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DATE: March 28, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 523

RELATING TO: Ecosystem Management

SPONSOR(S): Committee on Environmental Protection and Representative(s) Mackey; and Others

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 YEAS 8 NAYS 2
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 523 authorizes the development of ecosystem management agreements between regulated entities operating within a defined ecosystem management area and the Department of Environmental Protection or other state regulatory agencies provided the agreement will have net ecosystem benefit and the regulated entities have internal environmental management systems.

The bill also permits the use of incentives to encourage the development of these agreements. Incentives may include: a coordinated regulatory process; permitting process flexibility; alternative monitoring and reporting requirements; and informal dispute resolution processes.

In addition the bill authorizes:

- formation of ecosystem management advisory teams;
- the treatment of an ecosystem agreement as final agency action for the purposes of Chapter 120, F.S.; and
- the use of variance and waiver provisions provided within statutes and rules and that the execution of a ecosystem agreement shall constitute satisfaction of the variance and waiver procedural requirements of s. 120.542, F.S.

The bill would not require rules for its implementation.

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.

The Administrative Procedure Act was enacted in 1974 (Chapter 74-310, Laws of Florida (L.O.F.)), it replaced the original act that was adopted in 1961. The 1974 Act provides procedures for citizens and other persons to question or challenge actions taken by agencies that substantially affect them. It also allows for citizen input into agency decision-making through the public notice and public hearing requirements concerning agency actions. Agency action affects citizens and businesses in many ways, for example a citizen or business may be affected by the agency proposing a rule, issuing an order or permit, or by denying a license.

During the 1996 General Session the Act was revised, Chapter 96-159, L.O.F. As a part of the revisions s. 120.542, F.S. was created to provide for variances and waivers to agency rules.

A variance is defined as: a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in chapter 120, F.S. and in the uniform rules adopted pursuant to s. 120.54, F.S.

A waiver is defined as: a decision by an agency not to apply all or part of a rule to a person who is subject to the rules. Any waiver shall conform to the standards for waivers outlined in chapter 120, F.S. and in the uniform rules adopted pursuant to s. 120.54, F.S.

B. EFFECT OF PROPOSED CHANGES:

CS/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 area." These areas are any that may be described by the DEP or any activity or group of related activities which may include 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 may address: permit processing, project construction, operations monitoring, enforcement actions, proprietary approvals, and compliance with development

orders and comprehensive plans. The agreements are voluntary for both the regulated entity and the DEP and may act as final agency action.

- Encourages the use of such agreements:
 - when they would have a net ecosystem benefit other than under the guidance of standard regulations, will not interfere with obligations under any federally delegated programs, would provide for a reduction in the overall risk to human health and the environment, and where the regulated entities have in place internal environmental management systems.
- Allows for the use of incentives to encourage the development of these agreements. These incentives may include: coordinated regulatory contacts; permitting process flexibility; expedited permitting; alternative monitoring and reporting requirements; 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.
- Encourages local governments to enter into these agreements.
- Allows the DEP to form ecosystem management unit advisory teams. The teams would include governmental entities with regulatory authority within the ecosystem, in addition to: regional planning councils; private and public landowners; public and private utilities; corporations; and environmental interests. The DEP is directed to select members to ensure adequate representation of diverse interests.
- Provides that the ecosystem management 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.
- Requires that agreement that shall be deemed as final agency action must include in their public notice any standards, rules, or other legal or regulatory requirements proposed to be subject to variances or waivers.
- Directs that any review of a ecosystem management 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 that waivers and variances available under applicable statutes and rules may be granted as part of an ecosystem management agreement and that the execution of an agreement shall constitute satisfaction of the variance and waiver

procedural requirements under s. 120.542, F.S. to the extent necessary to implement the agreement.

- Directs that all agreements must be consistent with federally delegated programs and federal law.

No rules are required to implement the act.

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?

None

(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?

No

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 agreement to be treated as final agency action.

Section 4: Directs that no rules shall be necessary to implement the act.

Section 5: 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:

On March 11, 1997, the Committee on Environmental Protection considered HB 523. One remove and insert amendment was adopted and the bill was passed, by a vote of 8 yeas to 2 nays. The sponsor requested a committee substitute. Changes made by the committee substitute include: amending the definition of "ecosystem management area" by eliminating references to specific identified areas; providing more specific guidance on what may be covered within a agreement; a recognition that the agreement cannot supersede or interfere with federal programs and laws; eliminating specific components required for environmental management systems; deleting as incentives the reduction of permit fees or the granting of extended terms; removing the authority for agencies to transfer permitting responsibilities and related appropriations; and clarifying the wavier and variance provisions.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Wayne S. Kiger

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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