

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

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 852

INTRODUCER: Commerce Committee and Senators Fasano and Gaetz

SUBJECT: Expedited Permits

DATE: April 15, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	<b>Favorable</b>
2.	Wolfgang	Yeatman	CA	<b>Fav/1 amendment</b>
3.	Hrdlicka	Cooper	CM	<b>Fav/CS</b>
4.			GA	
5.				
6.				

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This CS creates the “Mike McHugh Act,” an expedited permitting process for economic development projects. It requires the Department of Environmental Protection (DEP or the department) or the appropriate water management district to adopt programs to expedite the processing of environmental resource permits (ERP) and wetland resource permits (WRP).

Specifically, the CS creates a process for economic development projects that have been identified by a municipality or county as meeting the definition of “target industry business.” It provides for a mandatory pre-application review process and it specifies the time period in which permits must be issued. Further, certain charter counties may review a project and determine whether it meets the definition of “target industry business,” and such projects will be eligible for expedited permitting.

The CS creates section 380.0657 of the Florida Statutes.

## II. Present Situation:

Florida has several programs that regulate most land alterations throughout the state. One such program is the Environmental Resource Permit (ERP) program. The ERP program regulates activities involving the alteration of surface water flows. This includes new activities in uplands that generate storm water runoff from upland construction, as well as dredging and filling in wetlands and other surface waters. ERP applications are processed by either the department or one of the state's water management districts, in accordance with the division of responsibilities specified in operating agreements between the department and the water management districts.

### **Local Program Delegation**

To implement the ERP program, the department adopted rules, ch. 62-344, F.A.C., to guide local governments in the application process and identify the criteria that will be used to approve or deny a delegation request.<sup>1</sup>

Most of the ERP permits are issued by the water management districts. However DEP issues the ERP permits relating to solid waste, hazardous waste, domestic waste, and industrial waste facilities; mining; power plants and transmission lines; docks that are not part of a larger plan of residential or commercial development (largely single family); systems located in whole or in part seaward of the coastal construction control line; seaports; and boat ramps, mooring buoys, and artificial reefs. The DEP also has a relationship with the U.S. Army Corps of Engineers regarding necessary federal dredge and fill permits. The DEP has developed a joint application for the ERP permit to include authorization to use state-owned submerged lands and the federal dredge and fill permit.

Section 373.4141, F.S., provides that a permit under part IV of ch. 373, F.S., including ERP and WRP, will be approved or denied within 90 days of the submission of a complete application. The site, activities, and facilities requiring permits under Florida law vary widely in their characteristics (size, scope, nature of activity, geography, geology, water quality and water flow impacts, etc.). The department receives approximately 25,000-35,000 permit applications per year depending on economic conditions. Those must be reviewed within 30 days of receipt and the majority of them must be acted upon within 90 days of a complete application.

Wetland resource permits and ERP permits may be expedited in at least seven instances. Current expedited permits include:

- Section 373.4141(3), F.S. — requires applications for permits associated with affordable housing and WRPs, to be expedited to a greater degree than other projects.
- Section 373.4592, F.S. — provides various references to expediting the Everglades, Lake Okeechobee, Caloosahatchee, and St. Lucie River permits and activities.
- Section 403.0752, F.S. — creates the Ecosystem Management Agreement program and allows the DEP to offer expedited permitting as an incentive under an ecosystem management agreement. This would include ERPs and WRPs, though the statute does not specify the degree to which a permit must be expedited.
- Various provisions in part II of ch. 403, F.S., relating to electrical power plant and transmission line siting, allow for an ERP portion of the review to be expedited.

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<sup>1</sup> Section 373.441, F.S. Delegation requests may be viewed at: <http://www.dep.state.fl.us/water/wetlands/erp/rules/local.htm> (last visited 3/13/09).

- Section 403.973, F.S. — provides for an expedited permitting program for certain economic development projects (see discussion below).
- Section 337.0261(4), F.S. — provides expedited permitting for aggregate mining.
- Section 380.0655, F.S. — provides for expedited permitting for marina projects with 10 percent or more of the slips open to the public.

### **Target Industries**

Section 288.106, F.S., provides that a target industry business is a corporate headquarters business or any business in one of the target industries meeting the following criteria developed by the Office of Tourism, Trade, and Economic Development (OTTED):

- Future growth – Industry forecasts should indicate a strong expectation of growth in both employment and output.
- Stability – Industry should not be subject to periodic layoffs and should be relatively resistant to recession.
- High Wage – Industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent – Location of business should not be dependent on Florida markets or resources.
- Industrial base diversification and strengthening – Industry should contribute to the expansion or diversification of the state or the area’s economic base.
- Economic benefits – Industry should have strong positive benefits to the state or regional economies.

The target industry list is developed annually by OTTED, in consultation with Enterprise Florida, Inc., and submitted as part of the legislative budget request.<sup>2</sup> Types of industries include:

- Manufacturing facilities such as pharmaceutical or computer and electronic product manufacturing;
- Finance and insurance services such as non-depository credit institutions or insurance carriers;
- Wholesale trades such as business-to-business electronic marketing;
- Information industries such as sound recording, film production and post-production, and publishing industries;
- Professional, scientific, and technical service industries such as computer programming and software, or research and development;
- Administrative and support services such as customer care centers and credit bureaus; and
- Management services.

### **Economic Development Projects**

It is important to note that there is an existing board expedited and streamlined permit review process in s. 403.973, F.S., for certain economic development projects. The statute states that the intent of the Legislature is “to encourage and facilitate the location and expansion of those types of economic development projects which offer job creation and high wages, strengthen and diversify the state’s economy, and have been thoughtfully planned to take into consideration the

<sup>2</sup> See Enterprise Florida, Inc., 2008 Incentives Report, Appendix A.

protection of the state's environment.”<sup>3</sup> Further, the statute specifies the businesses that can take advantage of this streamlined system and the state agencies that participate in the program. The statutes also expound on memorandums of understanding that can be constructed to streamline the application process.

To be eligible, an applicant business must be creating either 100 jobs; 50 jobs if the business is located in an enterprise zone or in a county of a certain population; or on a case-by-case basis at the request of a county or municipal government. The program includes ERPs and WRPs, though it does not specify the degree to which a permit must be expedited.

### III. Effect of Proposed Changes:

**Section 1.** The CS creates s. 380.0657, F.S., to be named the “Mike McHugh Act.”

**Section 2.** This CS provides an expedited permitting process for economic development projects. The DEP and, as appropriate, the water management districts, will adopt programs to expedite the processing of ERP and WRP. These projects must have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S., with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.<sup>4</sup> A municipality or county will provide an identified business with a municipal or county commission resolution identifying the business as a targeted industry business.

A mandatory pre-application review process must be created to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitation, facility design, and steps the applicant can take to ensure expeditious permit application review. Permit applications pursuant to this section must be approved or denied within 45 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

Notwithstanding the above, projects in charter counties, such as Broward County, that have a population of 1.2 million or more and have entered into a delegation agreement with the DEP or the applicable water management district to process ERPs, WRPs, or surface water management permits are eligible for expedited permitting when designated by resolution of the county's governing board. Before making such a designation, the county governing board may consult the county's economic development agency, or similar agency, to:

- Review and recommend whether the project meets the definition of “target industry business;” and
- Identify the tangible benefits and impacts of the project.

However, the decisions shall be made without consideration of the project's geographic location in the county. If a project is designated as a “target industry business,” then the permit

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<sup>3</sup> Section 403.973, F.S.

<sup>4</sup> The Board of Trustees of the Internal Improvement Trust Fund of the state is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state or any of its agencies, or other subdivisions. Section 253.03, F.S.

application shall be approved or denied within 45 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

**Section 3.** The CS would take effect July 1, 2009.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certain businesses, if classified as targeted industry businesses, would be eligible for expedited permits under the provisions of this CS, thereby creating possible savings for the private sector for costs associated with permitting. On the other hand, permit applicants in other areas, whose applications might also provide local economic development benefits, could find the review of their permits marginally delayed to accommodate those that must be statutorily expedited.

C. Government Sector Impact:

To be eligible for incentives, a business must be designated as a target industry business by a county or municipality. The number of businesses designated by a county or municipality to receive incentives under this CS could vary substantially.

Currently, counties and municipalities do not designate target industry businesses, making it difficult to estimate the number of projects that this CS may affect. The CS would require the municipality or county to identify in a resolution that the business is a targeted industry business.

The CS provides that a permit must be issued within 45 days after receipt of the original application. Depending on when DEP receives the completed application there may be significantly increased workload on the DEP or water management districts permitting

staff. Due to the uncertainty of the number of permits affected, the increase in workload and fiscal impact on the DEP cannot be determined at this time. The department is concerned that the reduced 45-day time to process the applications may not provide adequate time for the water management district's governing board to act on projects that are not delegated to staff.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Mike McHugh is the director of Business Development in Hernando County. According to information received from the sponsor, the act is named after Mr. McHugh because it was his original idea to expedite these permits.

The CS provides that the review be done in 45 days after three separate events but is silent on which event the 45 days should be calculated from (for example, the later event or the earlier event). This may be viewed by the courts as arbitrary for the enforcement of the provision.

**VIII. Additional Information:**

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

**CS by the Commerce Committee on April 14, 2009:**

The CS allows projects in charter counties, such as Broward County, that have a population of 1.2 million or more and have entered into a delegation agreement with the DEP or the applicable water management district to process ERPs, WRPs, or surface water management permits to be eligible for expedited permitting when designated by resolution of the county's governing board.

- B. **Amendments:**

None.