 plus the cost of the license or permit
1 <sup>st</sup> offense not involving s. 379.354, F.S., license or permit requirements <sup>6</sup>	Noncriminal	\$50
2 <sup>nd</sup> offense not involving s. 379.354, F.S., license or permit <sup>7</sup> requirements within 36 months of 1 <sup>st</sup> offense	Noncriminal	\$100

<sup>1</sup> Section 9, Art. IV, Fla. Const.

<sup>2</sup> Id.

<sup>3</sup> Section 379.401(1)(a), F.S.

<sup>4</sup> Section 379.401(1)(c)1., F.S.

<sup>5</sup> Section 379.401(1)(c)2., F.S.

<sup>6</sup> Section 379.401(1)(d)1., F.S.

<sup>7</sup> Section 379.401(1)(d)2., F.S.

## Level 2 Violations

Individuals who violate the following commit a Level 2 violation:

- FWC rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- FWC rules or orders relating to the feeding of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- FWC rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- FWC rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- FWC rules or orders relating to the use of dogs for the taking of wildlife.
- FWC rules or orders prohibiting the unlawful use of finfish traps.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., relating to the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., relating to the obstruction of waterways with net gear.
- Section 379.413, F.S., relating to the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., relating to the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., relating to the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., relating to the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., relating to the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., relating to the intentional harassment of hunters, fishers, or trappers.
- Chapter 379, F.S, violations which are not otherwise classified.
- FWC rules or orders which are not otherwise classified.<sup>8</sup>

Section 379.401, F.S., provides the following penalties for Level 2 violations:

<b>Level 2 Violation</b>	<b>Type of Infraction</b>	<b>Civil Penalty or Jail Time</b>	<b>License Restrictions</b>
1 <sup>st</sup> offense <sup>9</sup>	2 <sup>nd</sup> Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2 <sup>nd</sup> offense within 3 years of previous Level 2 violation (or higher) <sup>10</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$250; Max. \$1000 or Max. 1 year	None
3 <sup>rd</sup> offense within 5 years of two previous Level 2 violations (or higher) <sup>11</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of license for 1 year
4 <sup>th</sup> offense within 10 years of three previous Level 2 violations (or higher) <sup>12</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of license for 3 years

<sup>8</sup> Section 379.401(2)(a), F.S.

<sup>9</sup> Section 379.401(2)(b)1., F.S.

<sup>10</sup> Section 379.401(2)(b)2., F.S.

<sup>11</sup> Section 379.401(2)(b)3., F.S.

<sup>12</sup> Section 379.401(2)(b)4., F.S.

### Level 3 Violations

Individuals who violate the following commit a Level 3 violation:

- FWC rules or orders prohibiting the sale of saltwater fish.
- FWC rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(4), F.S., relating to the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., relating to the importation of freshwater fish.
- Section 379.354(17), F.S., relating to the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., relating to the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., relating to the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., relating to the possession and transportation of commercial quantities of freshwater game fish.<sup>13</sup>

Section 379.401, F.S., provides the following penalties for Level 3 violations:

<b>Level 3 Violation</b>	<b>Type of Infraction</b>	<b>Civil Penalty or Jail Time</b>	<b>License Restrictions</b>
1 <sup>st</sup> offense <sup>14</sup>	1 <sup>st</sup> Degree Misdemeanor	Max. \$1000 or Max. 1 year	None
2 <sup>nd</sup> offense within 10 years of previous Level 3 violation (or higher) <sup>15</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Maximum suspension of license for 3 years
Fishing, hunting, or trapping with a suspended license <sup>16</sup>	1 <sup>st</sup> Degree Misdemeanor	Mandatory \$1000 or Max. 1 year	May not acquire license for 5 years

### Level 4 Violations

Individuals who violate the following commit a Level 4 violation:

- Section 379.365(2)(c), F.S., relating to criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., relating to criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., relating to the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., relating to the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., relating to the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., relating to the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., relating to the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., relating to the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.<sup>17</sup>

<sup>13</sup> Section 379.401(3)(a), F.S.

<sup>14</sup> Section 379.401(3)(b)1., F.S.

<sup>15</sup> Section 379.401(3)(b)2., F.S.

<sup>16</sup> Section 379.401(3)(b)3., F.S.

<sup>17</sup> Section 379.401(4)(a), F.S.

Section 379.401, F.S., provides the following penalties for Level 4 violations:

Level 4 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense <sup>18</sup>	3 <sup>rd</sup> Degree Felony	Max. \$5000 or Max. 5 years	None

### Miscellaneous Penalties

In addition to the current four-tier penalty structure, there are a number of statutes in ch. 379, F.S., that have their own penalties that apply to recreational activities and that do not fit into the four tiered structure. For example:

- Section 379.2223, F.S., provides that any person violating any rule or regulation relating to the control and management of state game lands commits a second degree misdemeanor;
- Section 379.2257, F.S., provides that any person violating any rule or regulation relating to control of wildlife within U.S. Forest Service lands commits a second degree misdemeanor;
- Section 379.29, F.S., provides that any person, firm, or corporation violating any provisions relating to contaminating fresh waters in quantities sufficient to injure, stupefy, or kill fish commits a second degree misdemeanor for the first offense, and for the second and subsequent offense, commits a first degree misdemeanor;
- Section 379.3511, F.S., provides that any person who willfully violates any provisions related to the regulation of subagents for the sale of hunting, fishing, and trapping licenses and permits commits a second degree misdemeanor;
- Section 379.411, F.S., provides that any person who is found guilty of killing or wounding any species designated as endangered, threatened, or of special concern, commits a third degree felony; and
- Section 379.4115, F.S., provides that any person convicted of unlawfully killing a Florida or wild panther commits a third degree felony.

Subsection 379.401(5), F.S., provides a “catch all” provision making violations of ch. 379, F.S., except as provided elsewhere in the chapter, second degree misdemeanors for first offenses, and first degree misdemeanors for second or subsequent offenses. Thus, the first offense carries a maximum civil penalty of \$500<sup>19</sup> or maximum 60 days in jail.<sup>20</sup> The second or subsequent offense carries a maximum fine of \$1,000<sup>21</sup> or maximum 1 year in jail.<sup>22</sup> The statute does not provide an expiration time after which a first offense is not considered for purposes of accruing a second or subsequent offense. Similarly, subparagraph 379.401(2)(a)11, F.S., provides that all prohibitions in ch. 379, F.S., which are not otherwise classified, are Level 2 violations.

### **“Fish and Wildlife” Definition**

#### Present Situation

Currently, ch. 379, F.S., does not contain a definition for the term “fish and wildlife.” The Florida Endangered and Threatened Species Act does define the phrase as it relates specifically to that section.<sup>23</sup> It defines “fish and wildlife” to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.<sup>24</sup>

<sup>18</sup> Section 379.401(4)(b), F.S.

<sup>19</sup> Section 775.083(1)(e), F.S.

<sup>20</sup> Section 775.082(4)(b), F.S.

<sup>21</sup> Section 775.083(1)(d), F.S.

<sup>22</sup> Section 775.082(4)(a), F.S.

<sup>23</sup> Section 379.2291(3)(a), F.S.

<sup>24</sup> Id.

## Effect of the Proposed Change

The bill amends s. 379.101, F.S., to add a definition for the term “fish and wildlife” that is identical to the definition in the Florida Endangered and Threatened Species Act.

## **Taking Game or Fur-Bearing Animals While Trespassing Penalties**

### Present Situation

In addition to other penalties in ch. 379, F.S., any person who violates the provisions of ch. 379, F.S., by illegally killing, taking, possessing, or selling game or fur-bearing animals in or out of season while trespassing or committing burglary must pay a \$250 fine plus court costs and restitution.<sup>25</sup>

### Effect of the Proposed Changes

The bill repeals s. 379.403, F.S., and creates a new subsection 379.401(5), F.S., to incorporate the additional trespassing and burglary penalty into the larger four tiered recreational penalty section. The bill increases the penalty from \$250 to \$500. Further, the bill expands the list of species affected to include fish and wildlife, rather than just fur-bearing animals.

## **Hunting or Fishing without a License**

### Present Situation

Individuals who wish to hunt or fish recreationally in Florida must obtain the appropriate license and permit, unless exempted by subsection 379.353(2), F.S.<sup>26</sup> Individuals who violate the hunting and fishing license and permit requirements in subsections 379.354(1) through (15), F.S., commit a Level 1 violation.<sup>27</sup> Persons convicted of this must pay a \$50 fine, plus the cost of the appropriate license and permit, for the first offense. Persons who commit a second offence within 36 months of the first offense must pay a \$100 fine, plus the cost of the appropriate license and permit.<sup>28</sup>

From 2012 to 2014, FWC officers issued 9,435 citations for hunting or fishing without a license.<sup>29</sup>

### Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to offer violators of recreational fishing and hunting license provisions, except for a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), F.S.,<sup>30</sup> the option to purchase the appropriate license or permit in addition to the fine rather than just paying the cost of the license or permit. Thus, these individuals will possess the appropriate license and permit in the future. The bill also amends paragraph 379.401(1)(f), F.S., to provide a method to provide proof of compliance with the penalty.

The bill creates subsection 379.354(18), F.S., to provide a cross reference that, unless otherwise provided by law, violations of the hunting and fishing license and permit requirements are a Level 1 violation. This is consistent with subparagraph 379.401(1)(a)5., F.S.

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<sup>25</sup> Section 379.403, F.S.

<sup>26</sup> Section 379.354, F.S.

<sup>27</sup> Section 379.401(1)(a)5., F.S.

<sup>28</sup> Section 379.401(1)(c)1. and 2., F.S.

<sup>29</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

<sup>30</sup> Section 379.354(6), F.S., pertains to pier licenses, s. 379.354(7), F.S., pertains to vessel licenses, and s. 379.354(8)(f) and (h), F.S., pertains to special use permits for limited entry permits and permits for recreational hunting on lands leased from FWC by nongovernmental owners.

## **Repeat Offense of a Level 1 Violation**

### Present Situation

Currently, individuals who commit a Level 1 violation within 36 months of a previous Level 1 violation must pay a \$100 fine.<sup>31</sup>

### Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)2. and (d)2., F.S., to increase the penalty for a repeat Level 1 violation from \$100 to \$250.

## **Alligator License Hunting, Tagging, and Reporting Requirement Penalties**

### Present Situation

Individuals who wish to hunt alligators must obtain an alligator trapping license or alligator trapping agent's license.<sup>32</sup> FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.<sup>33</sup> Once an alligator is killed, the trapper must attach a CITES tag 6 inches from tip of the alligator's tail.<sup>34</sup> All unused CITES tags must be returned to FWC within 14 days (for recreational licensees) or 15 days (for alligator management programs) after the expiration of the alligator harvest permit.<sup>35</sup> Failure to return a CITES tag may be grounds to deny future alligator harvest permits.<sup>36</sup>

Further, within 24 hours of harvesting an alligator and prior to transfer of the carcass, the trapper must submit a harvest report form to FWC.<sup>37</sup> On the form, the trapper must indicate the CITES tag number, the harvest date, the location of the harvest, the size of the alligator, the disposition of the carcass, the sex, and the meat yield.<sup>38</sup> The alligator processor must fill out the same form upon receipt of the alligator carcass.<sup>39</sup> The processor must report its facility number, the disposition of the carcass, the sex of the alligator, and the meat yield.<sup>40</sup> The processor must maintain this information for one year.<sup>41</sup>

Other reporting requirements also apply to individuals who handle alligators. Hide dealers must keep records and make an annual report to FWC about the number of hides bought and who bought the hides.<sup>42</sup> Individuals permitted to operate captive wildlife exhibits with alligators must complete and sign the Captive Alligator and Egg Transportation/Transfer Document before the transport of live untagged alligators.<sup>43</sup> Individuals who operate alligator farms must keep inventory records of alligators and

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<sup>31</sup> Section 379.401(1)(c)2. and (d)2., F.S.

<sup>32</sup> Section 379.3751(1), F.S.

<sup>33</sup> Rule 68A-25.042(2)(d), F.A.C.; CITES is an international agreement between governments to regulate the trade of wild animal and plant species. Convention on International Trade in Endangered Species, *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (last visited October 7, 2015).

<sup>34</sup> Section 379.3752(1), F.S.; rule 68A-25.042(3)(h), F.A.C.

<sup>35</sup> Rules 68A-25.032(5) and 68A-25.042(3)(k), F.A.C.

<sup>36</sup> Id.

<sup>37</sup> Rules 68A-25.032(2)(g) and 68A-25.042(3)(i), F.A.C.

<sup>38</sup> FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at [http://myfwc.com/media/310137/Alligator\\_1001at.pdf](http://myfwc.com/media/310137/Alligator_1001at.pdf) (last visited October 7, 2015).

<sup>39</sup> Rule 68A-25.042(5)(a)1., F.A.C.

<sup>40</sup> FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at [http://myfwc.com/media/310137/Alligator\\_1001at.pdf](http://myfwc.com/media/310137/Alligator_1001at.pdf) (last visited October 7, 2015).

<sup>41</sup> Rule 68A-25.042(5)(a)2., F.A.C.

<sup>42</sup> Rule 68A-24.004(2)(a), F.A.C.

<sup>43</sup> Rule 68A-25.002(1)(b), F.A.C.

alligator eggs and document their transfer.<sup>44</sup> Individuals who collect alligator eggs and hatchlings must tag and report the collection.<sup>45</sup>

It appears unclear whether failing to possess an alligator trapper license or alligator trapping agent's license, failing to comply with the tagging requirements, and failing to file a report relating to alligator licensees or alligator reporting requirements are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9., F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- A second degree misdemeanor under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 22 citations for violations of alligator trapping license requirement.<sup>46</sup> From 2012 to 2014, FWC officers did not issue any citations for violations of alligator tagging requirements.<sup>47</sup>

### Effect of Proposed Changes

The bill adds subparagraph 379.401(1)(a)5., F.S., to decrease the penalty for violating FWC rules or orders requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program from a Level 2 violation to a Level 1 violation. Violating rules or orders of the commission requiring the return of unused CITES tags issued under an alligator program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program will remain a Level 2 violation because the bill adds subparagraph 379.401(2)(a)12., F.S.

The bill amends subparagraph 379.401(1)(a)1., F.S., to decrease the penalty for violating rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who holds an any alligator trapping license or permit from a Level 2 violation to a Level 1 violation. Violating FWC rules or orders that require the maintenance of records relating to alligators will be a Level 2 violation because the bill adds subparagraph 379.401(2)(a)11., F.S.

Lastly, the bill creates subparagraphs 379.401(2)(a)29. and 30., F.S., and subsections 379.3751(5), and 379.3752(3), F.S., to provide cross references that violations of the requirements to possess an alligator trapping license (or alligator trapping agent's license) or to place a CITES tag on a harvested alligator are Level 2 violations.

## **Wildlife Management Areas on U.S. Forest Service Land**

### Present Situation

Section 379.2257, F.S., authorizes FWC to enter into cooperative agreements with the U.S. Forest Service (USFS) for the development of game, bird, fish, reptile, or fur-bearing animal management and demonstration projects in the National Forests in Florida.<sup>48</sup> With the cooperation of the USFS, FWC may make, adopt, promulgate, amend, and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the National Forests.<sup>49</sup> These

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<sup>44</sup> Rule 68A-25.004(3), F.A.C.

<sup>45</sup> Rule 68A-25.031(1)(b) and (2)(b), F.A.C.

<sup>46</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 20 (October 23, 2015).

<sup>47</sup> Id.

<sup>48</sup> Section 379.2257(1), F.S.

<sup>49</sup> Section 379.2257(2), F.S.

regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.<sup>50</sup>

Individuals who violate these rules commit a second degree misdemeanor.<sup>51</sup> Violators face a maximum civil penalty of \$500 or a maximum 60 days in jail.<sup>52</sup> These penalties are inconsistent with violations in other wildlife management areas. For example, violations of FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission are Level 1 violations.<sup>53</sup> Whereas, violations of FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission are a Level 2 violation.<sup>54</sup>

### Effect of Proposed Changes

The bill amends s. 379.2257, F.S., to indicate that penalties for violations of rules or regulations for wildlife management areas on USFS lands will be penalized under s. 379.401, F.S. Thus, the penalties for these areas will be consistent for all lands. This change will increase the penalty for repeat offenders of wildlife management area, wildlife and environmental area, and fish management area rules on USFS lands. According to FWC, USFS indicated it preferred to eliminate the inconsistency.<sup>55</sup>

### **Sale, Barter, or Trade of Tarpon Penalties**

#### Present Situation

Tarpon are a popular sport fish found throughout Florida's coastal environment. In June 2013, FWC approved a series of changes to the tarpon tag rules.<sup>56</sup> Previously individuals could harvest two tarpon per day.<sup>57</sup> The rule amendments restricted tarpon to a catch-and-release only fishery.<sup>58</sup> FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.<sup>59</sup>

Section 379.357, F.S., provides that individuals may only harvest tarpon when in pursuit of an International Game Fish Association record.<sup>60</sup> Further, individuals may not possess or harvest a tarpon without first purchasing a tarpon tag and securely attaching the tag through the lower jaw of the tarpon.<sup>61</sup> A person may not use more than one tarpon tag during a single license year.<sup>62</sup>

Individual may not take, kill, or possess any tarpon unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.<sup>63</sup> Individuals who violate this prohibition commit a Level 2 violation.<sup>64</sup> Further, individuals may not sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase, or purchase any

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<sup>50</sup> See chapters 68A-15 and 68A-17, F.A.C.

<sup>51</sup> Section 379.2257(3), F.S.

<sup>52</sup> Sections 775.082 and 775.083, F.S.

<sup>53</sup> Section 379.401(1)(a)2., F.S.

<sup>54</sup> Section 379.401(2)(a)3., F.S.

<sup>55</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 9 (October 23, 2015).

<sup>56</sup> 39 Fla. Admin. R. 94 (May 14, 2013).

<sup>57</sup> Rule 68B-32.004, F.A.C. (2005).

<sup>58</sup> Rule 68B-32.001, F.A.C.

<sup>59</sup> Rule 68B-32.004(2), F.A.C.

<sup>60</sup> Rule 68B-32.009(1)(a), F.A.C.

<sup>61</sup> Rule 68B-32.009(1)(b), F.A.C.

<sup>62</sup> Rule 68B-32.009(1)(c), F.A.C.

<sup>63</sup> Section 379.357(3), F.S.

<sup>64</sup> Section 379.357(4), F.S.

tarpon.<sup>65</sup> Violations of any FWC rules or orders prohibiting the sale of saltwater fish, including tarpon, are Level 3 violations.<sup>66</sup>

From 2012 to 2014, FWC officers issued two citations for violations of tarpon regulations.<sup>67</sup>

### Effect of Proposed Changes

The bill amends subsection 379.357(5), F.S., and adds subparagraph 379.401(3)(a)6., F.S., to increase the penalty for the sale, transfer, or purchase of tarpon from a Level 2 violation to a Level 3 violation. This will make the penalty consistent with the penalty for violations prohibiting the sale of all saltwater fish.

The bill amends subsection 379.357(4), F.S., and creates subparagraph 379.401(2)(a)23, F.S., so that the unauthorized take, kill, or possession of tarpon remains a Level 2 violation.

### **“Changing” or “Altering” a License Penalties**

#### Present Situation

Individuals may not “alter” or “change” in any manner, or loan or transfer to another, unless otherwise provided, any license or permit issued by FWC.<sup>68</sup> It is unclear whether violators of this provision are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

Whereas, individuals who make, forge, counterfeit, or reproduce a license or permit issued by FWC or knowingly possess such a license commit a Level 4 violation.<sup>69</sup> Level 4 violations are third degree felonies which are consistent with the penalty for counterfeiting and forgery in the criminal statutes.<sup>70</sup>

From 2012 to 2014, FWC officers did not issue any citations altering or changing a license or permit.<sup>71</sup>

### Effect of Proposed Changes

The bill amends s. 379.3502, F.S., to remove the reference to “altering” or “changing” a license because “altering” or “changing” a license may be charged as forging or counterfeiting a license.

The bill also clarifies that loaning, transferring, or using a borrowed or transferred license or permit without permission is a Level 2 violation by amending s. 379.3502, F.S., and adding subparagraph 379.401(2)(a)20, F.S.

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<sup>65</sup> Section 379.357(5), F.S.

<sup>66</sup> Section 379.401(3)(a)1., F.S.

<sup>67</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

<sup>68</sup> Section 379.3502, F.S.

<sup>69</sup> Sections 379.354(16) and 379.401(4)(a)5., F.S.

<sup>70</sup> Sections 831.01 and 831.02, F.S.

<sup>71</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 11 (October 23, 2015).

## **Sale, Purchase, Harvest, or Attempted Harvest of any Saltwater Product Penalties & Stone Crab and Spiny Lobster Trap Tags Penalties**

### Present Situation

Individuals or corporations who wish to commercially sell, purchase, or harvest saltwater products must obtain the appropriate license.<sup>72</sup> Individuals must obtain a stone trap tag to use a stone crab trap.<sup>73</sup> Further, individuals must obtain a spiny lobster certificate and trap tag to use a spiny lobster trap.<sup>74</sup> Violators of these regulations commit a Level 2 violation.<sup>75</sup> However, such violations are commercial activities that are punishable under s. 379.407, F.S.

Further, individuals who steal stone crab and spiny lobster trap contents and gear commit Level 2 violations.<sup>76</sup>

### Effect of Proposed Changes

The bill removes subparagraphs 379.365(2)(a)2. and 379.401(2)(a)13., F.S., and amends subparagraphs 379.401(2)(a)16. and 18., F.S., to remove these commercial violations from the recreation penalty statute. Thus, violations of the requirements to obtain a saltwater products license, stone crab trap tags, and spiny lobster certificate and trap tags will now be punishable under the commercial fishing penalty statute, s. 379.407, F.S.

Theft of stone crab and spiny lobster trap contents and gear will remain Level 2 violations under the new subparagraphs 379.401(2)(a)26. and 28., F.S.

## **Authorized Spearfishing**

### Present Situation

Subsection 379.2425(2), F.S., prohibits spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys. However, rule 68B-20.003, F.A.C., allows spearfishing in these areas if authorized in other marine fisheries rules.<sup>77</sup>

In addition, it appears unclear whether violating spearfishing regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 38 citations for spearfishing where prohibited.<sup>78</sup>

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<sup>72</sup> Section 379.361, F.S.

<sup>73</sup> Section 379.365(2)(a), F.S.

<sup>74</sup> Section 379.3671(2)(c), F.S.

<sup>75</sup> Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

<sup>76</sup> Sections 379.401(2)(a)16. and 18., F.S.

<sup>77</sup> See rules 68B-20.003 and 68B-20.004, F.A.C.

<sup>78</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 10 (October 23, 2015).

## Effect of Proposed Changes

The bill amends subsection 379.2425(2), F.S., to allow spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys when authorized by rule.

The bill also creates subsection 379.2425(4), F.S., and subparagraph 379.401(2)(a)16., F.S., to make violations of the spearfishing regulations a Level 2 violation.

## **Unlawful Use of Traps Penalties**

### Present Situation

FWC sets forth numerous regulations on the use of traps.<sup>79</sup> Individuals who violate FWC rules or orders prohibiting unlawful use of finfish traps commit a Level 2 violation. However, the statute does not indicate the penalty for the unlawful use of other traps. Thus, it appears unclear whether violating the trap regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

### Effect of Proposed Changes

The bill amends subparagraph 379.401(2)(a)10., F.S., to make violations of all trap regulations a Level 2 violation.

## **Enforcement of Commission Rules**

### Present Situation

Section 379.33, F.S., states, “[e]xcept as provided under s. 379.401, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” Section 379.401, F.S., contains most of the recreational fishing and hunting penalties while s. 379.407, F.S., contains the penalties for commercial saltwater fishing regulations. However, other penalties enforced by FWC are found in other statutes.<sup>80</sup> Thus, the statement in s. 379.33, F.S., is inaccurate and confusing.

### Effect of Proposed Changes

The bill amends s. 379.33, F.S., to remove the inaccurate statement.

## **Control and Management of State Game Lands Penalties**

### Present Situation

The Legislature authorized FWC to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or

<sup>79</sup> See e.g., rule 68A-24.002, F.A.C. (relating to fur bearing animals); rule 68A-23.002, F.A.C. (relating to taking freshwater fish); and rule 68A-9.010 (relating to taking nuisance animals).

<sup>80</sup> See ch. 372, F.S., and s. 379.4015, F.S.

development of lands or waters owned by, leased by, or otherwise assigned to, FWC for fish or wildlife management purposes.<sup>81</sup>

State game lands include Wildlife Management Areas (WMAs), Wildlife and Environmental Areas (WEAs), and Fish Management Areas (FMAs). FWC manages a WMA system in order to sustain the widest possible range of native wildlife in their natural habitats. These lands are more rugged than parks, with fewer developed amenities. The WMA system includes more than 5.8 million acres of land established as WMAs or WEAs.<sup>82</sup>

Chapter 68A-15, F.A.C., establishes the rules for Florida's WMAs, and ch. 68A-17, F.A.C., establishes the rules for Florida's WEAs. These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.

Individuals who violate these rules commit a second degree misdemeanor,<sup>83</sup> punishable by a maximum civil penalty of \$500<sup>84</sup> or a maximum 60 days in jail.<sup>85</sup>

#### Effect of Proposed Changes

The bill amends subsection 379.2223(2), F.S., to make violations of WMA and FMA rules subject to the penalties in the recreational penalties statute. Thus, the penalties in subparagraphs 379.401(1)(a)2., 379.401(1)(a)3., and 379.401(2)(a)3., F.S., will apply to violations of WMA and FMA rules.

### **Contamination of Freshwater Penalties**

#### Present Situation

Individual, firms, and corporations may not cause any dyestuff, coal tar, oil, sawdust, poison, or deleterious substances to be thrown, run, or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish.<sup>86</sup> Violators of this prohibition commit a second degree misdemeanor for first offense, and first degree misdemeanor for the second or subsequent offense.<sup>87</sup> Thus, the first offense carries a maximum civil penalty of \$500<sup>88</sup> or maximum 60 days in jail.<sup>89</sup> The second or subsequent offense carries a maximum fine of \$1,000<sup>90</sup> or maximum 1 year in jail.<sup>91</sup>

#### Effect of Proposed Changes

The bill amends subsection 379.29(2), F.S., and adds subparagraph 379.401(2)(a)17., F.S., to make contaminating fresh water in a way that injures fish a Level 2 violation.

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<sup>81</sup> Section 379.2223(1), F.S.

<sup>82</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 8 (October 23, 2015).

<sup>83</sup> Section 379.2223(2), F.S.

<sup>84</sup> Section 775.083(1)(e), F.S.

<sup>85</sup> Section 775.082(4)(b), F.S.

<sup>86</sup> Section 379.29(1), F.S.

<sup>87</sup> Section 379.29(2), F.S.

<sup>88</sup> Section 775.083(1)(e), F.S.

<sup>89</sup> Section 775.082(4)(b), F.S.

<sup>90</sup> Section 775.083(1)(d), F.S.

<sup>91</sup> Section 775.082(4)(a), F.S.

## **Use of Explosives or Other Substances Penalties**

### Present Situation

Individuals may not use explosives or other similar substances in freshwaters of the state to injure fish.<sup>92</sup> It appears unclear whether violating this provision is a:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

### Effect of Proposed Change

The bill amends s. 379.295, F.S., and creates subparagraph 379.401(2)(a)18., F.S., to make violations of the use of explosives prohibition a Level 2 violation.

## **Freshwater Fish Dealer's and Fur and Hide Dealer's License Penalties**

### Present Situation

An individual who wishes to engage in the business of taking for sale or selling any frogs or freshwater fish, including live bait, of any species or size, or importing any exotic or nonnative fish must obtain a freshwater fish dealer's license.<sup>93</sup> Further, individuals who wish to engage in the business of a dealer or buyer in green or dried alligator hides or green or dried furs or purchase such hides or furs must obtain a fur and hide dealer's license.

It appears unclear whether violating of these license requirements are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 51 citations for violations of the freshwater fish dealer's license requirements.<sup>94</sup> From 2012 to 2014, FWC officers did not issue any citations for violations of the fur and hide dealer's license requirements.<sup>95</sup>

### Effect of Proposed Changes

The bill amends ss. 379.363 and 379.364, F.S., and creates subparagraphs 379.401(1)(a)24. and 379.401(2)(a)25., F.S., to make violations of the freshwater fish dealer's and fur and hide dealer's license requirements a Level 2 violation.

## **False Statement on License, Permit, or Application Penalties**

### Present Situation

Individuals who swear or affirm to a false statement on an application for a license or permit violates ch. 379, F.S.<sup>96</sup> Such statement also make the license or permit void.<sup>97</sup>

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<sup>92</sup> Section 379.295, F.S.

<sup>93</sup> Section 379.363(1), F.S.

<sup>94</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 18 (October 23, 2015).

<sup>95</sup> Id. at 19.

<sup>96</sup> Section 379.3503, F.S.

<sup>97</sup> Id.

Likewise, individuals who knowingly and willfully enter false information on, or allow or cause false information to be entered on or shown upon any license or permit in order to avoid prosecution or to assist another to avoid prosecution, or for any other wrongful purpose must be punished under s. 379.401, F.S.<sup>98</sup>

It is unclear whether violations of these provisions are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued three citations for making false statements on an application for a license or permit.<sup>99</sup> From 2012 to 2014, FWC officers issued two citations for entering false information on, or allowing or causing false information to be entered on or shown upon any license or permit.<sup>100</sup>

### Effect of Proposed Changes

The bill amends ss. 379.3503 and 379.3504, F.S., and creates subparagraphs 379.401(2)(a)20. and 21., F.S., to make false statements in an application for a license or permit or entering false information on licenses or permits Level 2 violations.

### **License Subagent Penalties**

#### Present Situation

The Legislature authorized FWC to appoint subagents to act on the behalf of FWC to sell hunting, fishing, and trapping licenses and permits.<sup>101</sup> FWC may prohibit subagents from selling certain types of licenses and permits.<sup>102</sup> Further, only individuals appointed by FWC may handle licenses or permits for a fee or compensation of any kind.<sup>103</sup>

As of July 2015, FWC has contracted with 883 bonded subagents to sell hunting, fishing, and trapping licenses and permits.<sup>104</sup> The subagents include 215 Florida tax collectors offices, as well retail stores, sporting goods stores, hardware stores, bait and tackle establishments, and others.<sup>105</sup>

Individuals who violate the subagent regulations and rules commit a second degree misdemeanor.<sup>106</sup> Thus, violators face a maximum civil penalty of \$500<sup>107</sup> or a maximum 60 days in jail.<sup>108</sup>

From 2012 to 2014, FWC officers did not issue any citations for violations of the subagent licensing requirements.<sup>109</sup>

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<sup>98</sup> Section 379.3504, F.S.

<sup>99</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 12 (October 23, 2015).

<sup>100</sup> Id.

<sup>101</sup> Section 379.3511, F.S.

<sup>102</sup> Section 379.3511(1)(b), F.S.

<sup>103</sup> Section 379.3511(1)(c), F.S.

<sup>104</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

<sup>105</sup> Id.

<sup>106</sup> Section 379.3511(1)(d), F.S.

<sup>107</sup> Section 775.083(1)(e), F.S.

<sup>108</sup> Section 775.082(4)(b), F.S.

<sup>109</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

## Effect of Proposed Change

The bill repeals paragraph 379.3511(1)(d), F.S., creates subsection 379.3511(4), F.S., and adds subparagraph 379.401(2)(a)22., F.S., to make violations of the subagent regulations and rules a Level 2 violation.

## **Illegal Killing, Possessing, or Capturing of Alligators or Other Crocodilia or Eggs Penalties**

### Present Situation

Individuals may not intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the FWC. Subsection 379.409(1), F.S., makes a violation of this prohibition a third degree felony. Subparagraph 379.401(4)(a), F.S., makes a violation of this provision a Level 4 violation. Both carry a maximum fine of \$5,000<sup>110</sup> or a maximum jail time of 5 years for the first offense.<sup>111</sup> These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>112</sup>

From 2012 to 2014, FWC officers issued 32 citations for intentionally killing, injuring, possessing, or capturing, or attempting to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian.<sup>113</sup>

### Effect of Proposed Changes

The bill amends subsection 379.409(1), F.S., and creates subsection 379.409(4), F.S., to clarify that violations of this prohibition are a Level 4 violation.

## **Intentional Killing or Wounding Species Designated as Endangered, Threatened, or of Special Concern Penalties**

### Present Situation

Individuals may not intentionally kill or wound any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife without authorization from FWC.<sup>114</sup> Violators of this prohibition face a third degree felony.<sup>115</sup> Third degree felonies carry a maximum fine of \$5,000<sup>116</sup> or a maximum jail time of 5 years.<sup>117</sup> These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>118</sup>

From 2012 to 2014, FWC officers issued 12 citations for intentionally killing or wounding any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or intentionally destroying the eggs or nest of any such fish or wildlife.<sup>119</sup>

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<sup>110</sup> Section 775.083, F.S.

<sup>111</sup> Section 775.082, F.S.

<sup>112</sup> Section 379.409(1), F.S.

<sup>113</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

<sup>114</sup> Section 379.411, F.S.

<sup>115</sup> Id.

<sup>116</sup> Section 775.083, F.S.

<sup>117</sup> Section 775.082, F.S.

<sup>118</sup> Section 379.411, F.S.

<sup>119</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

## Effect of Proposed Change

The bill amends s. 379.411, F.S., and creates subparagraph 379.401(4)(a)9., F.S., to make violations of this prohibition a Level 4 violation.

## **Killing Florida or Wild Panther Penalties**

### Present Situation

Individuals may not kill any Florida panther or wild panther.<sup>120</sup> Violators of this prohibition face a third degree felony.<sup>121</sup> Third degree felonies carry a maximum fine of \$5,000<sup>122</sup> or a maximum jail time of 5 years for the first offense.<sup>123</sup> These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>124</sup>

From 2012 to 2014, FWC officers did not issue any citations for killing any Florida panther or wild panther.<sup>125</sup>

### Effect of Proposed Changes

The bill amends s. 379.4115, F.S., and creates subparagraph 379.401(4)(a)10., F.S., to make violations of this prohibition a Level 4 violation.

## **Repeat Offense of a Level 4 Violation**

### Present Situation

Currently, an individual who commits a Level 4 violation commits a third degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>126</sup> Thus, such individual is subject to a maximum fine of \$5000<sup>127</sup> or a maximum jail term of 5 years.<sup>128</sup> Section 379.401, F.S., does not provide for increased penalties for repeat offenders. However, specific sections provide for enhanced penalties for Level Four violations if the individual is a habitual felony offender or a habitual violent felony offender.<sup>129</sup>

A “habitual felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
  - Within 5 years of the date of the conviction of the defendant’s last prior felony or other qualified offense, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole or court-

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<sup>120</sup> Section 379.4115, F.S.

<sup>121</sup> Id.

<sup>122</sup> Section 775.083, F.S.

<sup>123</sup> Section 775.082, F.S.

<sup>124</sup> Section 379.4115(3), F.S.

<sup>125</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

<sup>126</sup> Section 379.401(4)(b), F.S.

<sup>127</sup> Section 775.083, F.S.

<sup>128</sup> Section 775.082, F.S.

<sup>129</sup> See s. 379.409(1), F.S. (illegal killing, possessing, or capturing of alligators or other crocodilian or eggs), s. 379.411, F.S. (intentional killing or wounding species designated as endangered, threatened, or of special concern), and s. 379.4115(3), F.S. (killing Florida or wild panther).

- ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation relating to the purchase or the possession of a controlled substance;
- The defendant has not received a pardon for any felony or other qualified offense used in the habitual felony offender determination; and
- A conviction of a felony or other qualified offense used in the habitual felony determination has not been set aside in any post-conviction proceeding.<sup>130</sup>

A habitual felony offender may face a penalty not to exceed 10 years in prison.<sup>131</sup>

A “habitual violent felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
  - Arson;
  - Sexual battery;
  - Robbery;
  - Kidnapping;
  - Aggravated child abuse;
  - Aggravated abuse of an elderly person or disabled adult;
  - Aggravated assault with a deadly weapon;
  - Murder;
  - Manslaughter;
  - Aggravated manslaughter of an elderly person or disabled adult;
  - Aggravated manslaughter of a child;
  - Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - Armed burglary;
  - Aggravated battery; or
  - Aggravated stalking;
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
  - Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
- The defendant has not received a pardon on the ground of innocence for any crime used in the habitual violent felony offender determination; and
- A conviction of a crime used in the habitual violent felony offender determination has not been set aside in any post-conviction proceeding.<sup>132</sup>

A habitual violent felony offender may face a penalty not to exceed 10 years in prison and may not be eligible for release for 5 years.<sup>133</sup>

<sup>130</sup> Section 775.084(1)(a), F.S.

<sup>131</sup> Section 77.084(4)(a)3., F.S.

<sup>132</sup> Section 775.084(1)(b), F.S.

<sup>133</sup> Section 775.084(4)(b)3., F.S.

## Effect of the Proposed Changes

The bill amends paragraph 379.401(4)(b), F.S., to authorize penalties for all Level 4 violations to increase if the court determines the individual is a habitual felony offender or a habitual violent felony offender. This is consistent with the current penalties for:

- Illegally killing, possessing, or capturing of alligators or other crocodilia or eggs;<sup>134</sup>
- Intentionally killing or wounding species designated as endangered, threatened, or of special concern;<sup>135</sup> and
- Killing Florida or wild panther.<sup>136</sup>

## **Catch All Chapter Violation Penalties**

### Present Situation

Subparagraph 379.401(2)(a)11., F.S., makes violations of ch. 379, F.S., Level 2 violations. Whereas, subsection 379.401(5), F.S., makes violations of ch. 379, F.S., a second degree misdemeanor for the first offense and a first degree misdemeanor for the second and subsequent offenses.

### Effect of the Proposed Changes

The bill removes subsection 379.401(5), F.S., to eliminate this inconsistency. Thus, the catch all penalty for violations of ch. 379, F.S., will be a Level 2 violation under subparagraph 379.401(2)(a)13., F.S.

## **Southeastern Guide Dogs, Inc.**

### Present Situation

Individuals purchasing a license or permit from FWC may voluntarily check a box on their application to authorize an additional \$2 fee.<sup>137</sup> FWC must retain \$0.90 to cover administrative costs.<sup>138</sup> Southeastern Guide Dogs, Inc., must use the money they receive to breed, raise, and train guide dogs for the blind, specifically for the "Paws for Patriots" program, which includes in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.<sup>139</sup>

Southeastern Guide Dogs, Inc., a 501(c)(3) nonprofit organization, formed in 1982. The organization places more than 100 trained dogs each year into careers benefitting people with visual impairments and veterans. The organization provides all services free of charge and receives no government funding. The Paws for Patriots Program matches guide dogs, service dogs, facility therapy dogs, and emotional support dogs with active duty soldiers and retired servicemen and women who have one of the needs these dogs can help meet.<sup>140</sup>

When s. 379.359, F.S., passed, FWC contracted with a third-party vendor to operate a system that issues recreational licenses. As part of that contract, the vendor charged FWC \$0.90 to process each individual voluntary contribution made to Southeastern Guide Dogs, Inc. In practice, FWC retained \$0.90 of each contribution made to cover this processing fee, and forwarded \$1.10 to Southeastern Guide Dogs, Inc.<sup>141</sup>

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<sup>134</sup> Section 379.409(1), F.S.

<sup>135</sup> Section 379.411, F.S.

<sup>136</sup> Section 379.4115(3), F.S.

<sup>137</sup> Section 379.359, F.S.

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> Southeastern Guide Dogs, *About Us*, <http://www.guidedogs.org/about/about-us/> (last visited October 8, 2015).

<sup>141</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

In October 2012, FWC contracted with a new company to process recreational licenses. Under the new contract, the new vendor does not charge FWC any fees to process the contributions to Southeastern Guide Dogs, Inc. Thus, FWC stopped retaining any fees from the contributions and began sending the entirety of each contribution (\$2.00) to Southeastern Guide Dogs, Inc.<sup>142</sup>

In 2015, the Department of Financial Services (DFS) contacted FWC staff and advised that because the statutes says that \$0.90 “shall” be retained from each voluntary contribution made under s. 379.359, F.S., FWC was not permitted to send the entirety of the contributions to Southeastern Guide Dogs, Inc. DFS temporarily authorized the agency to continue sending the entire contributions to Southeastern Guide Dogs, Inc., with an agreement that FWC will seek a legislative change that would eliminate the requirement that FWC retain the \$0.90 fee.<sup>143</sup>

#### Effect of Proposed Changes

The bill amends s. 379.359, F.S., to eliminate the requirement that FWC retain the administrative fee. Instead, FWC may retain the fee at its discretion.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 379.101, F.S., defining the term “fish and wildlife.”
- Section 2.** Amends s. 379.2223, F.S., relating to control and management of state game lands.
- Section 3.** Amends s. 379.2257, F.S., relating to penalties on U.S. Forest Service lands.
- Section 4.** Amends s. 379.2425, F.S., relating to spearfishing.
- Section 5.** Amends s. 379.29, F.S., relating to contaminating fresh water.
- Section 6.** Amends s. 379.295, F.S., relating to use of explosives and other substances.
- Section 7.** Amends s. 379.33, F.S., relating to enforcement of commission rules.
- Section 8.** Amends s. 379.3502, F.S., relating to prohibition on the transferring licenses and permits.
- Section 9.** Amends s. 379.3503, F.S., relating to false statements in application for licenses or permits.
- Section 10.** Amends s. 379.3504, F.S., relating to entering false information on licenses or permits.
- Section 11.** Amends s. 379.3511, F.S., relating to appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.
- Section 12.** Amends s. 379.354, F.S., relating to recreational licenses, permits, and authorization numbers.
- Section 13.** Amends s. 379.357, F.S., relating to FWC license program for tarpon.
- Section 14.** Amends s. 379.359, F.S., relating to license application provision for voluntary contribution to Southeastern Guide Dogs, Inc.
- Section 15.** Amends s. 379.363, F.S., relating to freshwater fish dealer's license.

<sup>142</sup> Id.

<sup>143</sup> FWC, *2016 Legislative Proposal, Southeastern Guide Dogs, Inc. Donation Fee*, p. 2 (October 5, 2015).

- Section 16.** Amends s. 379.364, F.S., relating to license required for fur and hide dealers.
- Section 17.** Amends s. 379.365, F.S., relating to stone crab regulations.
- Section 18.** Amends s. 379.3751, F.S., relating to taking and possession of alligators.
- Section 19.** Amends s. 379.3752, F.S., relating to required tagging of alligators and hides.
- Section 20.** Amends s. 379.401, F.S., relating to penalties for Level One, Level Two, Level Three, and Level Four violations; providing additional criminal penalties for Level Four violations; providing additional penalties for the illegal taking of fish and wildlife while trespassing.
- Section 21.** Repeals s. 379.403, F.S., relating to illegal killing, taking, possessing, or selling wildlife or game.
- Section 22.** Amends s. 379.409, F.S., relating to illegal killing, possessing, or capturing of alligators or other crocodilia or eggs.
- Section 23.** Amends s. 379.411, F.S., relating to intentionally killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 24.** Amends s. 379.4115, F.S., relating to prohibition of killing Florida or wild panther.
- Section 25.** Amends s. 379.3004, F.S., correcting a cross reference.
- Section 26.** Amends s. 379.337, F.S., correcting a cross reference.
- Section 27.** Amends s. 589.19, F.S., correcting a cross reference.
- Section 28.** Amends s. 810.09, F.S., correcting a cross reference.
- Section 29.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an insignificant positive fiscal impact on FWC because it provides violators who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license. Currently, the Clerks of Courts collect these fines.<sup>144</sup> Now the money will be deposited in the Dedicated License Trust Fund,<sup>145</sup> the Lifetime Fish and Wildlife Trust Fund,<sup>146</sup> the State Game Trust Fund,<sup>147</sup> or the Marine Resources Conservation Trust Fund<sup>148</sup> if the individual chooses to purchase the appropriate license and permit. Based on FWC's estimation, if every violator chooses to purchase a license, the bill would increase funds collected by FWC by \$50,806.<sup>149</sup>

<sup>144</sup> Sections 142.01(1)(a) and 379.2203(1), F.S.

<sup>145</sup> Section 379.203, F.S.

<sup>146</sup> Section 379.207, F.S.

<sup>147</sup> Section 379.211, F.S.

<sup>148</sup> Section 379.2201, F.S.

<sup>149</sup> FWC, *Recreational Penalties Fiscal Impact*, p. 3 (October 23, 2015).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an insignificant negative fiscal impact on the Clerks of Court. The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license, thereby reducing the fines that may be collected by the Clerks of Courts.<sup>150</sup> However, the bill also increases the penalties collected by the Clerks of Court for certain violations. Based on FWC's estimation, if every judge imposes the maximum penalty and every violator chooses to purchase a license, the bill would reduce funds deposited with the Clerks of Court by approximately \$85,456.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the individuals who violate the provisions of ch. 379, F.S. Depending on the specific violation, the bill may increase or decrease the penalty.

In addition, the bill may create a positive impact on Southern Guide Dogs, Inc., by amending s. 379.359, F.S., to authorize FWC to transfer all of the \$2 contribution to the non-profit rather than requiring FWC to retain \$.90 for administrative costs.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the Clerk of Court the cost of the recreational license, thereby reducing the fines that may be collected by the Clerks of Courts. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 17, 2015, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with committee substitute. The amendment authorizes enhanced penalties for Level 4 violations if the individual is a habitual felony offender or a habitual violent felony offender.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.

1                                   A bill to be entitled  
2           An act relating to the Fish and Wildlife Conservation  
3           Commission; amending s. 379.101, F.S.; defining the  
4           term "fish and wildlife"; amending s. 379.2223, F.S.;  
5           revising penalties for violations of commission rules  
6           or regulations relating to control and management of  
7           state game lands; amending s. 379.2257, F.S.; revising  
8           penalties for violations of wildlife management area  
9           rules and regulations on United States Forest Service  
10          lands; amending s. 379.2425, F.S.; authorizing  
11          spearfishing in specified areas by commission rule or  
12          order; providing a penalty for violations of  
13          commission rules or orders relating to spearfishing;  
14          amending s. 379.29, F.S.; revising penalties for  
15          violations relating to the contamination of fresh  
16          waters; amending s. 379.295, F.S.; providing a penalty  
17          for violations relating to the use of explosives and  
18          other substances or force in fresh waters; amending s.  
19          379.33, F.S.; deleting base penalty provisions for  
20          violation of or failure to comply with any commission  
21          rule; amending s. 379.3502, F.S.; deleting violation  
22          provisions for altering or changing, in any manner, a  
23          license or permit; providing a penalty for violations  
24          relating to loaning or transferring a license or  
25          permit to another person or using a borrowed or  
26          transferred license or permit; amending s. 379.3503,

27 F.S.; revising penalties for violations of swearing or  
 28 affirming to a false statement on a license or permit  
 29 application; amending s. 379.3504, F.S.; revising  
 30 penalties for violations relating to entering false  
 31 information on a license or permit; amending s.  
 32 379.3511, F.S.; revising penalties relating to the  
 33 sale of specified licenses and permits by appointed  
 34 subagents; amending s. 379.354, F.S.; providing a  
 35 penalty for violations relating to possession of  
 36 recreational hunting, fishing, and trapping licenses,  
 37 permits, and authorization numbers; amending s.  
 38 379.357, F.S.; revising penalties for violations  
 39 relating to the purchase of a tarpon tag and the sale  
 40 of tarpon; amending s. 379.359, F.S.; authorizing,  
 41 rather than requiring, the commission to retain a  
 42 portion of voluntary contributions to Southeastern  
 43 Guide Dogs, Inc.; amending s. 379.363, F.S.; providing  
 44 a penalty for violations relating to freshwater fish  
 45 dealers' licenses; amending s. 379.364, F.S.;  
 46 providing a penalty for violations relating to fur and  
 47 hide dealers' licenses; amending s. 379.365, F.S.;  
 48 deleting penalty provisions for violations of stone  
 49 crab regulations by persons other than commercial  
 50 harvesters; amending s. 379.3751, F.S.; providing a  
 51 penalty for violations relating to trapping licenses  
 52 for taking and possessing alligators; amending s.

53 379.3752, F.S.; providing a penalty for violations  
 54 relating to the tagging of alligators and hides;  
 55 amending s. 379.401, F.S.; providing penalties for  
 56 violations relating to filing reports and documents by  
 57 persons who hold alligator licenses and permits;  
 58 reducing the penalties for failure to return CITES  
 59 tags issued under the Statewide Alligator Harvest  
 60 Program and the Stateside Nuisance Alligator Program;  
 61 providing an alternative penalty for specified  
 62 violations relating to recreational fishing, hunting,  
 63 and trapping licenses; increasing the civil penalty  
 64 amount for Level One repeat violations; providing that  
 65 the unlawful use of any trap is a Level Two violation;  
 66 providing that violations relating to record  
 67 requirements for alligators is a Level Two violation;  
 68 providing that violations relating to the return of  
 69 CITES tags issued in a program other than the  
 70 Statewide Alligator Harvest Program or the Statewide  
 71 Nuisance Alligator Program is a Level Two violation;  
 72 deleting penalty provisions for the sale, purchase,  
 73 harvest, or attempted harvest of any saltwater product  
 74 with intent to sell; providing additional criminal  
 75 penalties for Level Four violations; providing  
 76 additional penalties for the illegal taking of fish  
 77 and wildlife while trespassing; repealing s. 379.403,  
 78 F.S., relating to the illegal killing, taking,

79 possessing, or selling of wildlife or game; amending  
 80 s. 379.409, F.S.; revising penalties for the illegal  
 81 killing, possessing, or capturing of alligators or  
 82 other crocodilia or their eggs; amending s. 379.411,  
 83 F.S.; revising penalties for the intentional killing  
 84 or wounding of any species designated as endangered,  
 85 threatened, or of special concern; amending s.  
 86 379.4115, F.S.; revising penalties for violations  
 87 relating to killing a Florida or wild panther;  
 88 amending ss. 379.3004, 379.337, 589.19, and 810.09,  
 89 F.S.; conforming cross-references; providing an  
 90 effective date.

91

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

93

94 Section 1. Section 379.101, Florida Statutes, is amended  
 95 to read:

96 379.101 Definitions.—In construing this chapter ~~these~~  
 97 ~~statutes~~, where the context does not clearly indicate otherwise,  
 98 the word, phrase, or term:

99 (1) "Authorization" means a number issued by the Fish and  
 100 Wildlife Conservation Commission, or its authorized agent, which  
 101 serves in lieu of a license or permits and affords the privilege  
 102 purchased for a specified period of time.

103 (2) "Beaches" and "shores" shall mean the coastal and  
 104 intracoastal shoreline of this state bordering upon the waters

105 of the Atlantic Ocean, the Gulf of Mexico, the Straits of  
 106 Florida, and any part thereof, and any other bodies of water  
 107 under the jurisdiction of the State of Florida, between the mean  
 108 high-water line and as far seaward as may be necessary to  
 109 effectively carry out the purposes of this act.

110 (3) "Closed season" shall be that portion of the year  
 111 wherein the laws or rules of Florida forbid the taking of  
 112 particular species of game or varieties of fish.

113 (4) "Coastal construction" includes any work or activity  
 114 which is likely to have a material physical effect on existing  
 115 coastal conditions or natural shore processes.

116 (5) "Commercial harvester" means any person, firm, or  
 117 corporation that takes, harvests, or attempts to take or harvest  
 118 saltwater products for sale or with intent to sell; that is  
 119 operating under or is required to operate under a license or  
 120 permit or authorization issued pursuant to this chapter; that is  
 121 using gear that is prohibited for use in the harvest of  
 122 recreational amounts of any saltwater product being taken or  
 123 harvested; or that is harvesting any saltwater product in an  
 124 amount that is at least two times the recreational bag limit for  
 125 the saltwater product being taken or harvested.

126 (6) "Commission" shall mean the Fish and Wildlife  
 127 Conservation Commission.

128 (7) "Common carrier" shall include any person, firm, or  
 129 corporation, who undertakes for hire, as a regular business, to  
 130 transport persons or commodities from place to place offering

131 his or her services to all such as may choose to employ the  
 132 common carrier and pay his or her charges.

133 (8) "Coon oysters" are oysters found growing in bunches  
 134 along the shore between high-water mark and low-water mark.

135 (9) "Department" shall mean the Department of  
 136 Environmental Protection.

137 (10) "Erosion control," "beach preservation," and  
 138 "hurricane protection" shall include any activity, work,  
 139 program, project, or other thing deemed necessary by the  
 140 Department of Environmental Protection to effectively preserve,  
 141 protect, restore, rehabilitate, stabilize, and improve the  
 142 beaches and shores of this state, as defined above.

143 (11) "Exhibit" means to present or display upon request.

144 (12) "Finfish" means any member of the classes Agnatha,  
 145 Chondrichthyes, or Osteichthyes.

146 (13) "Fish and game" means all fresh and saltwater fish,  
 147 shellfish, crustacea, sponges, wild birds, and wild animals.

148 (14) "Fish and wildlife" means any member of the animal  
 149 kingdom, including, but not limited to, any mammal, fish, bird,  
 150 amphibian, reptile, mollusk, crustacean, arthropod, or other  
 151 invertebrate.

152 (15)~~(14)~~ "Fish management area" means a pond, lake, or  
 153 other water within a county, or within several counties,  
 154 designated to improve fishing for public use, and established  
 155 and specifically circumscribed for authorized management by the  
 156 commission and the board of county commissioners of the county

157 | in which such waters lie, under agreement between the commission  
 158 | and an owner with approval by the board of county commissioners  
 159 | or under agreement with the board of county commissioners for  
 160 | use of public waters in the county in which such waters lie.

161 |       (16)~~(15)~~ "Fish pond" means a body of water that does not  
 162 | occur naturally and that has been constructed and is maintained  
 163 | primarily for the purpose of fishing.

164 |       (17)~~(16)~~ "Food fish" shall include mullet, trout, redfish,  
 165 | sheepshead, pompano, mackerel, bluefish, red snapper, grouper,  
 166 | black drum, jack crevalle, and all other fish generally used for  
 167 | human consumption.

168 |       (18)~~(17)~~ "Fresh water," except where otherwise provided by  
 169 | law, means all lakes, rivers, canals, and other waterways of  
 170 | Florida, to such point or points where the fresh and salt waters  
 171 | commingle to such an extent as to become unpalatable and unfit  
 172 | for human consumption because of the saline content, or to such  
 173 | point or points as may be fixed by order of the commission by  
 174 | and with the consent of the board of county commissioners of the  
 175 | county or counties to be affected by such order. The  
 176 | Steinhatchee River shall be considered fresh water from its  
 177 | source to mouth.

178 |       (19)~~(18)~~ "Freshwater fish" means all classes of pisces  
 179 | that are native to fresh water.

180 |       (20)~~(19)~~ "Fur-bearing animals" means muskrat, mink,  
 181 | raccoon, otter, civet cat, skunk, red and gray fox, and opossum.

182 |       (21)~~(20)~~ "Game" means deer, bear, squirrel, rabbits, and,

183 | where designated by commission rules, wild hogs, ducks, geese,  
 184 | rails, coots, gallinules, snipe, woodcock, wild turkeys, grouse,  
 185 | pheasants, quail, and doves.

186 |        (22)~~(21)~~ "Guide" shall include any person engaged in the  
 187 | business of guiding hunters or hunting parties, fishers or  
 188 | fishing parties, for compensation.

189 |        (23)~~(22)~~ "Marine fish" means any saltwater species of  
 190 | finfish of the classes Agnatha, Chondrichthyes, and  
 191 | Osteichthyes, and marine invertebrates in the classes  
 192 | Gastropoda, Bivalvia, and Crustacea, or the phylum  
 193 | Echinodermata, but does not include nonliving shells or  
 194 | echinoderms.

195 |        (24)~~(23)~~ "Molest," in connection with any fishing trap or  
 196 | its buoy or buoy line, means to touch, bother, disturb, or  
 197 | interfere or tamper with, in any manner.

198 |        (25)~~(24)~~ A "natural oyster or clam reef" or "bed" or "bar"  
 199 | shall be considered and defined as an area containing not less  
 200 | than 100 square yards of the bottom where oysters or clams are  
 201 | found in a stratum.

202 |        (26)~~(25)~~ "Nongame" means all species and populations of  
 203 | native wild vertebrates and invertebrates in the state that are  
 204 | not defined as game.

205 |        (27)~~(26)~~ "Nonresident alien" shall mean those individuals  
 206 | from other nations who can provide documentation from the Bureau  
 207 | of Citizenship and Immigration Services evidencing permanent  
 208 | residency status in the United States. For the purposes of this

209 chapter, a "nonresident alien" shall be considered a  
 210 "nonresident."

211 (28)~~(27)~~ "Open season" shall be that portion of the year  
 212 wherein the laws of Florida for the preservation of fish and  
 213 game permit the taking of particular species of game or  
 214 varieties of fish.

215 (29)~~(28)~~ "Private hunting preserve" includes any area set  
 216 aside by a private individual or concern on which artificially  
 217 propagated game or birds are taken.

218 (30)~~(29)~~ "Reef bunch oysters" are oysters found growing on  
 219 the bars or reefs in the open bay and exposed to the air between  
 220 high and low tide.

221 (31)~~(30)~~ "Resident" or "resident of Florida" means:

222 (a) For purposes of part VII, a citizen of the United  
 223 States who has continuously resided in this state for 1 year  
 224 before applying for a hunting, fishing, or other license.  
 225 However, for purposes of ss. 379.363, 379.364, 379.3711,  
 226 379.3712, 379.372, 379.373, 379.374, 379.3751, 379.3752,  
 227 379.3761, and 379.3762, the term means a citizen of the United  
 228 States who has continuously resided in this state for 6 months  
 229 before applying for a hunting, fishing, or other license.

230 (b) For purposes of part VI:

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

234 2. A person who has declared Florida as his or her only

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235 state of residence as evidenced by a valid Florida driver  
 236 license or identification card that has both a Florida address  
 237 and a Florida residency verified by the Department of Highway  
 238 Safety and Motor Vehicles, or, in the absence thereof, one of  
 239 the following:

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

248 (32)~~(31)~~ "Resident alien" means a person who has  
 249 continuously resided in this state for at least 1 year and can  
 250 provide documentation from the Bureau of Citizenship and  
 251 Immigration Services evidencing permanent residency status in  
 252 the United States. For the purposes of this chapter, a "resident  
 253 alien" is considered a "resident."

254 (33)~~(32)~~ "Restricted species" means any species of  
 255 saltwater products which the state by law, or the Fish and  
 256 Wildlife Conservation Commission by rule, has found it necessary  
 257 to so designate. The term includes a species of saltwater  
 258 products designated by the commission as restricted within a  
 259 geographical area or during a particular time period of each  
 260 year. Designation as a restricted species does not confer the

261 authority to sell a species pursuant to s. 379.361 if the law or  
 262 rule prohibits the sale of the species.

263 (34)~~(33)~~ "Salt water," except where otherwise provided by  
 264 law, shall be all of the territorial waters of Florida excluding  
 265 all lakes, rivers, canals, and other waterways of Florida from  
 266 such point or points where the fresh and salt waters commingle  
 267 to such an extent as to become unpalatable because of the saline  
 268 content, or from such point or points as may be fixed for  
 269 conservation purposes by the Department of Environmental  
 270 Protection and the Fish and Wildlife Conservation Commission,  
 271 with the consent and advice of the board of county commissioners  
 272 of the county or counties to be affected.

273 (35)~~(34)~~ "Saltwater fish" means:

274 (a) Any saltwater species of finfish of the classes  
 275 Agnatha, Chondrichthyes, or Osteichthyes and marine  
 276 invertebrates of the classes Gastropoda, Bivalvia, or Crustacea,  
 277 or of the phylum Echinodermata, but does not include nonliving  
 278 shells or echinoderms; and

279 (b) All classes of pisces, shellfish, sponges, and  
 280 crustacea native to salt water.

281 (36)~~(35)~~ "Saltwater license privileges," except where  
 282 otherwise provided by law, means any license, endorsement,  
 283 certificate, or permit issued pursuant to this chapter.

284 (37)~~(36)~~ "Saltwater products" means any species of  
 285 saltwater fish, marine plant, or echinoderm, except shells, and  
 286 salted, cured, canned, or smoked seafood.

287        (38)~~(37)~~ "Shellfish" shall include oysters, clams, and  
 288        whelks.

289        (39)~~(38)~~ "Take" means taking, attempting to take,  
 290        pursuing, hunting, molesting, capturing, or killing any wildlife  
 291        or freshwater or saltwater fish, or their nests or eggs, by any  
 292        means, whether or not such actions result in obtaining  
 293        possession of such wildlife or freshwater or saltwater fish or  
 294        their nests or eggs.

295        (40)~~(39)~~ "Transport" shall include shipping, transporting,  
 296        carrying, importing, exporting, receiving or delivering for  
 297        shipment, transportation or carriage or export.

298        Section 2. Section 379.2223, Florida Statutes, is amended  
 299        to read:

300        379.2223 Control and management of state game lands.—

301        (1) The Fish and Wildlife Conservation Commission is  
 302        authorized to make, adopt, promulgate, amend, repeal, and  
 303        enforce all reasonable rules and regulations necessary for the  
 304        protection, control, operation, management, or development of  
 305        lands or waters owned by, leased by, or otherwise assigned to,  
 306        the commission for fish or wildlife management purposes,  
 307        including, but not being limited to, the right of ingress and  
 308        egress. Before any such rule or regulation is adopted, other  
 309        than one relating to wild animal life, marine life, or  
 310        freshwater aquatic life, the commission shall obtain the consent  
 311        and agreement, in writing, of the owner, in the case of  
 312        privately owned lands or waters, or the owner or primary

313 | custodian, in the case of public lands or waters.

314 |         (2) A person who violates a rule or regulation adopted  
 315 | pursuant to this section is subject to penalties as provided in  
 316 | s. 379.401 ~~Any person violating or otherwise failing to comply~~  
 317 | ~~with any rule or regulation so adopted commits a misdemeanor of~~  
 318 | ~~the second degree, punishable as provided in s. 775.082 or s.~~  
 319 | ~~775.083.~~

320 |         Section 3. Subsection (3) of section 379.2257, Florida  
 321 | Statutes, is amended to read:

322 |         379.2257 Cooperative agreements with United States U.S.  
 323 | Forest Service; penalty.—The Fish and Wildlife Conservation  
 324 | Commission is authorized and empowered:

325 |         (3) In addition to the requirements of chapter 120, notice  
 326 | of the making and, ~~adoption, and promulgation of the above~~ rules  
 327 | and regulations pursuant to this section shall be given by  
 328 | posting the said notices, ~~or~~ copies of the rules and  
 329 | regulations, ~~in~~ the offices of the county judges and in the post  
 330 | offices within the area to be affected and within 10 miles  
 331 | thereof. In addition to the posting of the said notices, ~~as~~  
 332 | ~~aforsaid,~~ copies of the said notices or ~~of said~~ rules and  
 333 | regulations shall ~~also~~ be published in newspapers published at  
 334 | the county seats of Baker, Columbia, Marion, Lake, Putnam, and  
 335 | Liberty Counties, or so many thereof as have newspapers, once  
 336 | between 28 and ~~not more than 35 nor less than 28~~ days and once  
 337 | between 14 and ~~not more than 21 nor less than 14~~ days before  
 338 | ~~prior to~~ the opening of the state hunting season in those said

339 areas. A Any person who violates ~~violating~~ any rules or  
 340 regulations of promulgated by the commission to manage such  
 341 ~~cover these~~ areas under cooperative agreements between the ~~Fish~~  
 342 ~~and Wildlife Conservation~~ commission and the United States  
 343 Forest Service is subject to penalties as provided in s.  
 344 379.401, ~~none of which shall be in conflict with the laws of~~  
 345 ~~Florida, shall be guilty of a misdemeanor of the second degree,~~  
 346 ~~punishable as provided in s. 775.082 or s. 775.083.~~

347 Section 4. Paragraph (a) of subsection (2) of section  
 348 379.2425, Florida Statutes, is amended, and subsection (4) is  
 349 added to that section, to read:

350 379.2425 Spearfishing; definition; limitations; penalty.—

351 (2) (a) Except as otherwise provided by commission rule or  
 352 order, spearfishing is prohibited within the boundaries of the  
 353 John Pennekamp Coral Reef State Park, the waters of Collier  
 354 County, and the area in Monroe County known as Upper Keys, which  
 355 includes all salt waters under the jurisdiction of the ~~Fish and~~  
 356 ~~Wildlife Conservation~~ commission beginning at the county line  
 357 between Miami-Dade and Monroe Counties and running south,  
 358 including all of the keys down to and including Long Key.

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

361 Section 5. Subsection (2) of section 379.29, Florida  
 362 Statutes, is amended to read:

363 379.29 Contaminating fresh waters.—

364 (2) A Any person, firm, or corporation that violates

365 ~~violating any of the provisions of this section commits a Level~~  
 366 ~~Two violation under s. 379.401 shall be guilty of a misdemeanor~~  
 367 ~~of the second degree, punishable as provided in s. 775.082 or s.~~  
 368 ~~775.083 for the first offense, and for the second or subsequent~~  
 369 ~~offense shall be guilty of a misdemeanor of the first degree,~~  
 370 ~~punishable as provided in s. 775.082 or s. 775.083.~~

371 Section 6. Section 379.295, Florida Statutes, is amended  
 372 to read:

373 379.295 Use of explosives and other substances or force  
 374 prohibited.—~~A~~ ~~No~~ person may not throw or place, or cause to be  
 375 thrown or placed, any dynamite, lyddite, gunpowder, cannon  
 376 cracker, acids, filtration discharge, debris from mines, Indian  
 377 berries, sawdust, green walnuts, walnut leaves, creosote, oil,  
 378 or other explosives or deleterious substance or force into the  
 379 fresh waters of this state whereby fish therein are or may be  
 380 injured. Nothing in this section may be construed as preventing  
 381 the release of water slightly discolored by mining operations or  
 382 water escaping from such operations as the result of  
 383 providential causes. A person who violates this section commits  
 384 a Level Two violation under s. 379.401.

385 Section 7. Section 379.33, Florida Statutes, is amended to  
 386 read:

387 379.33 Enforcement of commission rules; ~~penalties for~~  
 388 ~~violation of rule.~~—Rules of the ~~Fish and Wildlife Conservation~~  
 389 commission shall be enforced by any law enforcement officer  
 390 certified pursuant to s. 943.13. ~~Except as provided under s.~~

391 ~~379.401, any person who violates or otherwise fails to comply~~  
 392 ~~with any rule adopted by the commission shall be punished~~  
 393 ~~pursuant to s. 379.407(1).~~

394 Section 8. Section 379.3502, Florida Statutes, is amended  
 395 to read:

396 379.3502 License and permit not transferable.—A person may  
 397 ~~not alter or change in any manner, or~~ loan or transfer to  
 398 another person, unless otherwise provided by commission rule or  
 399 order, any license or permit issued pursuant to ~~the provisions~~  
 400 ~~of this chapter, and a nor may any other~~ person, other than the  
 401 person to whom the license or permit ~~it~~ is issued, may not use a  
 402 borrowed or transferred license or permit the same. A person who  
 403 violates this section commits a Level Two violation under s.  
 404 379.401.

405 Section 9. Section 379.3503, Florida Statutes, is amended  
 406 to read:

407 379.3503 False statement in application for license or  
 408 permit.—A ~~Any~~ person who swears or affirms to any false  
 409 statement in any application for a license or permit provided by  
 410 this chapter commits a Level Two violation under, ~~is guilty of~~  
 411 ~~violating this chapter, and shall be subject to the penalty~~  
 412 ~~provided in s. 379.401,~~ and any false statement contained in any  
 413 application for such license or permit renders the license or  
 414 permit void.

415 Section 10. Section 379.3504, Florida Statutes, is amended  
 416 to read:

417           379.3504 Entering false information on licenses or  
 418 permits.—Whoever knowingly and willfully enters false  
 419 information on, or allows or causes false information to be  
 420 entered on or shown upon, any license or permit issued under ~~the~~  
 421 ~~provisions of~~ this chapter in order to avoid prosecution or ~~to~~  
 422 assist another in avoiding ~~to avoid~~ prosecution, or for any  
 423 other wrongful purpose, commits a Level Two violation under  
 424 ~~shall be punished as provided in s. 379.401.~~

425           Section 11. Paragraphs (d), (e), and (f) of subsection (1)  
 426 of section 379.3511, Florida Statutes, are amended, and  
 427 subsection (4) is added to that section, to read:

428           379.3511 Appointment of subagents for the sale of hunting,  
 429 fishing, and trapping licenses and permits.—

430           (1) Subagents shall serve at the pleasure of the  
 431 commission. The commission may establish, by rule, procedures  
 432 for the selection and appointment of subagents. The following  
 433 are requirements for appointed subagents ~~so appointed~~:

434           ~~(d) Any person who willfully violates any of the~~  
 435 ~~provisions of this section commits a misdemeanor of the second~~  
 436 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

437           (d)(e) A subagent may charge and receive as his or her  
 438 compensation 50 cents for each license or permit sold. This  
 439 charge is in addition to the sum required by law to be collected  
 440 for the sale and issuance of each license or permit. This charge  
 441 does not apply to the shoreline fishing license; however, for  
 442 each shoreline fishing license issued, the subagent may retain

443 50 cents from other license proceeds otherwise due the  
 444 commission.

445 ~~(e)(f)~~ A subagent shall submit payment for and report the  
 446 sale of licenses and permits to the commission as prescribed by  
 447 the commission.

448 (4) A person who willfully violates this section commits a  
 449 Level Two violation under s. 379.401.

450 Section 12. Subsection (18) is added to section 379.354,  
 451 Florida Statutes, to read:

452 379.354 Recreational licenses, permits, and authorization  
 453 numbers; fees established.-

454 (18) VIOLATION OF SECTION.-Unless otherwise provided by  
 455 law, a person who violates this section commits a Level One  
 456 violation under s. 379.401.

457 Section 13. Subsections (3) through (7) of section  
 458 379.357, Florida Statutes, are amended to read:

459 379.357 Fish and Wildlife Conservation Commission license  
 460 program for tarpon; fees; penalties.-

461 (3) A person ~~An individual~~ may not take, kill, or possess  
 462 any fish of the species *Megalops atlanticus*, commonly known as  
 463 tarpon, unless the person ~~individual~~ has purchased a tarpon tag  
 464 and securely attached it through the lower jaw of the fish.

465 ~~(4) Any individual including a taxidermist who possesses a~~  
 466 ~~tarpon which does not have a tag securely attached as required~~  
 467 ~~by this section commits a Level Two violation under s. 379.401.~~  
 468 ~~Provided, however,~~ A taxidermist may remove the tag during the

469 process of mounting a tarpon. The removed tag shall remain with  
 470 the fish during any subsequent storage or shipment. The purchase  
 471 of a tarpon tag does not authorize the purchaser to harvest or  
 472 possess tarpon in violation of commission rules. A person who  
 473 violates this subsection commits a Level Two violation under s.  
 474 379.401.

475 ~~(4)(5) A person Purchase of a tarpon tag shall not accord~~  
 476 ~~the purchaser any right to harvest or possess tarpon in~~  
 477 ~~contravention of rules adopted by the commission. No individual~~  
 478 may not sell, offer for sale, barter, exchange for merchandise,  
 479 transport for sale, either within or without the state, offer to  
 480 purchase, or purchase any species of fish known as tarpon. A  
 481 person who violates this subsection commits a Level Three  
 482 violation under s. 379.401.

483 ~~(5)(6)~~ The commission shall prescribe and provide suitable  
 484 forms and tags necessary to carry out the provisions of this  
 485 section.

486 ~~(6)(7)~~ ~~The provisions of~~ This section does ~~shall~~ not apply  
 487 to anyone who immediately returns a tarpon uninjured to the  
 488 water at the place where the fish was caught.

489 Section 14. Section 379.359, Florida Statutes, is amended  
 490 to read:

491 379.359 License application provision for voluntary  
 492 contribution to Southeastern Guide Dogs, Inc.—The application  
 493 for any license for recreational activities issued under this  
 494 part must include a check-off provision that permits the

495 applicant for licensure to make a voluntary contribution of \$2.  
 496 The ~~Fish and Wildlife Conservation~~ commission may ~~shall~~ retain  
 497 up to 90 cents from each contribution to cover administrative  
 498 costs. The remainder shall be distributed quarterly by the ~~Fish~~  
 499 ~~and Wildlife Conservation~~ commission to Southeastern Guide Dogs,  
 500 Inc., located in Palmetto. Southeastern Guide Dogs, Inc., shall  
 501 use the contributions to breed, raise, and train guide dogs for  
 502 the blind, specifically for the "Paws for Patriots" program,  
 503 including in-residence training for veterans who are provided  
 504 guide dogs by Southeastern Guide Dogs, Inc.

505 Section 15. Subsection (4) is added to section 379.363,  
 506 Florida Statutes, to read:

507 379.363 Freshwater fish dealer's license.—

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

510 Section 16. Subsection (5) is added to section 379.364,  
 511 Florida Statutes, to read:

512 379.364 License required for fur and hide dealers.—

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

515 Section 17. Paragraph (a) of subsection (2) of section  
 516 379.365, Florida Statutes, is amended to read:

517 379.365 Stone crab; regulation.—

518 (2) PENALTIES.—For purposes of this subsection, conviction  
 519 is any disposition other than acquittal or dismissal, regardless  
 520 of whether the violation was adjudicated under any state or

521 federal law.

522 (a) It is unlawful to violate commission rules regulating  
 523 stone crab trap certificates and trap tags. No person may use an  
 524 expired tag or a stone crab trap tag not issued by the  
 525 commission or possess or use a stone crab trap in or on state  
 526 waters or adjacent federal waters without having a trap tag  
 527 required by the commission firmly attached thereto.

528 ~~1.~~ In addition to any other penalties provided in s.  
 529 379.407, for a ~~any~~ commercial harvester who violates this  
 530 paragraph, the following administrative penalties apply:~~-~~

531 1.a. For a first violation, the commission shall assess an  
 532 administrative penalty of up to \$1,000.

533 2.b. For a second violation that occurs within 24 months  
 534 after ~~of~~ any previous such violation, the commission shall  
 535 assess an administrative penalty of up to \$2,000 and the stone  
 536 crab endorsement under which the violation was committed may be  
 537 suspended for 12 calendar months.

538 3.c. For a third violation that occurs within 36 months  
 539 after ~~of~~ any previous two such violations, the commission shall  
 540 assess an administrative penalty of up to \$5,000 and the stone  
 541 crab endorsement under which the violation was committed may be  
 542 suspended for 24 calendar months.

543 4.d. A fourth violation that occurs within 48 months after  
 544 ~~of~~ any three previous such violations, shall result in permanent  
 545 revocation of all of the violator's saltwater fishing  
 546 privileges, including having the commission proceed against the

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547 endorsement holder's saltwater products license in accordance  
 548 with s. 379.407.

549 ~~2. Any other person who violates the provisions of this~~  
 550 ~~paragraph commits a Level Two violation under s. 379.401.~~

551

552 Any commercial harvester assessed an administrative penalty  
 553 under this paragraph shall, within 30 calendar days after  
 554 notification, pay the administrative penalty to the commission,  
 555 or request an administrative hearing under ss. 120.569 and  
 556 120.57. The proceeds of all administrative penalties collected  
 557 under this paragraph shall be deposited in the Marine Resources  
 558 Conservation Trust Fund.

559 Section 18. Subsection (5) is added to section 379.3751,  
 560 Florida Statutes, to read:

561 379.3751 Taking and possession of alligators; trapping  
 562 licenses; fees.—

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

565 Section 19. Subsection (3) is added to section 379.3752,  
 566 Florida Statutes, to read:

567 379.3752 Required tagging of alligators and hides; fees;  
 568 revenues.—The tags provided in this section shall be required in  
 569 addition to any license required under s. 379.3751.

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

572 Section 20. Subsections (1) through (5) of section

573 379.401, Florida Statutes, are amended to read:

574 379.401 Penalties and violations; civil penalties for  
 575 noncriminal infractions; criminal penalties; suspension and  
 576 forfeiture of licenses and permits.-

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

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

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

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

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

594 5. Rules or orders of the commission requiring the return  
 595 of unused CITES tags issued under the Statewide Alligator  
 596 Harvest Program or the Statewide Nuisance Alligator Program.

597 6. Section 379.3003, prohibiting deer hunting unless  
 598 required clothing is worn.

599        ~~7.5.~~ Section 379.354(1)-(15), providing for recreational  
 600 licenses to hunt, fish, and trap.

601        ~~8.6.~~ Section 379.3581, providing hunter safety course  
 602 requirements.

603        ~~7. Section 379.3003, prohibiting deer hunting unless  
 604 required clothing is worn.~~

605        (b) A person who commits a Level One violation commits a  
 606 noncriminal infraction and shall be cited to appear before the  
 607 county court.

608        (c)1. The civil penalty for committing a Level One  
 609 violation involving the license and permit requirements of s.  
 610 379.354 is \$50 plus the cost of the license or permit, unless  
 611 subparagraph 2. applies. Alternatively, except for a person who  
 612 violates s. 379.354(6), (7), (8)(f), or (8)(h), a person who  
 613 violates the license and permit requirements of s. 379.354 and  
 614 is subject to the penalties of this subparagraph may purchase  
 615 the license or permit, provide proof of such license or permit,  
 616 and pay a civil penalty of \$50.

617        2. The civil penalty for committing a Level One violation  
 618 involving the license and permit requirements of s. 379.354 is  
 619 \$250 ~~\$100~~ plus the cost of the license or permit if the person  
 620 cited has previously committed the same Level One violation  
 621 within the preceding 36 months. Alternatively, except for a  
 622 person who violates s. 379.354(6), (7), (8)(f), or (8)(h), a  
 623 person who violates the license and permit requirements of s.  
 624 379.354 and is subject to the penalties of this subparagraph may

625 purchase the license or permit, provide proof of such license or  
 626 permit, and pay a civil penalty of \$250.

627 (d)1. The civil penalty for any other Level One violation  
 628 is \$50 unless subparagraph 2. applies.

629 2. The civil penalty for any other Level One violation is  
 630 \$250 ~~\$100~~ if the person cited has previously committed the same  
 631 Level One violation within the preceding 36 months.

632 (e) A person cited for a Level One violation shall sign  
 633 and accept a citation to appear before the county court. The  
 634 issuing officer may indicate on the citation the time and  
 635 location of the scheduled hearing and shall indicate the  
 636 applicable civil penalty.

637 (f) A person cited for a Level One violation may pay the  
 638 civil penalty, and, if applicable, provide proof of the license  
 639 or permit required under s. 379.354 by mail or in person within  
 640 30 days after receipt of the citation. If the civil penalty is  
 641 paid, the person shall be deemed to have admitted committing the  
 642 Level One violation and to have waived his or her right to a  
 643 hearing before the county court. Such admission may not be used  
 644 as evidence in any other proceedings except to determine the  
 645 appropriate fine for any subsequent violations.

646 (g) A person who refuses to accept a citation, who fails  
 647 to pay the civil penalty for a Level One violation, or who fails  
 648 to appear before a county court as required commits a  
 649 misdemeanor of the second degree, punishable as provided in s.  
 650 775.082 or s. 775.083.

651 (h) A person who elects to appear before the county court  
 652 or who is required to appear before the county court shall be  
 653 deemed to have waived the limitations on civil penalties  
 654 provided under paragraphs (c) and (d). After a hearing, the  
 655 county court shall determine if a Level One violation has been  
 656 committed, and if so, may impose a civil penalty of not less  
 657 than \$50 for a first-time violation, and not more than \$500 for  
 658 subsequent violations. A person found guilty of committing a  
 659 Level One violation may appeal that finding to the circuit  
 660 court. The commission of a violation must be proved beyond a  
 661 reasonable doubt.

662 (i) A person cited for violating the requirements of s.  
 663 379.354 relating to personal possession of a license or permit  
 664 may not be convicted if, before ~~prior to~~ or at the time of a  
 665 county court hearing, the person produces the required license  
 666 or permit for verification by the hearing officer or the court  
 667 clerk. The license or permit must have been valid at the time  
 668 the person was cited. The clerk or hearing officer may assess a  
 669 \$10 fee for costs under this paragraph.

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

672 1. Rules or orders of the commission relating to seasons  
 673 or time periods for the taking of wildlife, freshwater fish, or  
 674 saltwater fish.

675 2. Rules or orders of the commission establishing bag,  
 676 possession, or size limits or restricting methods of taking

677 wildlife, freshwater fish, or saltwater fish.

678 3. Rules or orders of the commission prohibiting access or  
679 otherwise relating to access to wildlife management areas or  
680 other areas managed by the commission.

681 4. Rules or orders of the commission relating to the  
682 feeding of saltwater fish.

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

685 6. Rules or orders of the commission relating to  
686 restricted hunting areas, critical wildlife areas, or bird  
687 sanctuaries.

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

690 8. Rules or orders of the commission relating to the use  
691 of dogs for the taking of wildlife.

692 9. Rules or orders of the commission which are not  
693 otherwise classified.

694 10. Rules or orders of the commission prohibiting the  
695 unlawful use of ~~finfish~~ traps, unless otherwise provided by law.

696 11. Rules or orders of the commission requiring the  
697 maintenance of records relating to alligators.

698 12. Rules or orders of the commission requiring the return  
699 of unused CITES tags issued under an alligator program other  
700 than the Statewide Alligator Harvest Program or the Statewide  
701 Nuisance Alligator Program.

702 13.11. All requirements or prohibitions under ~~in~~ this

- 703 chapter which are not otherwise classified.
- 704 14. Section 379.105, prohibiting the intentional
- 705 harassment of hunters, fishers, or trappers.
- 706 15. Section 379.2421, relating to fishers and equipment.
- 707 16. Section 379.2425, relating to spearfishing.
- 708 17. Section 379.29, prohibiting the contamination of fresh
- 709 waters.
- 710 18. Section 379.295, prohibiting the use of explosives and
- 711 other substances or force in fresh waters.
- 712 19. Section 379.3502, prohibiting the loan or transfer of
- 713 a license or permit and the use of a borrowed or transferred
- 714 license or permit.
- 715 20. Section 379.3503, prohibiting false statements in an
- 716 application for a license or permit.
- 717 21. Section 379.3504, prohibiting entering false
- 718 information on licenses or permits.
- 719 22. Section 379.3511, relating to the sale of hunting,
- 720 fishing, and trapping licenses and permits by subagents.
- 721 23. Section 379.357(3), prohibiting the taking, killing,
- 722 or possession of tarpon without purchasing a tarpon tag.
- 723 24. Section 379.363, relating to freshwater fish dealer
- 724 licenses.
- 725 25. Section 379.364, relating to fur and hide dealer
- 726 licenses.
- 727 26. Section 379.365(2)(b), prohibiting the theft of stone
- 728 crab trap contents or trap gear.

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

731        28. Section 379.3671(2)(c), except s. 379.3671(2)(c)5.,  
 732 prohibiting the theft of spiny lobster trap contents or trap  
 733 gear.

734        29. Section 379.3751, relating to licenses for the taking  
 735 and possession of alligators.

736        30. Section 379.3752, relating to tagging requirements for  
 737 alligators and hides.

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

740        ~~13. Section 379.407(7), prohibiting the sale, purchase,~~  
 741 ~~harvest, or attempted harvest of any saltwater product with~~  
 742 ~~intent to sell.~~

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

745        31.15. Section 379.413, prohibiting the unlawful taking of  
 746 bonefish.

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

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

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

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

757 ~~20. Section 379.105, prohibiting the intentional~~  
 758 ~~harassment of hunters, fishers, or trappers.~~

759 (b)1. A person who commits a Level Two violation but who  
 760 has not been convicted of a Level Two or higher violation within  
 761 the past 3 years commits a misdemeanor of the second degree,  
 762 punishable as provided in s. 775.082 or s. 775.083.

763 2. Unless the stricter penalties in subparagraph 3. or  
 764 subparagraph 4. apply, a person who commits a Level Two  
 765 violation within 3 years after a previous conviction for a Level  
 766 Two or higher violation commits a misdemeanor of the first  
 767 degree, punishable as provided in s. 775.082 or s. 775.083, with  
 768 a minimum mandatory fine of \$250.

769 3. Unless the stricter penalties in subparagraph 4. apply,  
 770 a person who commits a Level Two violation within 5 years after  
 771 two previous convictions for a Level Two or higher violation,  
 772 commits a misdemeanor of the first degree, punishable as  
 773 provided in s. 775.082 or s. 775.083, with a minimum mandatory  
 774 fine of \$500 and a suspension of any recreational license or  
 775 permit issued under s. 379.354 for 1 year. Such suspension shall  
 776 include the suspension of the privilege to obtain such license  
 777 or permit and the suspension of the ability to exercise any  
 778 privilege granted under any exemption in s. 379.353.

779 4. A person who commits a Level Two violation within 10  
 780 years after three previous convictions for a Level Two or higher

781 violation commits a misdemeanor of the first degree, punishable  
 782 as provided in s. 775.082 or s. 775.083, with a minimum  
 783 mandatory fine of \$750 and a suspension of any recreational  
 784 license or permit issued under s. 379.354 for 3 years. Such  
 785 suspension shall include the suspension of the privilege to  
 786 obtain such license or permit and the suspension of the ability  
 787 to exercise any privilege granted under s. 379.353. If the  
 788 recreational license or permit being suspended was an annual  
 789 license or permit, any privileges under ss. 379.353 and 379.354  
 790 may not be acquired for a 3-year period following the date of  
 791 the violation.

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

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

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

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

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

803 3.5. Section 379.28, prohibiting the importation of  
 804 freshwater fish.

805 4. Section 379.3014, prohibiting the illegal sale or  
 806 possession of alligators.

807        ~~5.6.~~ Section 379.354(17), prohibiting the taking of game,  
 808 freshwater fish, or saltwater fish while a required license is  
 809 suspended or revoked.

810        6. Section 379.357(4), prohibiting the sale, transfer, or  
 811 purchase of tarpon.

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

814        7.8. Section 379.404(1), (3), and (6), prohibiting the  
 815 illegal taking and possession of deer and wild turkey.

816        8.9. Section 379.406, prohibiting the possession and  
 817 transportation of commercial quantities of freshwater game fish.

818        9. Section 379.407(2), establishing major violations.

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

821        (b)1. A person who commits a Level Three violation but who  
 822 has not been convicted of a Level Three or higher violation  
 823 within the past 10 years commits a misdemeanor of the first  
 824 degree, punishable as provided in s. 775.082 or s. 775.083.

825        2. A person who commits a Level Three violation within 10  
 826 years after a previous conviction for a Level Three or higher  
 827 violation commits a misdemeanor of the first degree, punishable  
 828 as provided in s. 775.082 or s. 775.083, with a minimum  
 829 mandatory fine of \$750 and a suspension of any recreational  
 830 license or permit issued under s. 379.354 for the remainder of  
 831 the period for which the license or permit was issued up to 3  
 832 years. Such suspension shall include the suspension of the

833 | privilege to obtain such license or permit and the ability to  
 834 | exercise any privilege granted under s. 379.353. If the  
 835 | recreational license or permit being suspended was an annual  
 836 | license or permit, any privileges under ss. 379.353 and 379.354  
 837 | may not be acquired for a 3-year period following the date of  
 838 | the violation.

839 |         3. A person who commits a violation of s. 379.354(17)  
 840 | shall receive a mandatory fine of \$1,000. Any privileges under  
 841 | ss. 379.353 and 379.354 may not be acquired for a 5-year period  
 842 | following the date of the violation.

843 |         (4) (a) LEVEL FOUR VIOLATIONS.—A person commits a Level  
 844 | Four violation if he or she violates any of the following  
 845 | provisions:

846 |             1. Section 379.354(16), prohibiting the making, forging,  
 847 | counterfeiting, or reproduction of a recreational license or the  
 848 | possession of same without authorization from the commission.

849 |             ~~2.1.~~ Section 379.365(2)(c), prohibiting criminal  
 850 | activities relating to the taking of stone crabs.

851 |             ~~3.2.~~ Section 379.366(4)(c), prohibiting criminal  
 852 | activities relating to the taking and harvesting of blue crabs.

853 |             ~~4.3.~~ Section 379.367(4), prohibiting the willful  
 854 | molestation of spiny lobster gear.

855 |             ~~5.4.~~ Section 379.3671(2)(c)5., prohibiting the unlawful  
 856 | reproduction, possession, sale, trade, or barter of spiny  
 857 | lobster trap tags or certificates.

858 |             ~~5. Section 379.354(16), prohibiting the making, forging,~~

859 ~~counterfeiting, or reproduction of a recreational license or~~  
 860 ~~possession of same without authorization from the commission.~~

861 6. Section 379.404(5), prohibiting the sale of illegally-  
 862 taken deer or wild turkey.

863 7. Section 379.405, prohibiting the molestation or theft  
 864 of freshwater fishing gear.

865 8. Section 379.409, prohibiting the unlawful killing,  
 866 injuring, possessing, or capturing of alligators or other  
 867 crocodilia or their eggs.

868 9. Section 379.411, prohibiting the intentional killing or  
 869 wounding of any species designated as endangered, threatened, or  
 870 of special concern.

871 10. Section 379.4115, prohibiting the killing of any  
 872 Florida or wild panther.

873 (b) A person who commits a Level Four violation commits a  
 874 felony of the third degree, punishable as provided in s.  
 875 775.082, ~~or~~ s. 775.083, or s. 775.084.

876 (5) ILLEGAL ACTIVITIES WHILE COMMITTING TRESPASS  
 877 VIOLATIONS OF CHAPTER.—In addition to any other penalty provided  
 878 by law, a person who violates the criminal provisions of this  
 879 chapter or rules or orders of the commission by illegally  
 880 killing, taking, possessing, or selling fish and wildlife as  
 881 defined in s. 379.101 in or out of season while violating  
 882 chapter 810 shall pay a fine of \$500 for each such violation,  
 883 plus court costs and any restitution ordered by the court. All  
 884 finest collected under this subsection shall be remitted by the

885 clerk of the court to the Department of Revenue to be deposited  
 886 into the State Game Trust Fund ~~Except as provided in this~~  
 887 ~~chapter.~~

888 ~~(a) A person who commits a violation of any provision of~~  
 889 ~~this chapter commits, for the first offense, a misdemeanor of~~  
 890 ~~the second degree, punishable as provided in s. 775.082 or s.~~  
 891 ~~775.083.~~

892 ~~(b) A person who is convicted of a second or subsequent~~  
 893 ~~violation of any provision of this chapter commits a misdemeanor~~  
 894 ~~of the first degree, punishable as provided in s. 775.082 or s.~~  
 895 ~~775.083.~~

896 Section 21. Section 379.403, Florida Statutes, is  
 897 repealed.

898 Section 22. Subsection (1) of section 379.409, Florida  
 899 Statutes, is amended, and subsection (4) is added to that  
 900 section, to read:

901 379.409 Illegal killing, possessing, or capturing of  
 902 alligators or other crocodilia or eggs; confiscation of  
 903 equipment.-

904 (1) A person may not ~~It is unlawful to~~ intentionally kill,  
 905 injure, possess, or capture, or attempt to kill, injure,  
 906 possess, or capture, an alligator or other crocodilian, or the  
 907 eggs of an alligator or other crocodilian, unless authorized by  
 908 ~~the rules of the Fish and Wildlife Conservation~~ commission. Any  
 909 ~~person who violates this section is guilty of a felony of the~~  
 910 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~

911 ~~or s. 775.084, in addition to such other punishment as may be~~  
 912 ~~provided by law.~~ Any equipment, including, but not limited to,  
 913 weapons, vehicles, boats, and lines, used by a person in ~~the~~  
 914 ~~commission of~~ a violation of any law, rule, regulation, or order  
 915 relating to alligators or other crocodilia or the eggs of  
 916 alligators or other crocodilia shall, upon conviction of such  
 917 person, be confiscated by the ~~Fish and Wildlife Conservation~~  
 918 commission and disposed of according to rules and regulations of  
 919 the commission. The arresting officer shall promptly make a  
 920 return of the seizure, describing in detail the property seized  
 921 and the facts and circumstances under which it was seized,  
 922 including the names of all persons known to the officer who have  
 923 an interest in the property.

924 (4) A person who violates this section commits a Level  
 925 Four violation under s. 379.401, in addition to such other  
 926 punishment as provided by law.

927 Section 23. Section 379.411, Florida Statutes, is amended  
 928 to read:

929 379.411 Intentional killing or wounding of any species  
 930 designated as endangered, threatened, or of special concern;  
 931 ~~criminal penalties. It is unlawful for~~ A person may not ~~to~~  
 932 intentionally kill or wound any fish or wildlife ~~of a species~~  
 933 designated by the ~~Fish and Wildlife Conservation~~ commission as  
 934 endangered, threatened, or of special concern, or ~~to~~  
 935 intentionally destroy the eggs or nest of any such fish or  
 936 wildlife, unless authorized by ~~except as provided for in the~~

937 | rules of the commission. A ~~Any~~ person who violates this section  
 938 | commits a Level Four violation under s. 379.401 ~~provision with~~  
 939 | ~~regard to an endangered or threatened species is guilty of a~~  
 940 | ~~felony of the third degree, punishable as provided in s.~~  
 941 | ~~775.082, s. 775.083, or s. 775.084.~~

942 | Section 24. Subsection (3) of section 379.4115, Florida  
 943 | Statutes, is amended to read:

944 | 379.4115 Florida or wild panther; killing prohibited;  
 945 | penalty.—

946 | (3) A person who violates this section commits a Level  
 947 | Four violation under s. 379.401 ~~convicted of unlawfully killing~~  
 948 | ~~a Florida panther, or unlawfully killing any member of the~~  
 949 | ~~species of panther occurring in the wild, is guilty of a felony~~  
 950 | ~~of the third degree, punishable as provided in s. 775.082, s.~~  
 951 | ~~775.083, or s. 775.084.~~

952 | Section 25. Paragraph (a) of subsection (2) of section  
 953 | 379.3004, Florida Statutes, is amended to read:

954 | 379.3004 Voluntary Authorized Hunter Identification  
 955 | Program.—

956 | (2) Any person hunting on private land enrolled in the  
 957 | Voluntary Authorized Hunter Identification Program shall have  
 958 | readily available on the land at all times when hunting on the  
 959 | property written authorization from the owner or his or her  
 960 | authorized representative to be on the land for the purpose of  
 961 | hunting. The written authorization shall be presented on demand  
 962 | to any law enforcement officer, the owner, or the authorized

963 agent of the owner.

964 (a) For purposes of this section, the term "hunting" means  
 965 to be engaged in or reasonably equipped to engage in the pursuit  
 966 or taking by any means of any animal described in s. 379.101(20)  
 967 or (21) ~~379.101(19) or (20)~~, and the term "written  
 968 authorization" means a card, letter, or other written instrument  
 969 which shall include, but need not be limited to, the name of the  
 970 person or entity owning the property, the name and signature of  
 971 the person granting the authorization, a description by  
 972 township, range, section, partial section, or other geographical  
 973 description of the land to which the authorization applies, and  
 974 a statement of the time period during which the authorization is  
 975 valid.

976 Section 26. Paragraph (d) of subsection (5) of section  
 977 379.337, Florida Statutes, is amended to read:

978 379.337 Confiscation, seizure, and forfeiture of property  
 979 and products.—

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

982 (d) For purposes of confiscation under this subsection,  
 983 the term "saltwater products" has the meaning set out in s.  
 984 379.101(37) ~~379.101(36)~~, except that the term does not include  
 985 saltwater products harvested under the authority of a  
 986 recreational license unless the amount of such harvested  
 987 products exceeds three times the applicable recreational bag  
 988 limit for trout, snook, or redfish.

989 Section 27. Paragraph (b) of subsection (4) of section  
 990 589.19, Florida Statutes, is amended to read:

991 589.19 Creation of certain state forests; naming of  
 992 certain state forests; Operation Outdoor Freedom Program.—

993 (4)

994 (b) Participation in the Operation Outdoor Freedom Program  
 995 shall be limited to Florida residents, as defined in s.

996 379.101(31)(b) ~~379.101(30)(b)~~, who:

997 1. Are honorably discharged military veterans certified by  
 998 the United States Department of Veterans Affairs or its  
 999 predecessor or by any branch of the United States Armed Forces  
 1000 to be at least 30 percent permanently service-connected  
 1001 disabled;

1002 2. Have been awarded the Military Order of the Purple  
 1003 Heart; or

1004 3. Are active duty servicemembers with a service-connected  
 1005 injury as determined by his or her branch of the United States  
 1006 Armed Forces.

1007

1008 Proof of eligibility under this subsection, as prescribed by the  
 1009 Florida Forest Service, may be required.

1010 Section 28. Paragraph (h) of subsection (2) of section  
 1011 810.09, Florida Statutes, is amended to read:

1012 810.09 Trespass on property other than structure or  
 1013 conveyance.—

1014 (2)

1015 (h) Any person who in taking or attempting to take any  
 1016 animal described in s. 379.101(20) or (21) ~~379.101(19) or (20)~~,  
 1017 or in killing, attempting to kill, or endangering any animal  
 1018 described in s. 585.01(13) knowingly propels or causes to be  
 1019 propelled any potentially lethal projectile over or across  
 1020 private land without authorization commits trespass, a felony of  
 1021 the third degree, punishable as provided in s. 775.082, s.  
 1022 775.083, or s. 775.084. For purposes of this paragraph, the term  
 1023 "potentially lethal projectile" includes any projectile launched  
 1024 from any firearm, bow, crossbow, or similar tensile device. This  
 1025 section does not apply to any governmental agent or employee  
 1026 acting within the scope of his or her official duties.  
 1027 Section 29. This act shall take effect July 1, 2016.