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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 523

RELATING TO: Ecosystem Management

SPONSOR(S): Representative Mackey

STATUTE(S) AFFECTED: Creates ss. 403.075, 403.0751, and 403.0752, F.S.

COMPANION BILL(S): SB 768 (s) by Senator Williams

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ENVIRONMENTAL PROTECTION
- (2) GENERAL GOVERNMENT APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

HB 523 authorizes the development of ecosystem management unit agreements between regulated entities operating within a defined ecosystem management unit and the Department of Environmental Protection or other state regulatory agencies provided the agreement will have favorable environmental impacts and the regulated entities have certain environmental management capabilities.

The bill also permits the use of incentives to encourage the development of these agreements. Incentives may include: use of a single regulatory contact; flexibility for those using pollution prevention programs; fee reductions; expedited permit processing; extended permit terms; reduced monitoring and reporting; and informal dispute resolution processes.

In addition the bill authorizes:

- transfer of authority and resources among the regulating agencies;
- formation of advisory teams for the preparation of these agreements;
- the agreement to be treated as final agency action for the purposes of Chapter 120, F.S.; and
- that the agreement shall constitute a variance or waiver pursuant to s. 120.542, F.S.

The bill would take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 93-213, Laws of Florida, merged the Departments of Natural Resources and Environmental Regulation into the Department of Environmental Protection (DEP). The legislation also directed that Florida's natural resources were to be managed as ecosystems.

The DEP defines "ecosystem" as "a community of organisms, including humans, interacting with one another and the environment in which they live." Derived from this definition the DEP defines "ecosystem management" as an "integrated, flexible approach to management of Florida's biological and physical environments -- conducted through the use of such tools as planning, land acquisition, environmental education, regulation, and pollution prevention -- designed to maintain, protect and improve the state's natural, managed and human communities." The four cornerstones of ecosystem management are:

- Placed-based management, which means flexibly managing all the components of a particular ecosystem, in the context in which they occur.
- Common-sense regulation, so that the focus can be on protecting the environment through flexible approaches, where appropriate, as long as the results are positive. Common-sense regulation means following the intent of the law, not simply following the letter of the law.
- Cultural change, from the current government command-and-control approach to environmental regulation, to partnerships between government and its citizens.
- Foundations, which include environmental education for citizens, statewide databases and other information, and program audits and evaluations to determine how well ecosystem management is proceeding.

In September 1995, the DEP published their "action plan" for ecosystem management. The plan is based on the premise that all components of Florida's environment -- the air, water, land, people and wildlife -- are interconnected, and that impacts to one component within a particular location affects all the others.

The report also listed 24 potential ecosystem management areas (EMAs) throughout the state. The boundaries of the EMAs are intended to be flexible, and include the Choctawhatchee Bay and River in three Panhandle counties, the greater Tampa Bay area, and the lower St. Johns River.

Running parallel to the DEP's project to develop an implementation strategy for ecosystem management was Chapter 95-275, Laws of Florida. This legislation created three demonstration projects, one of which encompasses facets of this proposed legislation.

- The Hillsborough River and Bay project focuses on a wide range of ecosystem issues. The DEP, as lead agency, was granted authority to waive rules, if necessary, to implement any ecosystem incentive programs in this pilot project.

In addition to the pilot project established by the 1995 act, the DEP has issued a mine-wide permit to CF Industries. The permit was issued based on an ecosystem approach which encompassed the joint processing of all major activities proposed by the mine. In addition, it entailed the cooperative efforts of the Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Florida Game and Fresh Water Fish Commission.

Though there are pilot projects to test the concept of ecosystem-wide permitting currently the issuance of permits still lies with the specific agency that has jurisdiction.

B. EFFECT OF PROPOSED CHANGES:

HB 523:

- Expresses legislative findings regarding the benefits of ecosystem management and identifies the need to develop unified plans for the long-term maintenance of ecosystems.
- Provides a definition for "ecosystem management unit." These units may be any of 24 ecosystem areas currently identified by the DEP or any activity or group of related activities conducted by or regulated by the DEP in a defined geographic area.
- Permits the DEP to enter into agreements with regulated entities. Such agreements would be allowed to address the permitting, operation, and management of the environmental impacts of the regulated entity within the ecosystem management unit. The agreements are voluntary for both the regulated entity and the DEP and shall act as final agency action.
- Encourages the use of such agreements:
 - when they would have a more favorable environmental impact on the ecosystem than under the guidance of standard regulations and would provide for a reduction in the overall risk to human health and the environment; and
 - when the regulated entities have internal systems that include: corporate policies based on continuous environmental improvement; periodic environmental impact evaluations; employee training in environmental management; performance monitoring and corrective action plans; and management oversight of environmental systems.
- Allows for the use of incentives to encourage the development of these agreements. These incentives may include: use of a single regulatory contact; flexibility for those who institute pollution prevention programs; fee reductions; expedited permit processing; extended permit terms; reduced monitoring and reporting; and informal dispute resolution.

- Permits the Secretary/Executive Director of the DEP, Dept. of Community Affairs, Transportation, Game and Fresh Water Fish Commission, the water management districts and the Commissioner of Agriculture to enter into such agreements.
- Allows agencies to include in these agreements the: delegation or transfer of permitting and regulatory authority; allocation of permit and operation fees; and the sharing of personnel and other resources.
- Allows the DEP to form ecosystem management unit advisory teams. The teams would include: state and local government entities with regulatory authority; and individuals residing within the designated ecosystem unit who are representative of the federal, state or local government, private landowners, private or public utilities, corporations, and environmental interests. The DEP is directed to select members to ensure adequate representation of diverse interests.
- Provides that the ecosystem management unit agreement may be considered final agency action for the purposes of Chapter 120, F.S. and must meet the relevant requirements of that chapter. Should the agreement be considered final agency action than any permits, licenses, or approvals that are granted through the agreement shall not be considered final agency action. Any substantial modifications or amendments to the agreement must meet the same requirements as the original agreement.
- Directs that any review of a ecosystem management unit agreement which constitutes final agency action shall be limited to the provisions of subsection (2) of the bill which details the requirements that must be contained within the agreement.
- Permits parties to an agreement to elect not to have the agreement represent final agency action. If this is done, any permits, licenses, or approvals issued subject to the agreement are subject to the provisions of Chapter 120, F.S.
- Provides for waivers or variances to agency rules, pursuant to s. 120.542, F.S., when deemed necessary to execute the ecosystem management unit agreement.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

- (3) any entitlement to a government service or benefit?

No

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Specifically none. However the bill does permit the transfer of authority and resources among the regulating agencies.

- (2) what is the cost of such responsibility at the new level/agency?

Indeterminate because it is dependent on the number of agreements that would be formed and the increased administration for one agency to act as a sole regulator.

- (3) how is the new agency accountable to the people governed?

NA

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No

- b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

The bill allows the DEP to reduce permit, permit renewal and operating fees when creating a ecosystem management unit agreement.

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

NA

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

NA

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

NA

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA

- (2) Who makes the decisions?

NA

- (3) Are private alternatives permitted?

NA

(4) Are families required to participate in a program?

NA

(5) Are families penalized for not participating in a program?

NA

b. Does the bill directly affect the legal rights and obligations between family members?

NA

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 403.075, F.S., to express legislative findings concerning ecosystem management.

Section 2: Creates s. 403.0751, F.S., to provide definitions for terms used in the act.

Section 3: Creates s. 403.0752, F.S., which provides for the creation of ecosystem management agreements; describes what shall be contained within such agreement; specifies who may enter into these agreements; permits the formation of advisory teams for consultation in developing the agreements; and allows for the unit agreement to be treated as final agency action.

Section 4: Provides that the bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Indeterminate because it is dependent on the number of agreements that would be formed and the increased administration for one agency to act as a sole regulator.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The ability to deal with one regulator to oversee an ecosystem approach to permitting would save businesses administrative costs.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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