HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 999	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Patronis; Peters and others	106 **Y's**	10 **N's**
COMPANION BILLS:	(CS/CS/SB 1684)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 999 passed the House on April 25, 2013. The bill was amended by the Senate on May 3, 2013, and subsequently passed the House on May 3, 2013. The bill includes numerous provisions relating to environmental regulation and permitting, such as:

- Limiting to three the number of times a local government may request additional information when reviewing an application for a development permit, unless the applicant waives the limit;
- Expanding the activities that qualify as "phosphate-related expenses" for the purpose of receiving severance tax proceeds;
- Providing lease fee calculation for certain marinas, boatyards, and marine retailers and providing conditions for the discount and waiver of these fees;
- Providing general permits for local governments to construct certain mooring fields;
- Increasing the size of certain multi-family docks on sovereign submerged lands that are exempt from paying lease fees;
- Prohibiting water management districts (WMDs) from reducing allocations due to additional water supplies resulting from developing of desalination plants;
- Providing that the issuance of well permits is the sole responsibility of WMDs, delegated local governments, or local county health departments, and prohibiting government entities from imposing certain requirements and fees;
- Providing that licensure of water well contractors by a WMD must be the only water well contractor license required in the state or any political subdivision;
- Exempting certain farm ponds and wetlands from regulatory requirements;
- Increasing the amount the Department of Environmental Protection (DEP) is authorized to enter into a contract for preapproved advanced cleanup work for designated contaminated sites in each fiscal year;
- Allowing a person to bring a cause of action for damages resulting from a discharge or certain pollution if not authorized pursuant to chapter 403, F.S.;
- Extending the payment deadline of permit fees for major sources of air pollution;
- Specifying that field procedures and lab methods for certain water quality testing must be adopted by rule or approved by order;
- Prohibiting a local government from using a recovered materials dealer's registration information to compete unfairly with the dealer for a period of 90 days after it is submitted;
- Authorizing DEP to establish permits for special events relating to boat shows;
- Authorizing expedited permitting for natural gas pipelines and for summary hearings; and
- Ratifying certain leases on state-owned uplands in the Everglades Agricultural Area.

The bill has a significant negative fiscal impact on state government, significant positive fiscal impact on the private sector, and insignificant impact on local government. See Fiscal Analysis Section below.

The bill was approved by the Governor on May 30, 2013, ch. 2013-92, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Section 1 amends s. 20.255, F.S., and section 17 amends s. 403.061, F.S., authorizing DEP to adopt rules requiring or incentivizing electronic submission of permit applications.

Current Situation

Section 20.255, F.S., creates DEP and provides for the organizational structure of DEP. Section 403.061, F.S., authorizes DEP to have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

DEP currently accepts certain types of permit applications on-line. In addition, Florida's five water WMDs have developed 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).

Effect of Proposed Changes

The bill amends ss. 20.255 and 403.061, F.S., to authorize DEP to adopt rules requiring or incentivizing electronic submission of forms, documents, fees, or reports required under chapter 161, F.S. (relating to beach and shore preservation); chapter 253, F.S. (relating to state lands); chapter 373, F.S. (relating to water resources); chapter 376, F.S. (relating to pollutant discharge prevention and removal); chapter 377, F.S. (relating to energy resources); or chapter 403, F.S. (relating to environmental control).

The rules requiring electronic submission must reasonably accommodate technological or financial hardship of the applicant, and must provide for procedures for obtaining an exemption from electronic submission requirements due to a technological or financial hardship.

Section 2 amends s. 125.022, F.S., and section 3 amends s. 166.033, F.S., relating to development permit applications by local governments.

Current Situation

A development permit, as defined in s. 163.3164, F.S., is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit.

Sections 125.022(4) and 166.033(4), F.S., provides that for any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state

or federal permits be obtained prior to commencement of the development. This does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The bill amends ss. 125.022 and 163.033, F.S., to specify that when reviewing an application for a development permit that is certified by a professional listed in s.403.0877, F.S., counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, an applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in ss. 125.022(4) and 163.033(4), F.S., if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county or municipality, at the applicant's request, must proceed to process the application for approval or denial.

The bill provides that the term 'development permit' has the same meaning as in s. 163.3164, F.S., but does not include building permits.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

Current Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate is $1.61 per ton severed, except for the time period from January 1, 2015, until December 21, 2022, where it is set at $1.80 per ton severed.

The proceeds of all taxes, interest, and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund, 25.5 percent;
- To the credit of the General Revenue Fund of the state, 35.7 percent;
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 12.8 percent; and
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 10.0 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The bill amends s. 211.3103(6)(c), F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county owned environmental lands that were formerly phosphate lands, and community infrastructure on county-owned environmental lands that were formerly phosphate lands.

Section 5 amends s. 253.0345, F.S., relating to special events on sovereign submerged lands.

Current Situation

Upon statehood, Florida gained title to all sovereign submerged lands[1] within its boundaries, to be held in trust for the public.[2] The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[3] The Florida Constitution requires the sale of such lands to be authorized by law, but only when in the public interest, and private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[4]

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[5] Section 253.141(1), F.S., specifies that these rights include ingress, egress, boating, bathing, fishing, and others as defined by law. Riparian landowners must obtain the board's authorization for installation and maintenance of docks, piers, and boat ramps on sovereign submerged land.[6] Under the board's rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[7] Authorization may be in the form of consent by rule, letter of consent, or lease.[8] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[9]

Section 253.0345, F.S., specifies that the BOT is authorized to issue consents of use or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the BOT. The BOT must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.

Any special event must be for a period not to exceed 30 days. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

Effect of Proposed Changes

The bill amends s. 253.0345, F.S., to specify that the BOT is authorized to issue leases or letters of consent to special event promoters and boat show owners to allow the installation of temporary

[1] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.
[2] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909)
[3] Section 253.03(1), F.S.
[4] Article X, Section 11 of the Florida Constitution
[5] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in natures. *Id*.
[6] Rule 18-21.005(1)(d), F.A.C.
[7] See Rule 18-20.003(19), F.A.C.; 18-21.003(2), F.A.C.
[8] Rule 18.21.005(1), F.A.C.
[9] Rule 18-21.008(1)(b)(2), F.A.C.

structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or letter of consent for a special event under this section must:

- Be for a period not to exceed 45 days and a duration not to exceed 10 consecutive years; and
- Include a lease fee, if applicable, based solely on the period and actual size of the preemption and conditions to allow reconfiguration of temporary structures within the lease area with notice to DEP of the configuration and size of preemption within the lease area.

Section 6 creates s. 253.0346, F.S., relating to lease of sovereignty submerged lands for marinas, boatyards, and marine retailers.

Current Situation

As stated above, the BOT is responsible for the administration and disposition of the state's sovereign submerged lands, which gives it the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages. Waterfront landowners must receive the board's authorization to build docks and related structures on sovereign submerged lands. DEP is required by law to perform all staff functions on behalf of the board.

Specific management policies, standards, and criteria are used in determining whether to approve, approve with conditions, or deny requests for activities on sovereignty submerged lands. Rule 18-21.004, F.A.C., identifies such criteria under the following categories:

- General proprietary.
- Resource management.
- Riparian rights.
- Private residential multi-family docks and piers.
- Special events.
- Sovereign and state owned springs and spring runs.
- General conditions for authorization.

When determining whether to approve or deny uses for sovereignty submerged land leases, the BOT must consider whether such uses pass a "public interest" test. Public interest is defined as the demonstrable environmental, social, and economic benefit that would accrue to the public at large as a result of a proposed action, and that would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the BOT must consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.[10] Using such policies, standards, and criteria established for each category, approved uses for sovereignty submerged lands are determined.

Rule 18-21.008, F.A.C., outlines the application process, categories, and terms for leases of sovereignty submerged land. There are currently three categories for leases identified in this rule. They are:

- Standard lease – Standard lease terms are for 5 years with the exception of leases for marinas, where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for 10 years.

[10] Rule 18-21.003, F.A.C.

- Extended term leases – Extended term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
    - Facilities or activities that provide public access.
    - Facilities constructed, operated, or maintained by government or funded by government secured bonds.
    - Facilities that have other unique operational characteristics as determined by the board.
- Oil and gas lease – Oil and gas leases are issued on a competitive bid basis for terms as determined by the board. However, no such leases have been issued as s. 377.242, F.S., prohibits the drilling for oil, gas, or other petroleum products on any sovereignty submerged land.

The Florida Clean Marina Program is a voluntary designation program with a proactive approach to environmental stewardship. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention, and emergency preparedness.[11]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Practices, such as, using dustless sanders, oil and solvent recycling, and re-circulating pressure wash systems to recycle wastewater help to preserve the state's natural resources for future generations.[12]

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer employs environmental best management practices in its boat and engine service operations and facilities.[13]

As of June 21, 2013, there are 263 designated Clean Marinas, 38 Clean Boatyards, and 17 Clean Marine Retailers throughout the state.[14]

Effect of Proposed Changes

The bill creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards, and marine retailers. The bill defines the term "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is not a club membership, stock ownership, equity interest, or other qualifying requirement.
- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open for rent to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a discount of 30 percent on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state that slips are open to the public on a first-come, first-served basis.

[11] DEP website on Florida Clean Marina Programs. *See* http://www.dep.state.fl.us/cleanmarina/about.htm
[12] *Id.*
[13] *Id.*
[14] DEP website on Florida Clean Marine Programs. *See* http://www.dep.state.fl.us/cleanmarina/default.htm

For a facility designated by DEP as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A discount of 10 percent on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program.
  - Complies with the terms of the lease.
  - Does not change use during the term of the lease.
- Extended-term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program.
  - Complies with the terms of the lease.
  - Does not change use during the term of the lease.
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with the requirements described above for having the surcharges waived, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

The bill also specifies that this section of law only applies to new leases or amendments to leases effective after July 1, 2013.

Section 7 amends s. 253.0347, F.S., relating to the lease of sovereignty submerged lands for private residential docks and piers.

Current Situation

Upon statehood, Florida gained title to all sovereign submerged lands[15] within its boundaries, to be held in trust for the public.[16] The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[17] The Florida Constitution requires the sale of sovereign submerged lands to be authorized by law, but only when in the public interest, and private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[18]

Section 253.03(7), F.S., specifies that, when disposing of sovereign submerged lands, the board is required to "ensure maximum benefit and use." The board also has the authority to adopt regulations pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.

Florida recognizes "riparian rights" for landowners with waterfront property bordering on navigable waters.[19] Section 253.141(1), F.S., specifies that these rights include ingress, egress, boating, bathing, fishing, and others as defined by law. Riparian landowners must obtain the board's authorization for installation and maintenance of docks, piers, and boat ramps on sovereign submerged land.[20] Under the board's rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[21] Authorization may be in the form

[15] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.
[16] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909)
[17] Section 253.03(1), F.S.
[18] Article X, Section 11 of the Florida Constitution
[19] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in natures. *Id*.
[20] Rule 18-21.005(1)(d), F.A.C.
[21] See Rule 18-20.003(19), F.A.C.; Rule 18-21.003(2), F.A.C.

of consent by rule, letter of consent, or lease.[22] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[23]

In 2012, legislation was passed[24] creating s. 253.0347, F.S., which established lease requirements for private residential docks and related structures on sovereign submerged lands. Section 253.0347, F.S., specifies that a maximum initial term of a standard lease for a "private residential single-family or multi-family dock"[25] is 10 years. If the parties agree and the lessee complies with all terms of the lease and applicable laws and rules, a lease may be renewed for successive terms of up to 10 years. The standard lease contract for sovereignty submerged lands for a private residential single-family or multi-family dock must specify the amount of lease fees as established by the BOT.

Section 253.0347, F.S., also specifies that the same financial benefit that exists for private residential single-family docks—exclusion from lease fees for a preempted area of 10 square feet or less for each linear foot of shoreline—extends to private residential multi-family docks. This benefit applies only to private residential multi-family dwellings that include no more than one wet slip for each approved upland residential unit. As such, lessees of sovereign submerged land for private residential multi-family docks that include no more than one wet slip for each approved upland residential unit are not required to pay lease fees on a preempted area of 10 square feet or less for each linear foot of shoreline. However, those private residential multi-family docks that include no more than one wet slip for each approved upland residential unit but do preempt an area of more than 10 square feet for each linear foot of shoreline (exceeding the ratio under which private residential single-family docks receive the exemption from lease fees) are subject to lease fees only on the preempted area of sovereign submerged land that exceeds 10 square feet for each linear foot of shoreline.

In addition, s. 253.0347, F.S., specifies that lessees whose upland property qualifies for a homestead exemption at the time of any transfer of fee simple or beneficial ownership of the property are not required to pay a lease fee on revenue derived from the transfer. Thus, the 6 percent of revenue from such a sale would be applicable to a lease fee only upon the first transfer from a non-resident developer or subsequent sale by a person who is not eligible for a homestead exemption under s. 196.031, F.S.

A lessee of sovereignty submerged lands for a private residential single-family or multi-family dock must pay a lease fee on any income derived from a wet slip, dock, or pier, as determined by the BOT. DEP must inspect each private residential single-family or residential multi-family dock under lease at least once every 10 years to determine compliance with the terms and conditions of the lease. The BOT and DEP are not prohibited from imposing additional application fees, regulatory permitting fees, or other lease requirements as authorized by law.

Effect of Proposed Changes

The bill amends s. 257.0347(2), F.S., to provide that a lessee of sovereignty submerged lands for a private residential single-family dock designed to moor up to four boats is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline along sovereignty submerged land on the affected waterbody or the square footage authorized for a private residential single-family dock under rules adopted by BOT for the management of sovereignty submerged lands, whichever is greater.

The bill specifies that a lessee of sovereignty submerged lands for a private residential multi-family dock designed to moor boats up to the number of units within the multi-family development is not required to pay lease fees for a preempted area equal to or less than 10 times the riparian shoreline

[22] Rule 18.21.005(1), F.A.C.
[23] Rule 18-21.008(1)(b)(2), F.A.C.
[24] Chapter 2012-202, L.O.F.
[25] For ease of reading, "private residential single-family or multi-family dock" is used in this analysis to refer to private residential single-family docks or piers, private residential multi-family docks or piers, and private residential multi-slip docks.

along sovereignty submerged land on the affected waterbody times the number of units with docks in the private multi-family development. For example, if a large condominium building owns 1,000 square feet of shoreline and has 100 units with docks, then the condominium association would be exempt from paying lease fees on a preempted area of 1,000,000 square feet of sovereign submerged lands. If the same condominium only had 50 units with docks, then the preempted area would be 500,000 square feet of sovereign submerged lands.

Section 8 amends s. 373.118, F.S., relating to general permits for local governments to construct certain marinas and mooring fields.

Current Situation

Section 373.118(4), F.S., directs DEP to adopt one or more general permits for local governments to construct, operate, and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks, and associated parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to chapter 379, F.S., and must obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility. Marinas and mooring fields authorized under any such general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The bill amends s. 373.118(4), F.S., to specify that mooring fields authorized under such general permit cannot exceed 100 vessels. The bill also authorizes DEP to have delegation of authority from the Board of Trustees of the Internal Improvement Trust Fund to issue leases for mooring fields that meet the requirements of such general permits.

In addition, the bill removes the requirement that facilities authorized under the general permits described above must obtain Clean Marina Program status prior to opening for operation and maintain the status for the life of the facility. The bill also removes the requirement that marinas and mooring fields authorized under the general permits cannot exceed 50,000 square feet over wetlands or surface waters.

Section 9 amends s. 373.233, F.S., relating to competing applications for the consumptive use of water permits.

Current Situation

A consumptive use permit (CUP) establishes the duration and type of water use, as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use: 1) must be a "reasonable-beneficial use" as defined in s. 373.019, F.S.; 2) must not interfere with any presently existing legal use of water; and 3) must be consistent with the public interest.

Section 373.233, F.S., specifies that if two or more applications that the WMD or DEP has deemed to be complete and that otherwise comply with the provisions of part II of chapter 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that for any other reason are in conflict, the governing board of the WMD or DEP has the right to approve or modify the application that best serves the public interest.

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to specify that where there are competing CUP applications as described above, and the WMD or DEP has deemed the applications complete, the WMD or DEP has the right to approve or modify the application that best serves the public interest.

Section 10 amends s. 373.236, F.S., prohibiting WMDs from reducing certain allocations as a result of seawater desalination plant activities.

Current Situation

Section 373.236(1), F.S., specifies that CUPs must be granted *for a period of 20 years* if:

- Requested by the applicant; and
- There is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP *may* require a permittee to produce a compliance report every 10 years.[26] A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

Effect of Proposed Changes

The bill amends s. 373.236(4), F.S., to specify that to promote the sustainability of natural systems through the diversification of water supplies through the development of seawater desalination plants, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a new seawater desalination plant that does not receive funding from a WMD. Except as expressly provided, nothing in this subsection must be construed to alter a district's existing authority to modify a CUP pursuant to chapter 373, F.S.

Section 11 amends s. 373.246, F.S., relating to a declaration of water shortage or emergency.

Current Situation

Section 373.246, F.S., provides for the governing board of a WMD or DEP to formulate a plan for implementation during periods of water shortage. As a part of this plan, the governing board or DEP must adopt a reasonable system of water-use classification according to source of water supply; method of extraction, withdrawal, or diversion; use of water; or a combination thereof. The plan may

[26] In limited instances, the statute authorizes more frequent "look backs". For example, the Suwannee River WMD may require a compliance report every 5 years through July 1, 2015; but on that date the "look-back" period returns to 10 years.

include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

Section 373.246(6), F.S., specifies that the governing board or DEP must notify each permittee in the district by regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.

Effect of Proposed Changes

The bill amends s. 373.246(6), F.S., to specify that a permittee in the district may also be notified by electronic mail of any change in the condition, suspension, or any other restriction on the permittee's use of water for the duration of the water shortage.

Section 12 amends s. 373.308, F.S., relating to well permits issued by WMDs.

Current Situation

Section 373.308, F.S., directs DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. DEP may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state, as may be determined by DEP. Some local governments also have certain ordinances pertaining to water wells, which has resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to specify that upon authorization from DEP, issuance of well permits is the sole responsibility of the WMDs, delegated local governments, or local county health departments. Other local governmental entities cannot impose additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13 amends s. 373.323, F.S., relating to licenses for water well contractors issued by WMDs.

Current Situation

Section 373.323, F.S., specifies that any person that wishes to engage in business as a water well contractor must obtain a license from the WMD to conduct such business. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have 2 years of experience in constructing, repairing, or abandoning water wells; and
- Show certain proof of experience.

Effect of Proposed Changes

The bill amends s. 373.323(1), F.S., to specify that licensure under this section by a WMD must be the only water well contractor license required for the location, construction, repair, or abandonment of water wells in the state or any political subdivision.

The bill specifies that water well contractors licensed under this section may install pumps, tanks, and water conditioning equipment for all water systems.

Section 14 amends s. 373.406, F.S., exempting certain farm ponds and ditches from surface water management and storage requirements.

Current Situation

As stated above, part IV of chapter 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by DEP and the WMDs for preserving natural resources, fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment, and removal of "stormwater management systems," "dams," "impoundments," "reservoirs," "appurtenant works," and "works." Individually and collectively these terms are referred to as "surface water management systems" or "systems."

Certain activities have been exempted by statute from the need for obtaining an ERP under state law or by agency rule. Section 373.406, F.S., provides several exemptions from the regulatory requirements in chapter 373, F.S. DEP's rules also provide certain exemptions and general permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Examples of exempt activities include, but are not limited to:

- Construction, repair, and replacement of certain private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and riprap in artificial waters;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of "noticed general permits" for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These 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; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to include the following additional exemptions:

- Construction, alteration, operation, or maintenance of any wholly owned, manmade excavated farm ponds as defined in s. 403.927, F.S.,[27] constructed entirely in uplands.

[27] "Farm pond" means a pond located on a farm, used for farm purposes, as determined by WMD rule.

    - This exemption does not apply to any farm pond that covers an area greater than 15 acres and has an average depth greater than 15 feet, or is less than 50 feet from any wetlands.
- Activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow or surface water caused by an unaffiliated adjoining landowner.
    - Requests for this exemption must be made within 7 years after the cause of such flooding.
    - Requests are to be submitted in writing to the WMD or DEP and such activities cannot begin without a written determination from the WMD or DEP confirming that the activity qualifies for the exemption.
    - The exemption does not expand the jurisdiction of DEP or WMDs.
    - The exemption does not apply to activities that discharge dredged or fill material into waters of the U.S., including wetlands, subject to federal jurisdiction under section 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

Section 15 amends s. 376.30713, F.S., relating to preapproved advanced cleanup.

Current Situation

The Legislature created the Inland Protection Trust Fund (fund) with the intent that it serve as a repository for funds that will enable DEP to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.[28] Section 376.3071(4), F.S., directs DEP to obligate money available in the fund to incidents of inland contamination related to the storage of petroleum or petroleum products that may pose a threat to the environment or the public health, safety, or welfare to provide for:

- Prompt investigation and assessment of contamination sites;
- Expeditious restoration or replacement of potable water supplies;
- Rehabilitation of contamination sites;
- Maintenance and monitoring of contamination sites;
- Payment of expenses incurred by DEP in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection;
- Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to DEP in the investigation of drinking water contamination complaints and costs associated with public information and education activities;
- Establishment and implementation of the compliance verification program;
- Activities related to removal and replacement of petroleum storage systems;
- Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action;
- Repayment of loans to the fund; and
- Expenditure of sums from the fund to cover ineligible sites or costs if DEP deems it necessary to do so.

Section 376.3071(5), F.S., specifies for the site selection and cleanup criteria that DEP uses in determining the priority ranking for sites seeking state funded rehabilitation. The priority ranking is based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

[28] Section 376.3071, F.S.

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Section 376.30713, F.S., outlines the Preapproved Advanced Cleanup Program, which is a cleanup program to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of a site's priority ranking. Section 376.30713(4), F.S., specifies that DEP is authorized to enter into contracts for a total of up to $10 million of preapproved advanced cleanup work in each fiscal year. However, no facility may be preapproved for more than $500,000 of cleanup activity in each fiscal year. For the purposes of this section the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under chapter 376, F.S.

Effect of Proposed Changes

The bill amends s. 376.30713(4), F.S., to increase the amount of money up to which DEP is authorized to enter into contracts from $10 million to $15 million for preapproved advanced cleanup work in each fiscal year. The bill also increases from $500,000 to $5 million the amount of funding DEP can preapprove to a particular facility each fiscal year.

Section 16 amends s. 376.313, F.S., relating to nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317, F.S.

Current Situation

Section 376.313, F.S., provides a cause of action for persons who allege damages resulting from a discharge or other pollution condition covered by ss. 376.30-376.317, F.S. Specifically, s. 376.313(3), F.S., specifies that nothing contained in ss. 376.30-376.317, F.S. (relating to petroleum storage discharges, drycleaning facilities, or wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred sections.

Effect of Proposed Changes

The bill amends s. 376.313(3), F.S., to specify that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., if the discharge was not authorized pursuant to chapter 403, F.S.[29]

Section 18 amends s. 403.0872, F.S., relating to operation permits for major sources of air pollution.

Current Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes the

[29] Chapter 403, F.S., includes provisions regulating the discharge of pollutants, and also provides for the implementation of the federal National Pollution Discharge Elimination System Permitting program established in the Clean Water Act.

Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.[30]

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[31] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs, and then assist the state and local governments in developing their programs.[32] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and promulgated in chapter 62-4, F.A.C., DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., specifies that each major source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, times the annual hours of operation allowed by permit condition; provided, however, that:

1. The license fee factor is $25 or another amount determined by DEP rule which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of DEP affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.
4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not allowed to operate.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a department-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in

[30] EPA website on the Clean Air Act. *See* http://www.epa.gov/regulations/laws/caa.html
[31] See EPA website, "Air Pollution Operating Permit Program Update."
[32] *Id.*

the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

7. If DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, DEP must impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. DEP may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than one percent of the fee, up to $50. DEP may revoke any major air pollution source operation permit if it finds that the permit holder has failed to timely pay any required annual operation license fee, penalty, or interest.
8. Notwithstanding the computational provisions of this section, the annual operation license fee for any source subject to this section must not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., must not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits must be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a, F.S. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

Effect of Proposed Changes

The bill amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1 each year. In addition, the bill specifies that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit.

The bill deletes subparagraphs 2-5, as described above.

The bill specifies that if DEP has not received the fee by March 1, instead of February 15 in current law, of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, DEP will impose an additional fee.

Section 19 amends s. 403.088, F.S., relating to conditions for obtaining water pollution operation permits.

Current Situation

Unless exempted by rule or statue, any facility or activity that discharges wastes into waters of the state or that will reasonably be expected to be a source of water pollution must obtain a permit from DEP. Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities.[33]

Section 403.088(2)(a), F.S., specifies that any person intending to discharge wastes into waters of the state must submit an application to DEP containing such information as DEP requires. Section 403.088(2)(b), F.S., specifies that if DEP finds that a proposed discharge will reduce the quality of the receiving waters below the classification established for them, DEP must deny the application and refuse to issue a permit. However, if DEP finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, DEP may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances that are clearly in the public interest.

Effect of Proposed Changes

The bill amends s. 403.088(2)(b), F.S., to specify that DEP cannot use the results from a field procedure or laboratory method to make such a finding as described above, or determine facility compliance, unless the field procedure or laboratory method has been adopted by rule or noticed and approved by the DEP order pursuant to DEP rule. Field procedures and laboratory methods must satisfy the quality assurance requirements of DEP rule and must produce data of known and verifiable quality. The results of field procedures and laboratory methods must be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

Section 20 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Current Situation

Pursuant to s. 403.7046(1), F.S., as promulgated in rule 62-722, F.A.C., any person who handles, purchases, receives, recovers, sells, or is an end user of recovered material,[34] is required to apply for an annual certification to DEP. By February 1 of each year, registrants must report all required information to DEP and to all counties from which they received materials.

Section 403.7046(3), F.S., specifies that local governments cannot enact any ordinance that prevents a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source separated[35] recovered materials.

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[33] DEP website on wastewater permitting. *See* http://www.dep.state.fl.us/water/wastewater/permitting.htm

[34] Rule 62-722, F.A.C., defines recovered material as metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.

[35] Rule 62-722, F.A.C., defines source separated as the recovered materials separated from solid waste where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials.

Section 403.7046(b), F.S., specifies that prior to engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section.

Effect of Proposed Changes

The bill amends s. 403.7046(b), F.S., to specify that the local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application.

The bill also specifies that recovered materials dealers or an association whose members include recovered materials dealers may initiate an action for injunctive relief or damages for alleged violations of s. 403.7046, F.S.

The court may award to the prevailing party or parties reasonable attorney fees and costs.

Section 21 amends s. 403.813, F.S., revising conditions under which certain permits are not required for seawall restoration projects.

Current Situation

Section 403.813(1), F.S., specifies that a permit is not required for the following activities:

- The installation of overhead transmission lines, with support structures which are not constructed in waters of the state and which do not create a navigational hazard;
- The installation and repair of certain mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat;
- The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists;
- The replacement or repair of existing docks and piers, except that fill material may not be used and the replacement or repaired dock or pier must be in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired; and
- The restoration of seawalls at their previous locations or upland of, or within 1 foot waterward of, their previous locations.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to specify that a permit is not required for the restoration of seawalls at their previous locations or upland of, or within 18 inches, instead of 12 inches, waterward of their previous locations.

Section 22 creates s. 403.8141, F.S., providing for DEP to establish permits for special events.

Current Situation

Section 253.0345, F.S., specifies that the Board of Trustees is authorized to issue consents of use or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. Any special event must be for a period not to exceed 30 days. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should the promoter or riparian owner fail to do so within the time specified in the agreement.

Effect of Proposed Changes

The bill creates s. 403.8141, F.S., directing DEP to issue permits for special events under s. 253.0345, F.S., described above. The permits must be for a period that runs concurrently with a letter of consent or lease issued pursuant to s. 253.0345, F.S., and must also allow for the movement of temporary structures within the footprint of the lease area.

Section 23 amends s. 403.973, F.S., authorizing expedited permitting for certain natural gas pipelines.

Current Situation

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

Under s. 403.973, F.S., the secretary of DEP must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, in a county having a population of fewer than 75,000, or in a county having a population of fewer than 125,000 that is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

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 must issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where more than one state agency action is challenged, the governor must issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Effect of Proposed Changes

The bill amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 24 ratifies and approves certain leases of state-owned land within the Everglades Agricultural Area previously approved by the BOT.

Current Situation[36]

The Everglades Forever Act (Act), enacted in 1994 (chapter 94-115, Laws of Florida), codified in s. 373.4592(5), F.S., offered for lease to farmers impacted by the Everglades Restoration Project (Project) several BOT parcels in the Everglades Agricultural Area in Palm Beach County. The law stated that impacted farmers should have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate would not be less than the rate the BOT received at the time. The BOT could also adjust the rental rate on an annual basis using an appropriate index and update the appraisal at five-year intervals. If more than one impacted farmer desired to lease the same parcel of land, the one that had the greatest number of acres affected by the Project had priority. DEP developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015, one lease will expire on January 31, 2016, one lease will expire on December 31, 2016, and one lease will expire on August 25, 2018.

Pursuant to rule 18-2.018(1), F.A.C., the decision to authorize the use of BOT-owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, must be taken into consideration.

On January 23, 2013, the BOT extended seven leases for 30 years, subject to the terms and conditions established by the BOT.

Effect of Proposed Changes

The bill specifies that the Legislature ratifies and approves the actions of the BOT regarding certain leases as approved on January 23, 2013, subject to the terms and conditions established by the BOT as approved on January 23, 2013.

The bill also specifies that the Legislature finds that the decision to authorize the use of BOT-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest; that it is in the public interest to waive the competitive bid process; that the leases are not standard agricultural leases; and that the leases should be amended on the terms and conditions as approved by the BOT.

Lastly, the bill specifies that the Legislature finds that the lease amendments and extensions approved by the BOT are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.

[36] The content of the current situation was taken from the DEP Agenda for the BOT's January 23, 2013 meeting. On file with staff.

Section 25 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Relating to activities qualifying as "phosphate-related expenses" – Counties could benefit by expanding the use of phosphate taxes to county-owned lands.

   Relating to lease of sovereignty submerged lands for marinas, boatyards, and marine retailers – According to DEP, the loss in county discretionary tax is approximately $93 annually based on .05 percent.

   Relating to general permits for the expansion of certain marinas – According to DEP, based on the minimum loss of annual revenue, there will be an annual loss of approximately $469 in county discretionary tax.

   Relating to well water permitting – Local governments who currently operate permitting programs for water well construction will see an insignificant negative fiscal impact due to the loss of permit fees.

   Southwest Florida WMD currently has one delegation to a municipality. The WMD may need additional staffing to conduct the permitting if the delegation were not able to continue.

   Relating to licenses for water well contractors issued by WMDs – The bill could have an insignificant negative fiscal impact on local governments due to the loss of fees currently charged as part of a local government requirement to obtain a local water well contractor license.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Relating to special events on sovereign submerged lands – Special events promoters would benefit from the elimination of the special event fee; however, the public would not benefit from this reduction because the promoter charges the vendor to participate in the event.

Relating to water well permitting – The bill could have a potentially positive fiscal impact on the private sector by eliminating the requirement to obtain a separate local government water well construction permit, including any required fee.

Relating to licenses for water well contractors issued by WMDs – The bill could have a potentially positive fiscal impact on the private sector by eliminating the requirement to obtain any local government water well contractor license.

Relating to annual operation license fees for operation permits for major sources of air Pollution – According to DEP, the bill could have a potentially positive fiscal impact of $2 million per year on those in the manufacturing and industrial businesses. Approximately $1.4 million could be saved in permit fees because the permittees would be paying fees based on actual emissions instead of adjusted allowable emissions, which is in current law. Tying the permit fees and annual operating report requirements could save $600,000 by eliminating the need to compute and submit different emission calculations.

Relating to the lease of sovereignty submerged lands for private residential docks and piers – Certain residents who pay fees for multifamily docks should see a reduction in permit fees.

D. FISCAL COMMENTS:

Relating to special events on sovereign submerged lands – According to DEP's analysis, an enhancement to the billing database would cost an estimated $13,000. The fees for special event fees are calculated based on the number of event days times the annual rent, or 5 percent of any revenue generated from the special event, whichever is greater. The loss of revenue in the Internal Improvement Trust Fund would be approximately $187,000 annually, based on the average of the past 7 fiscal years. The lease term would exceed the standard term of 5 years.

Relating to the lease of sovereignty submerged lands for private residential docks and piers – The exemption provided in this section will have a significant negative fiscal impact on the Internal Improvement Trust Fund. However, recurring revenue currently exceeds recurring expenditures by $2.6 million. This recurring revenue reduction should not impact the trust fund's ability to meet the department's needs.

Relating to annual operation license fees for operation permits for major sources of air pollution – The Air Pollution Control Trust Fund permit fee revenue will be reduced by $1.4 million. However, including the $1.4 million reduction in revenue, the current surplus of $4.1 in the trust fund is estimated to increase to $4.9 million by 2018.

Relating to special events on sovereign submerged lands – DEP estimates a loss of $1,120 to state taxes, which is based on a 7-year average.

Relating to lease of sovereignty submerged lands for marinas, boatyards, and marine retailers – Rule 18-21.004, F.A.C., currently provides the 30 percent and 10 percent discounts outlined in the bill resulting in a revenue neutral impact to the Internal Improvement Trust Fund.

Relating to general permits for the expansion of certain marinas – DEP estimates an expenditure of less than $50,000 for rulemaking. After general permits are developed, there could be a minimal loss in permit fees from the Permit Fee Trust Fund.

According to DEP, based on the minimum loss of annual revenue, there will be an annual loss of approximately $5,623 in state taxes.

Relating to exemptions from ERP permits – The exemption could result in an insignificant recurring reduction in revenue to the Permit Fee Trust Fund.

Relating to general permits for special events – DEP estimates an expenditure of $50,000 for rulemaking, which can be absorbed within existing resources.

Relating to General Revenue Impact – The Air Pollution Control Trust Fund and the Internal Improvement Trust Fund are subject to an 8 percent general revenue service charge on certain revenues collected. For these trust funds, the bill will result in a reduction of revenue that is subject to the service charge totaling $2,827,000. This will result in a $226,160 negative fiscal impact to the general revenue fund.