HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 991 Environmental Permitting
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Patronis and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 5 N, As CS	Deslatte	Blalock
2) Rulemaking & Regulation Subcommittee	14 Y, 0 N, As CS	Jensen	Rubottom
3) Economic Affairs Committee			
4) Appropriations Committee			
5) State Affairs Committee			

SUMMARY ANALYSIS

The bill creates, amends, and revises numerous provisions relating to development, construction, operating, and building permits; permit application requirements and procedures; programmatic general permits and regional general permits; permits for certain projects Specifically the bill:

- Provides for petitioner burden of ultimate persuation
- Provides that an application for a license must be approved or denied within 60 rather than 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law
- Directs local governments to define the construction and operation of a bio-fuel processing facility as a valid industrial/agricultural/silviculture use permitted within land use categories in local comprehensive plans; directs local governments to establish an expedited review process of comprehensive plan amendments should a biomass facility not be found in original comp plan
- Prohibits a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency
- Allows applicants 90 days to respond to requests for additional information (RAIs)
- Provides that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance
- Create incentive based permitting
- Requiring DEP to establish reasonable zones of mixing for discharges into specified waters
- Excludes the term sludge from a waste treatment works if the sludge is not discarded
- Provides that a permit for a solid waste management facility shall be for 20 years as established by the applicant or a lesser period if requested by the applicant
- Specifies that the renewable fuel standard does not prohibit the sale of unblended fuels for exempted uses
- Establishes in statute and revises certain rules related to the application and interpretation of uniform mitigation assessment methodology
- Prohibits a municipality from requiring an applicant to obtain state and federal permits as a condition of approval for development permits
- Expands the process for submitting RAIs
- Provides for an expanded state programmatic general permit
- Provides for incentive-based environmental permitting and limits grounds for revoking a permit
- Requires certain counties/municipalities within specified population limits to apply for delegation of authority by June 1, 2012, for state environmental resource permitting
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action
- Provides expedited permitting for inland multimodal facilities; clarifies creation of regional action teams for expedited permitting for certain businesses; establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects
- Expands activities that can be funded by Miami-Dade County Lake Belt Mitigation Plan fees
- Revises mitigation requirements for impacts related to transportation projects
- Provides building code exemptions for non residential farm buildings and fences
- Allows certain recently acquired filling stations to have until December 31, 2012 to install secondary containment

The bill has a significant negative fiscal impact. See Fiscal Comments Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 120.569, F.S., creates petitioner burden of ultimate persuasion under s. 373, F.S. and s. 403, F.S.

Current Situation

Chapter 120, F.S., is known as the Florida Administrative Procedures Act. It sets forth the procedures by which executive branch agencies must adopt their respective agency administrative rules that are used to implement and carry out statutory duties and responsibilities. Under s. 120.569, F.S., a party whose substantial interest are being determined by an agency is entitled to an administrative hearing to determine whether an agency has applied an administrative rule erroneously. This section also provides that parties must be notified of any order arising out of an administrative hearing. The notice must indicate the procedure that must be followed to obtain the hearing or judicial review.

Effect of Proposed Changes

The bill amends s. 120.569, F.S., to provide that the notice described above, including any items required by the uniform rules adopted pursuant to s. 120,54(5), F.S.[1], may be provided via a link to a publicly available Internet website. The bill also provides that for any proceeding arising under Chapters 373[2], 378[3], or 403[4], F.S., if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence.

Section 2 creates s. 125.0112 and Section 8 creates s.166.0447, F.S., relating to biofuels and renewable energy.

Current Situation

Section 125.01, F.S., establishes the powers and duties of county governments. These powers and duties include the power to prepare and enforce comprehensive plans for development of the county and to establish, coordinate, and enforce zoning and business regulations as necessary to protect the public. Section 166.021, F.S., establishes the powers of municipalities. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. Municipal purpose is defined as any activity or power which may be exercised by the state or its political subdivisions. Accordingly, municipalities may adopt and enforce land use regulations.

To make biofuel processing and biomass generating facilities economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced. Costs to transport the feedstock can reduce the cost-effectiveness of these facilities. Currently, local land use

[1] Section 120.54(5), F.S., provides that the Administration Commission shall adopt one or more sets of uniform rules of procedure for agencies to comply with. These rules shall establish procedures that comply with the requirements of Chapter 120. The uniform rules shall be the rules of procedure for each agency subject to Chapter 120 unless the Administration Commission grants an exception to the agency.

[2] Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.

[3] Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.

[4] Chapter 403, F.S., establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.

plans may require a property owner to obtain an amendment to the local comprehensive plan, a special exemption, or some similar relief to allow the combination of industrial, agricultural, and/or silvicultural land uses on a site that the owner intends to use for purposes of biofuel processing or biomass generation.

Effect of Proposed Changes

The bill creates ss. 125.0112 and 166.0447, F.S., to provide that construction and operation of a biofuel processing facility or renewable energy generating facility[5], and the cultivation and production of bioenergy, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, are each a valid industrial, agricultural, and silvicultural use permitted within such land use categories of a local comprehensive land use plan. If a local comprehensive plan does not specifically allow for the construction of the above facilities, the local government must establish a review process that may include expediting local review of any necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. The expedited review does not obligate a local government to approve such proposed use. The comprehensive plan shall, if approved by the local government, be eligible for the alternative state review process in s. 163.32465, F.S.[6]

Section 3. amends s. 125.022, F.S. and Section 7 amends s. 166.033, F.S., prohibiting a county or municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation

Some in the development community say there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a state or federal agency, regardless of whether the development proposal required state or federal approval.

Effect of Proposed Changes

The bill prohibits a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency, unless the agency has issued a notice of intent to deny the federal or state permit prior to the county action on the local development permit. The section provides that it is the applicant's responsibility to seek any additional state or federal authority, and that the issuance of a development permit does not create liability on the part of the local government for the applicant's failure to secure proper state or federal approval. Counties may attach this disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits must be obtained prior to development. This provision shall not be construed to prohibit a county from providing information to an applicant regarding what other state or federal permits may be applicable.

[5] The bill references s. 366.91(2)(d), F.S., which defines renewable energy as "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." Biomass is defined in s. 366.91(2)(a), F.S., as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food process, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[6] This statute states that "The Legislature finds and declares that this state's urban areas require a reduced level of state oversight because of their high degree of urbanization and the planning capabilities and resources of many of their local governments. An alternative state review process that is adequate to protect issues of regional or statewide importance should be created for appropriate local governments in these areas. Further, the Legislature finds that development, including urban infill and redevelopment, should be encouraged in these urban areas. The Legislature finds that an alternative process for amending local comprehensive plans in these areas should be established with an objective of streamlining the process and recognizing local responsibility and accountability."

Section 4. Creates s. 161.032, F.S., providing for applicants to timely respond to RAIs

Current Situation

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Changes

The bill provides that if the applicant believes a request for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the permit application. In addition, this section requires the applicant to respond to the RAI within 90 days of receipt. If the applicant needs more than 90 days, he or she is required to inform the DEP and the applicant will receive another 90 day period. Additional time may be granted with a showing of good cause.

Section 5. Amends s. 161.041(5), F.S., allowing incentive based permitting to apply to certain permits

The bill requires the incentive-based permitting program of s. 403.0874, F.S., to apply to all permits issued under this chapter, which governs the protection of beaches and shores.

Section 6. Amends s. 163.3180, F.S., providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities.

Current Situation

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system, and then measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.[7]

Concurrency in Florida is tied to provisions in the state Growth Management Act requiring the adoption of level of service standards, addressing existing service deficiencies, and providing infrastructure to accommodate new growth reflected in the comprehensive plan. Plans and development regulations must achieve and maintain the desired level of service, and the Department of Community Affairs (DCA) reviews comprehensive plans to ensure that the capital improvement element is consistent with other elements of the plan, including the future land use element. Rule 9J-5.0055(3), Florida Administrative Code, establishes the minimum requirements for satisfying concurrency. It also requires local governments to develop and implement a concurrency management system, which typically includes a

[7] Department of Community Affairs website, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm

method for tracking transportation concurrency, an application for transportation concurrency and a review process.[8]

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), Florida Administrative Code, allows local governments to evaluate transportation concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle[9].

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or *"de minimis"* are exempted from concurrency, where certain criteria are met. These alternatives include:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit" (s. 163.3180(15)(a), F.S.). To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

Effect of Proposed Changes

The bill provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first 5 years of the project's development.
- The project, upon completion, would result in the creation of at least 50 full-time jobs.
- The project is compatible with existing and planned adjacent land uses.
- The project is consistent with local and regional economic development goals or plans.

[8] *Id.*
[9] *Id.*

- The project is proximate to regionally significant road and rail transportation facilities.
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 9 . Amends s. 373.026, F.S., expanding the use of Internet-based self-certifications.

Current Situation

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled "Improving Consistency and Predictability in Dock and Marina Permitting"[10]. This report concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Recommendation 3, 4, and 5, of the LCIR report suggested that the Department of Environmental Protection (DEP) expand the use of the Internet for permitting and certification purposes.

E-permitting
The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the Army Core of Engineers (COE) State Programmatic General Permit (SPGP IV). In addition, Florida's five water management districts (WMDs) have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits)[11].

Self certification
According to the LCIR report, interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

The bill authorizes the DEP and WMDs to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the DEP and the WMDs, providing such expansion is economically feasible. In addition to expanding the use of internet based self certification services for appropriate exemptions and general permits, the DEP and WMDs are directed to identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 10. Amends s. 373.413(6), F.S., allowing incentive-based permitting to apply to certain permits

The bill requires the incentive-based permitting program of s. 403.0874, F.S., to apply to all permits issued under this chapter, which governs the issuance of environmental resource permits for the alteration of surface waters.

[10] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf
[11] See http://www.flwaterpermits.com/

Section 11. Amends s. 373.4137, F.S., revising legislative findings relating options for mitigation, excluding projects from mitigations plans.

Current Situation

Enacted in 1996, s. 373.4137, F.S., directs the Florida Department of Transportation (FDOT) to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife, and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The FDOT creates escrow accounts with the DEP or WMDs for their mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., also are able to create similar escrow accounts with the WMD's and DEP for their mitigation requirements.

On a annual basis, FDOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over transfer or under transfer of funds.

Effect of Proposed Changes

In addition to using mitigation banks to offset the adverse effects of transportation projects on wetlands, the bill provides for the use of any other mitigation options that satisfy state and federal requirements, including, but not limited to U.S. general compensatory mitigation requirements.[12] The bill makes it optional for transportation authorities to participate in the program. Finally, the bill provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD will have continuing responsibility for the mitigation project.

Section 12. Amends s. 373.4141, F.S., requiring additional RAIs to be signed off by specified officials of the DEP or WMD.

Current Situation

Under current law governing, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Changes

The bill provides that if there is a second RAI by DEP or a WMD, that the request must be signed by the supervisor of the project manager. If there is a third RAI, the request must be signed by the division director who oversees the program area. If there is a fourth RAI, the request must be signed by the assistant secretary of the DEP or the assistant executive director of the WMD. Any additional RAI must be signed by the secretary of the DEP or the executive director of the WMD. The bill also provides that

[12] 33 U.F.R. s. 332.3(b), http://edocket.access.gpo.gov/cfr_2009/julqtr/pdf/33cfr332.3.pdf

permits must be approved or denied within 60 days of receipt of the original application. Any permit required by a local government that also requires a state permit, must be approved or denied within 60 days after receiving the original application. Any application which is not approved or denied within 60 days is deemed approved.

Section 13. Amends s. 373.4144, F.S., expanding the use of SPGP permits.

Current Situation

Regulation of Florida's wetlands starts with the federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899. This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of some activities that occur in or near the nation's wetlands. The regulatory plan is intended to control discharge from dredge or fill materials into wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

The third permit is a State Programmatic General Permit (SPGP). This permit is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of projects are limited as well. Wetland impacts allowed in general permits usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas, and associated facilities; maintenance dredging of canals and channels; selected regulatory exemptions; and selected ERP noticed general permits. Monroe County and those counties within the jurisdiction of the Northwest Florida WMD are excluded from the SPGP permit.

Under current law, the DEP works with the COE to streamline the issuance of both the state and federal permits for work in wetlands and other surface waters in Florida. The SPGP process allows the DEP or WMD to grant both the ERP and the federal permit, instead of requiring both agencies to process the application.

The general permit process is supposed to eliminate individual review by the COE and allow certain activities to proceed with little or no delay. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization; however, this is not always the case. Since the general permit authorizes the issuance of federal permits, federal resource agency coordination requirements remain. If a permit impacts a listed species, the permit must be forwarded to the COE for coordination with federal resource agencies.

Effect of Proposed Changes

The bill requires the DEP to obtain an expanded SPGP or a series of regional general permits from the COE for activities in waters which are similar in nature, which will only cause minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. In appropriate cases, the need for a separate individual approval from the COE would be eliminated.

The bill directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the COE. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 14. Amends s. 373.41492, F.S., Miami-Dade County Lake Belt Mitigation Plan.

Effect of Proposed Changes

The bill adds various activities that can be funded by the Miami-Dade County Lake Belt Mitigation Plan mitigation fee to include seepage mitigation projects, including hydrological structures as authorized in an Environmental Resource Permit (ERP) issued by the Department of Environmental Protection (DEP) for mining activities within the Miami-Dade County Lake Belt Area. Defines proceeds of the fee to mean all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees; and providing that the amount deducted for administrative costs may not exceed 3 percent of the total revenues collected and may equal only those costs attributable to the fees. The bill provides that beginning January 1, 2012, and ending either December 31, 2017 or upon issuance of Water quality Certification for Phase II mining activities, the water treatment plant upgrade fee, less administrative costs, must be transferred to SFWMD and deposited into the Lake Belt Mitigation Trust Fund. Also, beginning January 1, 2018 this same fee is to be transferred to Miami-Dade County for activities authorized under this section. Provides that the proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund must be used to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an ERP issued by DEP for mining activities within the Miami-Dade County Lake Belt Area. Provides that the proceeds of the water treatment plant upgrade fee that are transferred to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County.

Section 15. Amends s. 373.441, F.S., directing DEP and WMDs to regulate activities pursuant to delegation agreements.

Current Situation

Florida Statutes and Florida Administrative Code (F.A.C.) sections authorize and provide procedures and considerations for the DEP to delegate the Environmental Resource Permit (ERP) program to local governments[13]. Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs the rules shall "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and

[13] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.

- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained[14].

According to the statute, delegation includes the applicability of Chapter 120, F. S., (the Administrative Procedures Act) to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

Effect of Proposed Changes

The bill provides that any county having a population of 75,000 or more, or a municipality that has local pollution control programs serving populations of more than 50,000, must apply for delegation of authority on or before Jun 1, 2012. Those local governments that fail to apply for delegation of authority may not require permits that are similar to the requirements needed to obtain an ERP.

The bill provides that upon delegation to a qualified local government, the DEP and WMD shall not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

Section 16. Amends s. 376.30715, F.S., providing that the transaction of title for a petroleum contaminated site to a child or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.

Current Situation

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

Effect of Proposed Changes

The bill amends s. 376.30715, F.S., to provide that the transfer of title for a petroleum contaminated site to a child or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The bill also provides that applicants previously denied coverage may reapply.

Section 17. Amends s. 380.06, F.S., exempting proposed mines or proposed additions or expansions of existing mines from provisions governing developments of regional impacts.

Current Situation

Developments of Regional Impacts (DRIs) are developments which, because of their character, magnitude, or location, are presumed to have a substantial effect upon the health, safety, or welfare of citizens of more than one county. The variety of projects that can fall under DRI status include large-scale planned developments, airport expansions, office and industrial parks, mining operations, and sports and entertainment facilities. Pursuant to s. 380.06, F.S., the state land planning agency must recommend to the Administration Commission specific statewide guidelines and standards for adoption.

[14] Chapter 62-344 of the Florida Administrative Code, provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

These rules will be used in determining whether particular developments shall undergo development-of-regional-impact review. In adopting these guidelines and standards, the Administration Commission must consider and be guided by:

- The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise
- The amount of pedestrian or vehicular traffic likely to be generated
- The number of persons likely to be residents, employees, or otherwise present
- The size of the site to be occupied
- The likelihood that additional or subsidiary development will be generated
- The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments
- The unique qualities of particular areas of the state.

Effect of Proposed Changes

The bill exempts any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from review as a DRI. Any proposed changes to any previously approved solid mineral mine DRI's development orders will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.[15] Lastly, any previously approved solid mineral mine DRI orders will continue to be

Section 18. Amends s. 380.0657, F.S., authorizing certain inland multimodal facilities for expedited permitting.

Current Situation

Currently, DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource and environmental resource permits when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(1)(o), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Stability – The industry may not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry may be more resistant to recession. Special consideration should be given to Florida's growing access to international markets or to replacing imports. Demand for products of this industry is not necessarily subject to decline during an economic downturn.
- High wage – The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent – The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis. Special consideration should be given to the development of strong industrial clusters that include defense and homeland security businesses.
- Industrial base diversification and strengthening – The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of

[15] Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
- Economic benefits – The industry should have strong positive impacts on or benefits to the state and regional economies.

Effect of Proposed Changes

The bill amends current law to include any inland multimodal facility, receiving or sending cargo to or from Florida ports as a target industry that would receive expedited permitting.

Section 19. Amends s. 403.061, F.S., requiring DEP to establish reasonable zones of mixing for discharges into specified waters and providing certain discharges do not create liability for site cleanup.

Current Situation

Section 403.061, F.S., authorizes the DEP with the power and the duty to control and prohibit pollution of air and water. DEP is required to adopt rules to establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and standards for the abatement of excessive and unnecessary noise. The DEP is also authorized to establish reasonable zones of mixing for discharges into waters.

Section 20. Amends s. 403.087, F.S., revising conditions under which the DEP is authorized to revoke permits.

Current Situation

Current law states that the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation
- The permit holder has refused lawful inspection under s. 403.091, F.S.[16]

Effect of Proposed Changes

The bill revises s. 403.087(7), F.S., to require that DEP prove that a permit holder knowingly violated this section in order to revoke any permit. The bill limits application of the submission of false information criterion to the application for the specific permit under review for revocation; limits the violations criterion to violations of law or department orders, rules or conditions that directly relate to such permit and where the applicant has refused to correct or cure such violations when requested to do so; limits the submission of reports and information criterion to reports and other information directly related to the permit and or review and where the applicant has refused to correct or cure such violations when requested to do so; and limits the refusing inspection criterion to the facility authorized by such permit.

Section 21. Creates s. 403.0874, F.S., creating incentive-based permitting

Current Situation-Florida

[16] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

The State of Florida regulates the impacts of certain activities on the environment primarily through permitting programs in three chapters of the Florida Statutes: ch. 403, ch. 373, and ch. 161, F.S. The majority of permitting programs within these chapters are administered by DEP and the WMDs.[17] Although certain DEP rules do require consideration of a permit applicant's prior violations,[18] the DEP does not currently have a comprehensive program to reward those in the regulated community who consistently meet or better their permit requirements.[19]

Chapter 403, F.S.

Chapter 403, the Florida Air and Water Pollution Control Act, establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.[20] The DEP is responsible for issuing permits for stationary installations that are reasonably expected to be a source of air and water pollution.[21] The DEP has rulemaking authority to adopt, amend, or repeal rules related to the issuance, denial, modification or revocation of permits issued for this regulation.[22]

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These requirements may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility.[23] In addition to listed permit requirements, under Rule 62-4.070(5), F.A.C., the DEP must consider the permit applicant's environmental violations at any location in the state when determining whether the applicant has provided the necessary "reasonable assurance" that it will be able to meet the permit requirements. Within certain individual program areas of the DEP, additional rules or statutes narrow the standards for issuing or denying permits.[24]

In addition, the DEP currently has statutory authority to adopt alternative permitting programs on a pilot project basis. Section 403.0611, F.S., directs the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution.

Chapter 373, F.S.

Under the Florida Water Resources Act of 1972, ch. 373, F.S., water constitutes a public resource benefiting the entire state and thus should be managed on a state and regional basis.[25] Generally, environmental permits issued under ch. 373, F.S., are issued by the governing board of water management districts or the DEP. Prior to construction or alteration of any stormwater management system, dam, impoundment, reservoir appurtenant work,[26] or vessel dry storage facility,[27] the DEP or

[17] *See, e.g.*, s. 403.0885, F.S. (the DEP's permitting authority for a state-operated National Pollutant Discharge Elimination System program under federal delegation); s. 403.0881, F.S. (the DEP's permitting authority for wastewater treatment facilities, generally conducted by the DEP's six District Offices and delegated local programs (http://www.dep.state.fl.us/water/wastewater/permitting.htm)); s. 373.219, F.S. (the DEP and water management district's permitting authority for consumptive use of water, which the water management districts issue) s. 161.041 (DEP's permitting authority for certain coastal construction and reconstruction); s. 403.086, F.S. (the DEP's permitting authority for certain stationary air and water pollution sources); *see also* http://flwaterpermits.com/home/floridawater_permits.html (identifying certain permitting authority shared by the DEP and water management districts).

[18] *See* discussion of Rule 62-4.070(5), F.A.C., under section on Chapter 403.

[19] However, limited financial incentives do exist in the DEP's permitting process for wastewater treatment facilities not regulated under the National Pollutant Discharge Elimination System. If certain conditions based on compliance and water quality standards are met, renewal of operation permits must be issued for term of up to 10 years for the same cost and under the same conditions as a 5-year permit. s. 403.087(3), F.S.

[20] s. 403.021, F.S.

[21] s. 403.087, F.S.

[22] s. 403.087(1), F.S.

[23] Rule 62-4.070(1), F.A.C.

[24] *See, e.g.*, Rule 62-620.320, F.A.C. (for wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination); s. 403.707(8), F.S. (for solid waste facilities, the DEP may deny a permit application for repeated violations of statutes, rules, orders, or permit terms or conditions and is deemed to be irresponsible under the DEP's rules).

[25] s. 373.016(4)(a), F.S.

[26] s. 373.413, F.S.

governing board of a water management district may require a permit authorizing the construction or alteration activity. Permits may also be required for authorization of mitigation banks.[28]

For environmental resource permitting, which regulates activities involving the alteration of surface water flows, the DEP has specific conditions for issuance of permits and considers rule and permit violations.[29] However, these programmatic rules and statutes do not provide guidance as to what type of violations should be considered or how far back into an applicant's compliance history the DEP should review.

Chapter 161, F.S.

The Legislature adopted the Beach and Shore Preservation Act, parts I and II of ch. 161, F.S., in order to protect, preserve, and manage Florida's valuable sandy beaches and adjacent and coastal system. Any coastal construction, reconstruction of existing structures, or physical activity undertaken specifically for shore protection purposes upon sovereignty lands of Florida requires a coastal construction permit issued by DEP.[30]

Current Situation – Federal

In 2000, the federal Environmental Protection Agency established the National Environmental Performance Track (Performance Track) program. The goal of the program was to encourage performance above and beyond legal requirements that results in measurable benefits to the environment.[31] Admittance to the program required a record of sustained compliance with environmental laws, an independently reviewed environmental management system, a commitment to continuous improvement with four measurable goals, a commitment to public outreach, and annual reporting.[32] Benefits of Performance Track membership include recognition, networking, and regulatory incentives. However, the Performance Track program was terminated in 2009, at which point more than half of the states had developed similar programs.[33]

Effect of Proposed Changes

The bill creates s. 403.0874, F.S., the Florida Incentive-based Permitting Act. The bill establishes the Legislature's finding that the DEP should consider a permit applicant's site-specific and program-specific history of compliance when considering whether to issue, renew, amend, or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This bill applies to all persons and regulated activities subject to permitting requirements of ch. 403, ch. 161, and ch. 373, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However it does not apply to environmental permitting or authorization laws that regulate for the purpose of zoning, growth management, or land use. In addition, the bill does not apply where its implementation would jeopardize the state's delegation or assumption of federal law or permit programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under ch. 161, ch. 373, or ch. 403, F.S.

The DEP is directed to consider a permit applicant's compliance history for 5 years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

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[27] s. 373.4132, F.S.
[28] s. 373.4136, F.S.
[29] Rule 40B-400.104(2), (3), F.A.C.
[30] s. 161.041, F.S.
[31] EPA's Performance Track website, http://www.epa.gov/performancetrack/ (last visited Mar. 10, 2011).
[32] *Id.*
[33] *Id.*

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least 4 of the 5 years prior, or have conducted the same regulated activity at a different site within the state for at least 4 of the last 5 years prior
- Have not been subject to a formal administrative or civil judgment or criminal conviction in the last 5 years where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant must request applicable compliance incentives at the time of submitting a permit application or renewal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 15 days after the application is filed and final agency action shall be taken no later than 45 days after the application is deemed complete
- Priority review of permit applications
- Reduced number of routine compliance inspections
- No more than two requests for additional information under s. 120.60, F.S.
- Longer permit period durations

Furthermore, the DEP is directed to identify and make available additional incentives to applicants who demonstrate during a 10-year compliance history the implementation of activities or practices that resulted in:

- Reductions in actual or permitted discharges or emissions
- Reductions in the impacts of regulated activities on public lands or natural resources
- Implementation of voluntary environmental performance programs, such as environmental management systems
- The applicant having not been subject in the 10 years before the renewal application to a formal administrative or civil judgment or criminal conviction where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant meeting any one of the first three criteria above and the fourth criterion during the 10-year compliance history is entitled to:

- Automatic renewals if there are no substantial changes in permitted activities or circumstances
- Reduced or waived application fees

The DEP must implement rulemaking within 6 months after the effective date of this act. The DEP may identify additional incentives and programs consistent with the Legislature's purpose noted in this bill. All rules must produce certain compliance incentives established in this bill and are binding on the water management districts and any local government administering a regulatory program to which this bill applies

Section 22. Amends s. 403.703, F.S., excluding the term sludge from a waste treatment works if the sludge is not discarded.

Current Situation

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material.

Effect of Proposed Changes

The bill amends current statute to exclude sludge from a waste treatment works if the sludge is not discarded from the definition of solid waste.

Section 23. Amends s. 403.707, F.S., providing that a permit for a solid waste management facility shall be for the projected life of the facility as established by the applicant or a lesser period if requested by the applicant.

Current Situation

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by DEP. Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under this chapter or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

Effect of Proposed Changes

The bill deletes the public nuisance requirements in s. 403.707(2), F.S., described above.

The bill defines 'addressed by a groundwater monitoring plan' to mean the plan is sufficient to monitor groundwater or surface water for contaminants of concerns associated with the solid waste being disposed. The plan can be demonstrated to be sufficient regardless of whether the groundwater monitoring plan or disposal is referenced in a DEP permit or other authorization.

The bill provides that a person can dispose of solid wastes on their property if the disposal takes place within an area which is over a zone of discharge.

The bill provides that the disposal of solid waste pursuant to s. 403.707, F.S., does not create liability under this chapter or chapter 376, F.S.[34], for site cleanup and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

Lastly, any permit issued to a solid waste management facility will be for 20 years and this applies to all solid waste management facilities that obtain an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 24. Amends s. 403.814, F.S., providing for the issuance of general permits for certain surface water management systems without the action of the DEP or a WMD.

[34] Chapter 376, F.S., regulates pollutant discharge prevention and removal.

Current Situation

Currently, DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP[35]. Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes
- Installation and repair of riprap at the base of existing seawalls
- Installation of culverts associated with stormwater discharge facilities
- Construction and modification of certain utility and public roadway construction activities

Effect of Proposed Changes

The bill amends current law to allow for the construction, alteration, and maintenance of surface water management systems to be eligible for general permits. Construction of a system may proceed without DEP or WMD action if:

- The total project area is less than 10 acres;
- The total project area involves less than 2 acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and
- The project is not part of a larger common plan of development or sale.

Section 25. Amends s. 403.973, F.S., providing for the creation of regional action teams for expedited permitting for businesses that will house one or more other businesses or operations that would collectively create at least 50 jobs and clarifies the process and use of Memorandum of Agreement (MOA).

Current Situation

Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., OTTED or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 100 jobs; or
- Create 50 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

[35] Section 403.814(1), F.S.

Regional Permit Action Teams are established by a Memoranda of Agreement (MOA) with the secretary of DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the Department of Community Affairs, Transportation, Agriculture & Consumer Services; the Florida Fish & Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments;
- Waiver of interstate highway concurrency with approved mitigation;

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction;
- A project, the primary purpose of which is to:
- Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,

    - Produce electrical power (unless the production of electricity is incidental and not the project's primary function),
    - Extract natural resources, produce oil, or construct, maintain, or
    - Operate an oil, petroleum, natural gas, or sewage pipeline

Effect of Proposed Changes

The bill revises the structure and process for expedited permitting of targeted industries. The bill substitutes the Secretary of DEP, or his or her designee, for OTTED; adds commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs to activities qualifying for expedited review; requires regional teams to be established through the execution of a project-specific MOA; provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 26. Amends s. 526.203, F.S., specifying that the renewable fuel standard does not prohibit the sale of unblended fuels for exempted uses.

Current Situation

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch[36].

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent. There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The bill provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The bill provided that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; or

[36] U.S. Department of Energy's website: http://www.eere.energy.gov/afdc/incentives_laws_security.html.

- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

Effect of Proposed Changes

The bill provides that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted above.

Section 27. Amends s. 604.50, F.S., expanding exemptions for nonresidential farm buildings and fences.

The bill expands exemption for nonresidential farm buildings from the Florida Building Code or any county or municipal code or fee, except federal floodplain management regulations. Expressly includes farm fencing and clarifies the definition of "nonresidential farm building".

Section 28. Installation of fuel tank upgrades to secondary containment systems.

Allows certain recently acquired filling stations to have until December 31, 2012 to install secondary containment.

Section 29. Amends s. 373.414, F.S., revising rules of the DEP relating to the UMAM for activities in surface waters and wetlands.

Current Situation

Section 373.414(18), F.S., directed the DEP and WMDs, in cooperation with local governments and the relevant federal agencies, to develop a state-wide method to determine the amount of mitigation required for regulatory permits. The Uniform Mitigation Assessment Method (UMAM) rule (Chapter 62-345, F.A.C.) went into effect on February 2, 2004. Although only the Department was required to adopt the method by rule, it is now the sole means for all state entities (DEP, Water Management Districts, local governments and other governmental entities) to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to determine mitigation bank credits awarded and debited.

The rule is not intended to affect the many other aspects of wetland regulation that remain intact in current rules, such as ascertaining that the direct and secondary impacts have been reduced or eliminated, that the project does not result in unacceptable cumulative impacts, the appropriateness of the mitigation, and so forth.

Effect of Proposed Changes

The bill puts the entire UMAM rule into statute and provides the following changes to the rule:

- Rule 62-345.100 (intent and scope): the bill amends the rule to make DEP responsible for ensuring statewide coordination and consistency in the application of this rule but providing training and guidance to other relevant agencies and WMDs. Every two years DEP must coordinate with WMDS to verify consistent application of the methodology. Any interpretation or application of this rule by any agency or local government that differs from the DEP's interpretation or application of this rule will be incorrect and invalid. The only acceptable method will be that of the DEP's.
- Rule 62-345.200 (definitions): The bill redefines the term "without preservation assessment" to mean a reasonably anticipated use of the assessment area, and the temporary or permanent effects of those uses on the assessment area, considering the protection provided by existing easements, regulations and land use restrictions. The bill also defines "reasonably anticipated uses" to include those activities that have been previously implemented within the assessment area or adjacent to the assessment area, or are considered to be common uses in the region

without the need for additional authorizations or zoning, land use code, or comprehensive plan changes.

- Rule 62.345.500 (assessment method overview and guidance): The bill requires additional information from applicants to provide to the relevant agency.
- Rule 62-345.400 (qualitative characterization –Part I): The bill clarifies what water bodies should be looked at for wetlands on sites that did not exist prior to creation or natural water-bodies for a frame of reference.
- Rule 62.345.500 (assessment and scoring part II): The bill specifies preservation as the only form of mitigation. It further describes in rule altered and artificial wetlands and other surface waters, how preservation mitigation is assessed, how upland and preservation mitigation areas are assessed. It also allows currently permitted mitigation banks to request a UMAM reassessment based on these changes in this section if an application with this request is submitted no later than September 30, 2011.

Section 30. Provides an effective date.

This act shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.569, F.S., providing for a notice of rights via internet; providing that a nonapplicant who challenges an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence.

Section 2. Creates s. 125.0112, F.S., providing that the construction and operation of biofuel processing facilities or renewable energy generation facilities is a valid and permitted land use; requiring expedited review of such facilities; providing that such facilities are eligible for the alternative state review process.

Section 3. Amends s. 125.022, F.S., prohibiting a county from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency; authorizing a county to attach certain disclaimers to the issuance of a development permit.

Section 4. Creates s. 161.032, F.S., providing for applicants to timely respond to RAIs for beach applications.

Section 5. Amends s. 161.041, F.S., specifying that authorized expedited permitting applies to provisions governing beaches and shores and surface water management and storage.

Section 6. Amends s. 163.3180, F.S., providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities.

Section 7. Amends s. 166.033, F.S., prohibiting a municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency; authorizing a county to attach certain disclaimers to the issuance of a development permit.

Section 8. Creates s. 166.0447, F.S., providing that the construction and operation of biofuel processing facilities or renewable energy generation facilities is a valid and permitted land use within the unincorporated area of a municipality; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount.

Section 9. Amends s. 373.026, F.S., expanding the use of internet-based self-certification services.

Section 10. Amends s. 373.413, F.S., specifying that authorized expedited permitting applies to provisions governing beaches and shores and surface water management and storage.

Section 11. Amends s. 373.4137, F.S., revising legislative findings related to options for mitigation for transportation projects; revises certain requirements for determining the habitat impacts of transportation projects; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan.

Section 12. Amends s. 373.4141, F.S., providing for applicants to timely respond to RAIs for ERP applications.

Section 13. Amends s. 373.4144, F.S., providing legislative intent in the coordination of regulatory duties among state and federal agencies; requiring that the DEP report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities.

Section 14. Amends s. 373.41492, F.S., adding various activities that can be funded by the Miami-Dade County Lake Belt Mitigation Plan mitigation fee.

Section 15. Amends s. 373.441, F.S., directing the DEP and water management districts to regulate activities pursuant to delegation agreements.

Section 16. Amends s. 376.30715, F.S., providing that the transfer of title for a petroleum contaminated site to a child or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.

Section 17. Amends s. 380.06, F.S., exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from provisions governing developments of regional impact; providing certain exceptions.

Section 18. Amends s. 380.0657, F.S., authorizing expedited permitting for certain inland multimodal facilities.

Section 19. Amends s. 403.061, F.S., requiring DEP to establish reasonable zones of mixing for discharges into specified waters and providing certain discharges do not create liability for site cleanup.

Section 20. Amends s. 403.087, F.S., revising conditions under which the DEP is authorized to revoke a permit.

Section 21. Creates s. 403.0874, F.S., providing legislative intent in the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered in issuing or renewing a permit; providing criteria to be used by DEP; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authoring the DEP to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring DEP to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties.

Section 22. Amends s. 403.703, F.S., excluding the term sludge from a waste treatment works if the sludge is not discarded.

Section 23. Amends s. 403.707, F.S., providing that a permit for a solid waste management facility shall be for 20 years as established by the applicant or a lesser period if requested by the applicant.

Section 24. Amends s. 403.814, F.S., providing for issuance of general permits for certain surface water management systems without action by the DEP or water management districts; specifies conditions for those permits.

Section 25. Amends s. 403.973, F.S., authorizing expedited permitting for certain commercial or industrial development projects; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review of the expedited permitting by the Secretary of the DEP instead of OTTED.

Section 26. Amends s. 526.203, F.S., specifying that the renewable fuel standard does not prohibit the sale of unblended fuels for exempted uses.

Section 27. Amends s. 604.50, F.S., expanding exemptions for non residential farm buildings and fences.

Section 28. Allows certain recently acquired filling stations to have until December 21, 2012 to install secondary containment.

Section 29. Revises rules of the DEP relating to the UMAM for activities in surface waters and wetlands; directing the DEP to make additional changes to conform; providing for reassessment of mitigation banks under certain conditions.

Section 30. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   Non-recurring Effects: DEP provided the following:

   Given that the intent of this bill is not to change individual scoring under UMAM, there should be no fiscal impact. However, if an entity holding a mitigation bank permit applies to have the mitigation bank reassessed there could be fiscal impacts to the state associated with the reevaluations.

   Recurring Effects: DEP provided the following:

   - Allowing notice of procedure to obtain a review of an agency order to be accomplished via a web link will save mailing and paper costs.
   - Changes in the permitting time clock from 90 days to 60 days, and from 90 days to 45 days under the incentive based permitting program, will likely require additional staffing to review applications within the expedited timeframes and to avoid default permits.
   - Expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. The cost of each such cleanup averages $380,000.
   - Solid waste permit fees would be reduced to one-quarter of current numbers. Over the past five years, DEP has taken in an annual average of $320,000 in permit fees for solid waste facilities, almost all of which is for 5-year permits. If these are replaced with 20-year permits, it is anticipated that permit fee revenues would fall to $80,000 - $100,000 per year. Some of this cost would be offset by reductions in the amount of time dedicated to permit review. It is also possible that significant cost savings could be realized if site cleanup and assessment staff is no longer needed.
   - Changes to the DOT mitigation program may leave the WMDs with insufficient funds to successfully provide mitigation for transportation projects.

- Agency mitigation costs may increase as a result of the requirement in s. 25 that privately owned mitigation bonds must be used where available.
- The state will likely incur additional costs to clean up contamination, particularly exceedances of the "free from" criteria, if parties discharging contaminants onto property overlying a zone of discharge are released from all liability associated with that discharge.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: DEP provided the following:

   - Local governments that have their environmental regulatory programs preempted will realize a cost savings from program elimination.
   - When a local government is a permit applicant, increased availability of Internet based self certifications and general permits should reduce permitting costs.
   - When a local government is a permit applicant, shortened permitting time clocks might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for timeclock waivers.
   - Local governments that operate solid waste management facilities would have permit fees reduced to one-quarter of current costs. Local governments that operate landfills that have caused environmental impacts would be relieved of the costs of addressing these impacts.

2. Expenditures: DEP provided the following:

   Local governments providing drinking water to their citizens will likely incur additional costs to remove contaminants from drinking water sources if those responsible for discharging the contaminants are not liable for those costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: DEP provided the following:

Direct Private Sector Costs:

Increased litigation costs for third party petitioners who will have the burden of proof in a license or permit challenge.

Direct Private Sector Benefits:

- Increased availability of Internet based self certifications and general permits should reduce permitting costs.
- Shortened permitting time clocks might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for timeclock waivers.
- Decreased litigation costs for private sector applicants who no longer have the burden of proof in a third party permit challenge.
- Applicant obtaining longer permits may see reduced permitting fees and costs.
- Operators of solid waste management facilities would pay one-quarter of current permit fees. Operators of facilities that have caused environmental impacts would be relieved of the costs of addressing these impacts. Operators of on-site disposal facilities might see cost savings if such disposal is exempted without the need of addressing impacts through any permit or site certification. Generators of sludge might see cost savings by not having to address potential environmental impacts from land application of this sludge.
- Increased profits for private mitigation bank owners.

D. FISCAL COMMENTS:

The following are comments from the DEP analysis:

Section 11. Allowing DOT the unilateral option of not including projects in the mitigation program is problematic for the workability of the mitigation program as a whole. DOT would like to not include projects whose mitigation cost is less than $75,000 per acre in order to avoid paying that amount to the WMD mitigation program. However, they will continue to include those projects with more expensive mitigation. Given that the $75,000 per acre cost is an average cost of the less and more expensive types of mitigation, the WMDs will be left with inadequate funding to accomplish the mitigation. In addition, the concept of the program was to allow for regional mitigation, where multiple transportation projects could be mitigated for in more valuable larger mitigation sites. Removing projects on a case by case basis will undermine the ability to provide more environmentally beneficial mitigation. Requiring the use of private mitigation banks, where available, is detrimental to the program because it does not allow selection of the most cost-effective mitigation option.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

According to DEP's analysis, Sections 19 and 23, which grant zones of discharge for most discharges and exempt the discharger from liability for any subsequent clean-up, either on or off-site, may conflict with Article 2, Section 7 of the Florida Constitution, which states that "adequate protection shall be made by law for the abatement of air and water pollution…and for the conservation and protection of natural resources."

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to implement rulemaking for incentive-based permitting within 6 months after the effective date of this bill. The rulemaking may identify additional incentives and programs not expressly enumerated under s. 403.0874, F.S., so long as each incentive is consistent with the Legislature's purpose and intent of this section. The DEP's rules adopted are also binding on the WMDs and any local government that has been delegated or assumed a regulatory program to which this section applies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Rulemaking & Regulation Subcommittee amended HB 991 as a Committee Substitute (CS). The CS added the following:

- Prohibiting a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency.
- Restricting the Department of Environmental Protection (DEP) and water management districts to request additional information no more than twice from applicants, unless waived.
- Requiring certain counties/municipalities within specified population limits to apply for delegation of authority by June 1, 2012, for state environmental resource permitting.
- Providing that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.
- Amending incentive-based permitting program compliance history.

- Preventing DEP from requiring more stringent sediment quality specifications or turbidity standards; and from issuing guidelines that are not enforceable as standards without rulemaking; also amending the streamlining of the permitting process for periodic maintenance of beach renourishment projects.
- Providing that DEP may revoke a permit under s 403.087, F.S., if it finds that a permitholder has violated laws, department orders, rules or conditions.
- Providing that a permit for a solid waste management facility shall be for 20 years as established by the applicant or a lesser period if requested by the applicant.
- Providing for a general permit for a surface water management system less than 10 acres bya be authorized without agency action.
- Providing for challenges to state agency action in the expedited permitting process are subject to the summary hearing provisions of s. 120.574, F.S.
- Expanding activities that can be funded by Miami-Dade County Lake Belt Mitigation Plan fees.
- Providing building code exemptions for non residential farm buildings and fences.
- Allowing certain recently acquired filling stations to have until December 31, 2012 to install secondary containment.