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DATE: April 1, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 901
RELATING TO: Jacksonville/Air & Water Pollution
SPONSOR(S): Representative Davis & other
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 0
 - (2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill extends the date of operation for the City of Jacksonville Environmental Protection Board (EPB), which is currently set to expire on October 1, 2001.

This bill authorizes a cited party to opt to proceed administratively, rather than through a hearing by the EPB. This bill additionally authorizes the EPB to reject an administrative judge's decision, under limited circumstances.

According to the Economic Impact Statement, this bill results in a local fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

City of Jacksonville Environmental Protection Board

In 1971, local ordinance provided for the creation of the City of Jacksonville Environmental Protection Board (EPB). The mission of the EPB is to enhance the quality of life for Jacksonville's citizens through the protection of the natural environment. The EPB consists of nine members appointed by the Mayor and City Council. Members serve a four year term without compensation. The EPB works very closely with the Air & Water Quality Division (AWQD) of the Regulatory & Environmental Services Department. The AWQD is the operational arm of environmental regulation within the City of Jacksonville.

Two special acts address the EPB (Chapters 89-439 and 91-362, Laws of Florida). Ch. 89-439, L.O.F., legislatively enables the EPB with the following powers:

- Promulgation of rules to implement, administer, and enforce environmental protection ordinances;
- Hold hearings, conduct investigations, and take testimony on issues relating to environmental protection;
- Hold hearings, conduct studies, and investigate pollution control programs, to advise the city council and the mayor on environmental protection issues;
- Enforce city ordinances and EPB rules, to include issuing orders;
- Order the posting of bonds, up to \$50,000, to ensure compliance with orders; and,
- Assess civil penalties, pursuant to ordinance, to be paid to the Environmental Protection Fund, for violations of city ordinances or Board Orders.

Ch. 89-439, L.O.F., additionally provided for the EPB's expiration, on October 1, 1991.

The City did pass a local ordinance, which provides for civil penalties for violations, as authorized by Chapter 89-439, F.S. Section 362.110 provides the following:

A person who...Makes air or water pollution in violation of the limits and standards established by the rules of the Board...May be administratively or judicially assessed a civil penalty of up to ten thousand dollars for each violation...For violations that are of a continuing nature, each day that the violation continues shall be a separate offense subject to penalty. (Ord. 89-1235-597)

The second special act addressing the EPB, Ch. 91-362, L.O.F., added a provision that assessed attorney fees against the city, up to \$5,000, when a civil penalty, ordered by the EPB, is reversed on appeal. This special act additionally extended the termination date of the EPB to October 1, 2001.

Local Pollution Control Programs

Section 403.182, F.S., authorizes counties and municipalities to develop local pollution control programs, provided that they meet certain conditions.

These conditions require the local entity to:

- Secure approval by the Department of Environmental Protection;
- Provide by ordinance, regulation, or local law for requirements compatible with, or stricter than those imposed by this act;
- Provide an appropriate administrative and judicial process in place to enforce the requirements; and,
- Provide administrative organization, staff, financial and other resources to adequately carry out the program.

This section also provides:

All remedies of the department under this chapter shall be available, as an alternative to local enforcement provisions, to each local pollution control program to enforce any provision of local law.

Section 403.141, F.S., authorizes the Department to fine a violator up to \$10,000 a day for damage caused to the air, waters, or property, including animal, plant, and aquatic life.

As the EPB has been approved as a local pollution control program by the Department, and an approved program is statutorily authorized to avail itself of the same remedies as the Department, the EPB can assess the same \$10,000 a day penalty available to the Department. Therefore, the EPB has two available options to assess penalties: through the local ordinance, which codifies Ch. 89-439, L.O.F., and through the statutory authority that applies to the Department. In practice, the EPB typically uses the ordinance route.

Florida Administrative Procedures Act

Ch. 120, F.S., contains the Administrative Procedures Act.

S. 120.52, F.S., provides definitions. This section defines the "agency" as including boards.

S. 120.569, F.S., provides that this section applies to all administrative proceedings in which the substantial interests of a party are decided by an agency. This section addresses notice, request for hearing, assignment of an administrative law judge, pleading and motion procedure, taking of testimony, document evidence, cross-examination, and the issuing of a final order.

S. 120.57, F.S., outlines additional procedures relating to administrative hearings. Such procedures relate to the rights of the parties, substance of the case record, admissibility of evidence, making a motion for a summary final order, and burden of proof. Regarding adoption of a final order:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action.

C. EFFECT OF PROPOSED CHANGES:

This bill extends the operation of the EPB, currently scheduled to dissolve October 1, 2001, indefinitely.

When the EPB cites a party, this bill authorizes the party to opt to proceed administratively, rather than through a hearing by the same EPB that issued the citation. Although an administrative judge's decision is not absolutely dispositive or binding, the EPB must carry a significant burden in rejecting an administrative order.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Extends the operation of the EPB indefinitely; provides the citizen with the option of having the case decided administratively, including the hiring of administrative law judges, within the Division of Administrative Hearings, to hear cases.

Section 2. Provides that this act takes effect October 1, 2001.

E. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

F. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

November 7, 2000

WHERE?

Daily Record (Jacksonville)

G. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

H. LOCAL BILL CERTIFICATION FILED? Yes, attached No

I. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, this bill, in extending the operation of the Board, creates a fiscal impact. In Fiscal Year 2001-2002, expenditures for salaries, benefits, overhead, and professional services are estimated at \$195,291. In Fiscal Year 2002-2003, expenditures are expected to decrease slightly, to \$185,525. The expected decrease is based on continued, historical budget reductions of five to ten percent a year.

III. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

House Bill 837 (2000), which provided for an extension of the operation of the EPB until October 1, 2011, died in the Committee on Community Affairs, during the 2000 Legislative Session. House Bill 837 did not contain language providing an option to the party cited to pursue the case administratively, as does this bill.

A spokesperson for the City of Jacksonville expresses that the City supports this bill.

The Mayor of the City of Jacksonville and the President of the Jacksonville City Council indicate support for this bill, as follows:

The Environmental Protection Board (EPB) is a quasi-judicial board of local volunteers appointed by the Mayor and City Council to oversee the environmental regulatory and outreach activities in the City. The EPB addresses environmental matters that are only of interest to this community. The EPB is also a forum for citizens regarding controversial environmental issues such as odors, contaminated waterways, fallout from ships, and major environmental projects affecting Jacksonville's local environment.

The EPB is responsible for the development and enforcement of local rules which eliminated odors in Jacksonville. The EPB is also responsible for development of local regulations that controlled VOC emissions from gasoline service stations and the implementation of the City's air quality attainment plan which resulted in the City meeting the National Ambient Air Quality Standard for ozone. Local rules which resulted in the removal of almost 400 small, unreliable waste water treatment plants came from the EPB. These efforts have resulted in a measurable improvement in the quality of our local environment.

The funds collected from local enforcement actions are deposited into the Environmental Protection Trust Fund and are returned to the community in many ways. The funds are never

used for regulatory operations, rather they are used for special projects and studies to enhance the local environment. For example, the EPB is responsible for partially funding the St. Vincents Lung Cancer Study which proved that the local environment was not the cause of the high incidence of lung cancer in Jacksonville.

A spokesperson with the Department of Environmental Protection indicates that the Department wishes to remain neutral on the bill.

IV. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

V. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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Joan Highsmith-Smith

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