

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 364

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Regulatory Reform

DATE: April 14, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.			GO	
3.			TA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The CS/SB 364 (the bill) establishes the Legislature’s intent that a statewide, user-friendly, consolidated system be created to simplify licensing and permitting in the state by directing the Office of Tourism, Trade and Economic Development in the Executive Office of the Governor is directed to create the E-SHOP FLORIDA Internet website. The bill provides requirements for the development of the website, directs the participation of specified state agencies and water management districts, and specifies the types of permits and activities for which a common application may be used.

The bill also provides conditions under which permit applications which are prepared and signed by designated professionals are in compliance with statutory requirements governing activities in surface waters and wetlands. The bill creates a burden of proof with a standard of a preponderance of the evidence, and provides conditions under which a designated professional may be restricted from preparing and signing permit applications. The Department of Environmental Protection and the water managements districts are directed to expand the use of Internet self-certification services, and must identify and develop opportunities for expedited review of permit applications through the use of professional certifications.

The bill creates s. 282.801, substantially amends ss. 373.414 and 403.814, F.S., corrects cross-references in ss. 373.036, 373.4135, and 373.4136, and repeals s. 288.109, of the Florida Statutes.

II. Present Situation:

Permitting in General

The permitting of new, expanding, or relocating businesses in Florida involves a mosaic of state, regional, and local development permits and approvals. A typical large commercial development might require an environmental resource permit issued by a water management district, a stormwater permit issued by the Department of Environmental Protection or a local government, a comprehensive plan amendment approved by the local government as reviewed by the Department of Community Affairs, a certification of transportation concurrency from the local government or the Department of Transportation, and a local government site plan approval and building permit.

Self-Certification

The Department of Environmental Protection uses a self-certification process for private docks associated with detached individual single-family homes on adjacent uplands. A permit applicant can use self-certification to determine if a single-family dock can be constructed without further notice or review by the department, including notification of qualification for the U.S. Army Corps of Engineers State Programmatic Permit. If an applicant is qualified, the self-certification process provides a written confirmation so that further contact with the department is not necessary. The permit applicant is responsible for meeting all of the limitations established under self-certification and the department conducts inspections to ensure compliance. The department reports that the average time to complete the self-certification process is 20 minutes.¹

The U.S. Environmental Protection Agency (EPA) implements self-certification through the Environmental Results Program which establishes accountability by setting multimedia performance standards that replace individual state permits at a facility and by requiring a self-certification statement that the facility is in compliance with all applicable state air, water, and hazardous waste management standards. The facility must also certify that it has systems in place to maintain compliance. The agency's program is supported with workbooks that include a checklist for regulatory requirements, health and safety information, and pollution prevention advice. The individual components are sector performance standards, applicability statements, self-certification forms, return-to-compliance forms, and certification statements.² In Florida, the Department of Environmental Protection implemented self-certification for auto repair shops in two of the department's regions. In the "2007 Report – ERP States Produce Results,"³ the EPA noted that the department reported that auto repair shops were already performing fairly well prior to self-certification, and that a statewide environmental results program for auto repair shops was unnecessary and not cost-effective.

One-Stop Permitting – s. 288.109, F.S.

¹<http://appprod.dep.state.fl.us/erppa/> (last visited April 2009)

²<http://www.epa.gov/erp/certify.htm#apply> (last visited April 2009)

³ Report may be located at <http://www.epa.gov/erp/ERPreport.pdf> (last visited April 2009)

In 1999, the Legislature enacted chapter 99-244, Laws of Florida, to authorize the Department of Management Services to create a One-Stop Permitting Internet System by January 1, 2000. The purpose of the system was to create a central source of development permit information. The ultimate objective of the site was to allow an applicant to complete and submit permit application forms and fees to state agencies and local governments over the Internet. State agencies initially included in the One-Stop Permitting System were the Department of Environmental Protection, the Department of Community Affairs, the Department of Transportation (including district offices), and each water management district. Additional state agencies were to be added to the system by January of 2001.

As an incentive to use the One-Stop Permitting System, individuals and businesses who submit a permit application using the system were to be issued or denied a permit within 60 days of receipt by the appropriate permitting agency. The fee imposed by a state agency or a water management district for issuing a permit was to be waived for complete permit applications submitted on the system and received by the agency during the first six months of agency participation in the system.

Quick Permitting County Designation Program – s. 288.1093, F.S.

Chapter 99-244, Laws of Florida, also created the Quick Permitting County Designation Program under which counties could certify to the Department of Management Services that the county was implementing certain permitting best management practices, including the establishment of a single point of contact for businesses seeking permits with the county and the selection of high-priority projects for expedited review. After certification, a Quick Permitting County was eligible for participation in the One-Stop Permitting System Grant Program (s. 288.1092, F.S.). Quick Permitting Counties were eligible to receive a grant of up to \$50,000 to purchase software, hardware, or consulting services necessary for the county to interface with the state's One-Stop Permitting System.

Transfer of One-Stop Permitting to State Technology Office

In 2001, the Legislature enacted chapter 2001-278, Laws of Florida, to transfer responsibility for the One-Stop Permitting Program from the Department of Management Services to the State Technology Office, housed within the department but independently headed by a Chief Information Officer appointed by the Governor. Professional committee staff reported the following with regard to the implementation of the One-Stop Permitting Program:

- All water management districts and state departments, except for the Department of Insurance and the Department of Labor, were participating as statutorily required.
- In fiscal year 1999-2000, 16 counties received grants totaling \$460,884 from the One-Stop Permitting Grant Program.
- In fiscal year 2000-2001, 14 counties were eligible to receive \$604,000 in grants.
- The website only provided information on the permitting process and allowed persons to print out a permit application for participating entities.
- Phase II of the project would enable the public to complete and submit permit applications online.⁴

⁴ See the "Senate Staff Analysis and Economic Impact Statement" for SB 1738, prepared by the Senate Community Affairs Committee, and dated April 13, 2001.

Agency for Enterprise Information Technology

In 2007, the Legislature enacted chapter 2007-105, Laws of Florida, to create the Agency for Enterprise Information Technology in the Executive Office of the Governor, and to provide that the head of the agency is the Governor and the Cabinet. The agency is to act as the focal point for large-scale enterprise policy for state agencies, and to develop and publish a strategic enterprise information technology plan to ensure effective and efficient government services. As part of the legislation, the Department of Management Services was directed to assume the duties and responsibilities of the State Technology Office with respect to the One-Stop Permitting System Grant Program and the Quick Permitting County Designation Program. The State Technology Office was abolished, and no provision was made for the transfer of the One-Stop Permitting Program.

License Minnesota⁵

In April of 2005, Governor Pawlenty issued Executive Order 05-05, to direct the Commissioner of Labor and Industry to lead the implementation of the “One-Stop Shop” licensing recommendations set forth in the state’s “Transformation Roadmap” which outlined a strategic plan for state government to provide faster, more reliable, and cost-effective services to Minnesota’s citizens and businesses. The “Transformation Roadmap” outlined a licensing process to increase customer satisfaction, and improve efficient and effectiveness in licensing operations while maintaining a high level of quality.

The “License Minnesota” website allows access to information on over 500 licenses administered by more than 40 state agencies using more than 60 independent licensing systems, and is built on earlier platform and data developed by the Minnesota Department of Employment and Economic Development. As part of the website, the “One-Stop Licensing Project” is being designed to consolidate a statewide licensing system that provides a single entry portal or businesses and individuals to acquire all licenses and permits in a simple process.

Burden of Proof and Standard of Review

The obligation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established, and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.⁶

Preponderance of Evidence

Black’s Law Dictionary 1182 (6th ed. 1990) defines “preponderance of evidence” as a standard of proof in civil cases; preponderance of evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.⁷

Clear and Convincing Evidence

⁵ <http://www.state.mn.us/portal/mn/jsp/home.do?agency=LicenseMN> (last visited April 8, 2009)

⁶ 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).

⁷ Citing *Braud v. Kinchen*, LA. App. 310 So.2d 657, 659

Black's Law Dictionary 251 (6th ed. 1990) defines "clear and convincing proof" as proof which results in reasonable certainty of the truth of the ultimate fact in controversy, proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable.⁸

III. Effect of Proposed Changes:

Section 1. Creates s. 282.801, F.S., relating to E-SHOP FLORIDA.

- Subsection (1) establishes the following legislative intent and findings:
 - To establish a user-friendly, consolidated, statewide system that allows individuals and businesses to commence, develop, or expand business activities that contribute to the betterment of the state's economic condition;
 - That the system simplify licensing and permitting by providing for a central point of collection for data and fees so that individuals and businesses can comply with state requirements in one easy process.
 - The development of an Internet website to be designated as E-SHOP FLORIDA supports the Legislature's intent.
 - The E-SHOP FLORIDA website must be designed to allow individuals and businesses to obtain state government approvals as efficiently as possible and without duplicative efforts and reviews.

- Subsection (2) provides that by October 1, 2010, the Office of Tourism, Trade and Economic Development in the Executive Office of the Governor (OTTED) must issue requests for proposals to develop the E-SHOP FLORIDA website.
 - Requirements for the website are provided, and OTTED is provided with the authority to competitively procure and contract for services necessary to develop the website.
 - Each state agency and water management district that is directed to provide access to permits and licenses through the website must appoint representatives who may participate on behalf of the agency or district in the development of statewide policies, procedures, and standards for permitting and licensing activities.

- Subsection (3) provides requirements for the Internet site.
 - The site must be capable of allowing an applicant for a state or water management district permit, license, or approval to complete and submit a common application to the agency and the district.
 - The site must be capable of allowing the applicant to submit payment for the permit, license, or approval to the appropriate agency or district, and must provide payment options.
 - The site must be searchable by activity, state agency name, water management district name, or keyword.
 - Permits, licenses, and approvals must be listed alphabetically and each listing must link to a site that provides the agency or district information.

⁸ Citing *Lepre v. Caputo*, 131 N.J. Super. 18, 328 A.2d 650, 652 and *In re: Estate of Lobe*, Minn. App., 348 N.W. 2d 413, 414

- Subsection (4) defines “permit” or “license” to be:
 - Wetland or environmental resource permits;
 - Surface water management and improvement permits;
 - Transportation concurrency approvals;
 - Consumptive use permits;
 - Wastewater treatment permits;
 - Dock permits; and
 - Professional and business licenses, and taxpayer identification numbers.
- Subsection (5) provides that by July 1, 2010, the following agencies and all five water management districts must provide access to the E-SHOP FLORIDA website:
 - Department of Environmental Protection, including district regulatory offices;
 - Department of Community Affairs;
 - Department of Transportation, including district offices;
 - Department of Business and Professional Regulation; and
 - Department of Revenue.
 - By July 1, 2011, other state agencies that issue licenses, permits, and approvals must develop a protocol to allow participation in the E-SHOP FLORIDA system.
- Subsection (6) provides that to the extent feasible, agencies that do not have online licensing or permitting must develop and implement a system that will integrate with E-SHOP FLORIDA, and such agencies may competitively procure and contract for the necessary services.
- Subsection (7) provides that a state agency must approve or deny a completed application for a license, permit or approval submitted through the E-SHOP FLORIDA website within 60 days of receipt. Completed applications for permits, licenses, and approvals submitted to a water management district which do not require approval by the district governing board must be approved or denied within 60 days of receipt. Applications which must be approved or denied by the district governing board must be approved at the next regularly scheduled meeting held within 60 days after receipt of the completed application. An exemption is provided for permits issued under a federal delegation of authority or under a federally approved permitting program.
- Subsection (8) requires each state agency or water management district participating in E-SHOP FLORIDA to maintain a record of the time required for processing of applications filed under the system. The records must be compiled in to a report to be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15 of each year beginning in 2011.
- Subsection (9) provides that each state agency or water management district required to participate in E-SHOP FLORIDA may reduce a permit fee by 25 percent if an applicant submits an application that does not require the agency or district to request additional information.

Sections 2 thru 4. Amend ss. 373.036, 373.4135, and 373.4136, F.S., to correct cross-references.

Section 5. Amends s. 373.414, F.S., to provide that a permit application prepared and signed by a Florida licensed professional engineer, landscape architect, surveyor and mapper, or a geologist, which is determined by a water management district governing board or the Department of Environmental Protection to be a completed application, is in compliance with the statutory requirements for activities in surface waters and wetlands. If the district governing board or the department denies such permit application, or the application is challenged by a third party, the burden of proving noncompliance rests with the governing board, the department, or the third-party. The standard of proof is a preponderance of the evidence.

The department or a water management district may forward a complaint against the registered professional to the appropriate professional regulatory board or the Department of Business and Professional Regulation (DBPR) if the department or the district finds that a review under s. 455.227, F.S.,⁹ is warranted. If the registered professional is sanctioned by the regulatory board or DBPR, the professional is prohibited from preparing and signing permit applications under s. 373.414, F.S. After three sanctions, the professional is permanently barred from preparing and signing permit applications for regulated activities in surface waters and wetlands.

Section 6. Creates subsection (12) in s. 403.814, F.S., to require the Department of Environmental Protection and the water management districts to expand the use of Internet-based self-certification to be used by applicants for permit exemptions and general permits issued by the department and the districts, if appropriate. The department and the districts must also identify and develop general permits for activities for which review may be expedited through the use of professional certification. The department and the districts must submit a progress report on both requirements to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.

Section 7. Repeals s. 288.109, F.S, relating to the One-Stop Permitting System.

Section 8. Provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ Section 455.227, F.S., provides the grounds for disciplinary actions for professions and occupations regulated by the Department of Business and Professional Regulation.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill provides that the Department of Environmental Protection or a water management district may reduce permit application fees by 25 percent for a permit applicant who initially submits a completed application using the E-SHOP FLORIDA system.

B. Private Sector Impact:

Permit applicants who use the E-SHOP FLORIDA system will receive an approval or denial of a permit within 60 days of receipt of the completed application by the Department of Environmental Protection or a water management district. Also, applicants using the E-SHOP FLORIDA system may see a decrease in transaction costs due to the use of a central source of permit application information and an alternative method of submitting permit applications to state agencies.

C. Government Sector Impact:

The fiscal impact of the bill on OTTED and the designated agencies and water management districts is unknown at this time. However, when the One-Stop Permitting System was created in 1999, the Legislature appropriated \$3 million from non-recurring General Revenue to offset the potential decline in revenues as a result of the six-month fee waiver, and appropriated \$100,000 from the General Revenue Fund to the Department of Management Services to fund the administrative costs of establishing and implementing the One-Stop Permitting System Internet website.

VI. Technical Deficiencies:

Paragraph (5)(b) of section 1 of the bill provides that by July 1, 2011, each state agency that issues permits, approvals, or licenses must develop a protocol that allows for participation in the E-SHOP FLORIDA system, while paragraph (5)(a) provides a list of agencies that must provide access to the system by July 1, 2010. Paragraph (b) should be amended to clarify that the protocol directive is for each state agency not designated under paragraph (5)(a).

VII. Related Issues:

The bill provides that registered professionals who are sanctioned by a regulatory board or the DBPR are prohibited from preparing and signing permit applications for regulated activities in surface waters and wetlands; and also provides that if such professional is sanctioned a total of three times, the prohibition is permanent. The bill does not provide a length of time for a first or second prohibition, and does not provide how a sanctioned professional becomes eligible to prepare and sign permit applications after the conclusion of a first or second prohibition.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on April 14, 2009:

The committee substitute amends s. 403.814, F.S., to direct the Department of Environmental Protection and the water management districts to expand the use of Internet-based self-certification for exemptions and general permits if appropriate, and directs the department and the districts to identify and develop general permits which may receive expedited review through the use of professional certification. By January 15 2010, the department and the districts must submit a report to the President of the Senate and the Speaker of the House of Representatives on efforts to expand self-certification and develop general permits.

- B. **Amendments:**

None.