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 Environmental Preservation and Conservation Committee

BILL:	SB 716
INTRODUCER:	Senator Bennett
SUBJECT:	Environmental Regulation
DATE:	January 10, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill creates, amends and redefines provisions relating to environmental regulation. It relates to permit administration, requirements and application for various types of permits. It also addresses contaminated site cleanup and other petroleum-related issues. Lastly, the bill addresses small community sewer grants and drinking water for religious institutions. Specifically the bill:

- Prohibits a county or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allows applicants 90 days to respond to requests for additional information (RAIs);
- Clarifies beach and shore restoration and management requirements;
- Establishes a limited exemption for certain development projects from the Strategic Intermodal System (SIS);
- Expands eligibility for those entities entitled to reduced or waived permit processing fees;
- Specifies additional uses and activities in the Biscayne Bay Aquatic Preserve;
- Expands the use of Internet-based self-certification services and general permits;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;
- Provides for an expanded state programmatic general permit;
- Requires certain counties and municipalities with a specified population to apply for delegation of authority by certain deadlines for environmental resource permitting;
- Exempts certain expenditures from counting against the low-scored site initiative cleanup program;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;

- Provides expedited permitting for inland multimodal facilities receiving or sending cargo to or from Florida ports;
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Revises the definition for "financially disadvantaged small community";
- Revises the definition of industrial sludge;
- Revises provisions related to solid waste disposal and management;
- Provides a general permit for small surface water management systems;
- Expands the definition for "transient noncommunity water systems" to include religious institutions;
- Clarifies creation of regional action teams for expedited permitting for certain businesses;
- Allows for sale of unblended fuels for specified applications; and
- Extends certain deadlines for petroleum storage tank upgrades;

This bill substantially amends ss. 125.022, 161.041, 163.3180, 166.033, 218.075, 258.397, 373.026, 373.4141, 373.4144, 373.441, 376.3071, 376.30715, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.707, 403.814, 403.853, 403.973, 526.203 of the Florida Statutes.

This bill creates s. 161.032 of the Florida Statutes and an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas addressed by this bill are diverse. Each programmatic area will be addressed in the "effect of proposed changes" of the bill to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The bill prohibits a county from making the processing of a development permit conditional on the applicant first securing permits from any other state or federal agency, unless the agency issues a notice of intent to deny the permit before a county's action. It specifies that issuance of a county development permit does not create any right for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for an applicant's failure to fulfill its legal obligations and may attach a disclaimer stating as much. The bill allows a county to require an applicant to obtain all state and federal permits before commencing development. The bill does not prohibit a county from providing information to an applicant as to what other permits may apply.

Section 2 creates s. 161.032, F.S., relating to application review and RAIs for beach and shore preservation.

Prior to development of coastal projects, an applicant must apply to the Department of Environmental Protection (DEP) for a coastal construction permit. Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter duration for agency action is provided by law. There is no time limit for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a "take" as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues authorizations for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.[1]

In 2011, the Secretary of Environmental Protection established an RAI policy for the permitting process with the following guidelines:[2]

- The first RAI will require a mandatory review by the permitting supervisor and may be signed by the permit processor or the permitting supervisor;
- A second RAI must be signed by the program administrator;
- A third RAI must be signed by the district director or bureau chief. In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the third RAI issued and an explanation of why the RAI was issued; and
- Additional RAIs will require the Secretary's approval prior to issuance.

The bill specifies how the DEP processes applications and issues RAIs for coastal construction permits. The bill requires the DEP to issue any RAIs within 30 days of receiving an application. If an applicant believes the RAI is not authorized by law or rule, the applicant may request a hearing pursuant to ch. 120.57, F.S. Once the information requested is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the DEP is not authorized to issue the RAI, the applicant may ask the DEP to process the application.

Additionally, the bill provides a permit applicant with 90 days to respond to an RAI with the requested information. If the applicant needs additional time to respond to an RAI, the applicant

[1] U.S. Fish and Wildlife Service, *Endangered Species Permits*, http://www.fws.gov/midwest/endangered/permits/hcp/index.html (last visited Jan. 10, 2012).
[2] Memorandum to Regulatory Division Directors and Regulatory District Directors from Herschel T. Vinyard Jr. (Mar. 22, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

is required to notify in writing the agency processing the permit application of the circumstances. The DEP must hold the application in active status for no more than one additional 90-day period. Additional extensions may be granted with a showing of good cause. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the requested information by the applicable deadline results in denial of the application without prejudice. This allows the applicant to reapply at a later date.

The bill authorizes the DEP to issue a permit in advance of an applicant securing an incidental take authorization from under the federal Endangered Species Act if the permit contains conditions that prohibit the authorized activity from occurring until the incidental take authorization is approved.

Section 3 amends s. 161.041, F.S., relating to permits required for beach and shore preservation.

Beach restoration and nourishment projects are permitted by the DEP pursuant to Rule 62B-41.008(1)(k)4.b., Florida Administrative Code (F.A.C.). Permit applications must include a quality control/assurance plan to ensure the sediment from the sand borrow area will meet the standards contained in Rule 62B-41-007(2)(j), F.A.C.[3] Some coastal counties conducting or planning beach nourishment projects have expressed concerns over the DEP's inconsistent rule interpretation on the percentage of silt, clay or colloids allowed in beach fill. The rule provides that silt, clay or colloids cannot make up more than five percent by weight of the borrowed sand.

Proviso language in the Fiscal Year 2008-2009 General Appropriations Act called for creation of a working group to evaluate the effectiveness of Florida's beach management program. The working group included the Secretary of Environmental Protection along with city and county representatives, experts, engineers and environmental stakeholders. The working group was tasked with coming up with recommendations to address funding challenges, increasing regulatory costs and the need for better program accountability.[4] One of the recommendations was to amend chapter 161, F.S., to include Legislative intent to simplify the permitting of maintenance nourishment projects previously permitted by the DEP under the Joint Coastal Permit process.[5]

The bill amends s. 161.041, F.S., prohibiting the DEP from requiring, as a permit condition, sediment quality specifications or turbidity standards more stringent than those provided for in current law or rule. The bill specifies the DEP is prohibited from issuing guidelines that are enforceable as standards without going through rulemaking. The bill also provides that it is the Legislature's intent to simplify the permitting for periodic maintenance of beach renourishment projects previously permitted and restored under the joint coastal permit process pursuant to ch. 161 or part IV, ch. 373, F.S. The bill requires the DEP to amend chs. 62B-41 and 62B-49,

[3] Florida Dep't of Environmental Protection, *Guidelines for Preparing Sediment Quality Control / Quality Assurance Plans for Submittal to the Florida Department of Environmental Protection*, available at http://www.dep.state.fl.us/beaches/publications/pdf/QCQAPlan9-09.pdf (last visited Jan. 9, 2012).
[4] Beach Management Working Group, *Recommendations of the Beach Management Working Group* (on file with the Senate Committee on Environmental Preservation and Conservation).
[5] *Id.* at 7.

F.A.C., to comply with legislative intent to simplify the permitting process for periodic maintenance.

Section 4 amends s. 163.3180, F.S., relating to concurrency.

Major changes to concurrency were included in HB 7207, passed during the 2011 Regular Session.[6] In addition to repealing rule 9J-5, F.A.C., the act made concurrency for parks and recreation, schools and transportation facilities optional for local governments. However, s. 163.3180, F.S., subjects certain public facilities and services to the concurrency requirement on a statewide basis: sanitary sewer, solid waste, drainage and potable water. Additional public facilities and services may not be made subject to concurrency on a statewide basis without approval by the Legislature. Local governments may still extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction. If a local government decides to extend concurrency within its jurisdiction, the comprehensive plan must include certain guidelines, including adopted levels of service, that can be reasonably attained.

Transportation concurrency is intended to ensure transportation facilities and services are available at the same time as the development impacts. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system and measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is constructed. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements or wait until government provides the necessary improvements.

If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application. Local governments must use professionally accepted studies to evaluate the appropriate levels of service. Local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service must be reflected in the capital improvement element. A comprehensive plan that imposes transportation concurrency must contain appropriate amendments to the capital improvements element of the comprehensive plan.[7] When a proposed plan amendment affects Strategic Intermodal System (SIS) facilities, it must consult with the Florida Department of Transportation (DOT).

The DOT is responsible for establishing level-of-service standards on the highway component of the SIS and for developing guidelines to be used by local governments on other roads.[8] The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

[6] *See* ch. 2011-139, s. 15, Laws of Fla.
[7] *Id* at 69.
[8] *See* s. 339.64, F.S.

The bill provides for a limited exemption from SIS adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities (inland ports) receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the SIS facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is close to regionally significant road and rail transportation facilities;
- The project is close to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average; and
- The local government has a plan, developed in consultation with DOT, for mitigating any impacts to the SIS.

Section 5 amends s. 166.033, F.S., relating to municipal development permits.

This section of the bill is substantially similar to section one of the bill, except it applies to municipalities instead of counties. The bill prohibits a municipality from making processing of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any right for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations and may attach a disclaimer stating as much. The bill allows a municipality to require that an applicant obtain all state and federal permits before commencing development. It does not prohibit a municipality from providing information to an applicant as to what other permits may apply.

Section 6 amends 218.075, F.S., relating to reduction or waiver of permit fees.

Section 218.075, F.S., provides that the DEP or a Water Management District (WMD) can reduce or waive permit processing fees for counties with a population of 50,000 or less until that county exceeds a population of 75,000, and for municipalities with a population of 25,000 or less. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship.

The bill expands eligibility for reductions or waivers of permit processing fees for entities created by special act, local ordinance or interlocal agreement of those local governments that would qualify under existing law.

Section 7 amends s. 258.397, F.S., relating to the Biscayne Bay Aquatic Preserve.

Florida has 41 aquatic preserves, encompassing approximately 2 million acres. Biscayne Bay Aquatic preserve is located in Southeast Florida in Miami-Dade and Monroe Counties. Its boundaries, management authorities, and rules are established in Rule 18-18, F.A.C.[9] The Board of Trustees of the Internal Improvement Trust Fund (Board) may not convey sovereignty submerged lands within the preserve except upon a showing of extreme hardship by the applicant and that the conveyance is in the public interest. There are no exceptions for municipal projects. In addition, dredging and filling activities are restricted to four activities:

- For public navigation, public necessity or preservation of the bay;
- For enhancement of the quality and utility of the preserve;
- For creation and maintenance of marinas, piers and docks and their associated activities as long as the Board makes a specific finding that the dredge and fill activities will not adversely affect the quality and utility of the preserve; and
- For the purpose of eliminating public health hazards, stagnant waters, islands and spoil banks, if the dredging will enhance the aesthetic and environmental quality and utility of the preserve.

The bill exempts a municipal applicant from having to show extreme hardship for a proposed project, although the Board must still find the project is in the public interest. The bill also authorizes dredge and fill activities to allow for creation of public waterfront promenades.

Section 8 amends s. 373.026, F.S., relating to DEP powers and duties and Internet-based self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing and repairing single-family docks, adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[10]

In addition, the WMDs allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[11] interviews with stakeholder groups indicated some local governments often

[9] Florida Dep't of Environmental Protection, *About the Biscayne Bay Aquatic Preserve*, http://www.dep.state.fl.us/coastal/sites/biscayne/info.htm (last visited Jan. 9, 2012).
[10] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Jan. 9, 2012).
[11] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.myfmca.org/wp-

do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

The bill requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. The expansion of services is only required if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 9 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or an environmental resource permit (ERP) under part IV, ch. 373, F.S., the DEP or a WMD is required to examine the application and notify the applicant within 30 days of any apparent errors or omissions and RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request the agency process the application if he or she believes that an RAI is not authorized by law or rule. The DEP or a WMD is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to an RAI, or limit to the number of RAIs the DEP or WMD may issue.[12]

The bill reduces the time frame for the DEP or a WMD to approve, deny or issue a notice of proposed agency action from 90 to 60 days. Additionally, the bill prohibits a state agency or an agency of the state from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 10 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[13]

For activities occurring in "waters of the United States" in Florida, including wetlands, the federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal

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content/uploads/2009/12/007_Improving_Consistency_Predictability_Dock_Marina_Permitting_2-19-07.pdf (last visited Jan. 9, 2012).

[12] For additional information on Secretarial guidelines for RAIs, see "Section 2" of this bill analysis.

[13] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Jan. 9, 2012).

Clean Water Act (CWA).[14] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[15] although the focus of that legislation is primarily maintaining navigable waters.[16] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or a waiver through the state Environmental Resource Permit (ERP)[17] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[18]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorizations for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[19] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The bill authorizes the DEP to obtain issuance of an expanded SPGP or a series of regional general permits from the Corps for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters governed by the Rivers and Harbors Act of 1899. An activity will only be authorized if it causes only minimal adverse environmental effects when performed separately and, when taken together, cause only minimal cumulative adverse environmental effects.

The bill directs the DEP to not seek issuance of or take any action pursuant to such permits unless the conditions are at least as protective of the environment and natural resources as

[14] 33 U.S.C. §§ 1251-1387.
[15] 33 U.S.C. § 403.
[16] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Jan. 9, 2012).
[17] *See generally* part IV, ch. 373, F.S.
[18] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Jan. 9, 2012).
[19] *Id. at* 20.

existing state law and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. It deletes the requirement that the DEP develop a consolidated wetland permitting mechanism by October 1, 2005. It also deletes the requirement that dredge and fill activities impacting 10 acres or less be processed as part of an ERP program.

The bill authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps if the general permit is at least as protective of the environment and natural resources as existing state law and federal law under the Clean Water Act and Rivers and Harbors Act of 1899. It deletes an obsolete reporting requirement. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 11 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and rules authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments.[20] Local governments are entitled to request delegation authority from the DEP for a variety of programs and the DEP has authority to approve those delegations. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.[21] Currently, only Broward County has a received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.[22]

According to the statute, delegation includes the applicability of ch. 120, F. S., (the Administrative Procedure Act), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

[20] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.
[21] Florida Dep't of Environmental Protection, *Delegations*, available at http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf (last visited Jan. 9, 2012).
[22] Rule 62-344, F.A.C., provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

The bill requires any county or municipality having a population of 400,000 or more that has local pollution control programs regulating wetlands or surface waters within its geographic boundary to apply for delegation of ERP authority on or before January 1, 2014. Local governments that fail to receive delegation of all or part of ERP authority within two years of requesting delegation or January 1, 2016, at the latest, may not require permits that are substantially similar to the requirements needed to obtain an ERP. The bill includes a grandfather clause for local governments that receive ERP delegation by January 1, 2014.

The bill specifies that the DEP is responsible for all ERP delegations to local governments. The DEP must approve or deny the application within two years of receipt of the application for delegation. If a delegation is denied, a challenge to the denial tolls the deadline until the challenge is resolved. The bill also prohibits the DEP and the WMDs from regulating activities subject to a delegated authority.

The bill does not prohibit or limit a local government from regulating wetlands or surface waters after January 1, 2014, if it receives delegation of all or part of ERP authority within two years of submitting its application.

The bill specifically excludes ERPs or reclamation applications for solid mineral mining from the delegation provisions contained in this section. It also allows local governments to continue to regulate new solid mineral mines or any additions, changes or expansions to existing solid mineral mines.

Section 12 amends s. 376.3071, F.S., related to the low-scored site initiative for contaminated sites.

The Legislature created the Inland Protection Trust Fund (fund) with the intent that it serve as a repository for funds which will enable the DEP to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products in order to protect public health, safety and welfare, and to minimize environmental damage.[23] Section 376.3071(4), F.S., directs the DEP to obligate moneys available in the fund whenever incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or public health, safety or welfare. The current law provides for:

- Prompt investigation and assessment of contaminated sites;
- Expeditious restoration or replacement of potable water supplies;
- Rehabilitation of contaminated sites;
- Maintenance and monitoring of contaminated sites;
- Payment of expenses incurred by the DEP in its efforts to obtain the payment or recovery of reasonable costs resulting from the activities described in this subsection from responsible parties;
- 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 the DEP in the investigation of drinking

[23] Section 376.3071, F.S.

water contamination complaints, and costs associated with public information and education activities;
- Establishment and implementation of a 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
- Expenditures from the fund to cover ineligible sites or costs if the DEP deems it necessary to do so.

Section 376.3071(5), F.S., provides for the site selection and cleanup criteria that the 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 are not limited to:
- 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 376.3071(11), F.S., provides for a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation, including:
- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of six months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and two feet below land surface meet the soil cleanup target levels established by DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, the DEP must issue a "No Further Action" determination, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order (SRCO). Sites that are eligible must be voluntarily initiated by the source property owner or responsible party for the contamination. For sites eligible for state restoration funding, the DEP may pre-approve the costs of the site assessment, including six months of groundwater monitoring, not to exceed $30,000 for each site. The DEP may not pay

the costs associated with the establishment of institutional or engineering controls. Assessment work must be completed no later than six months after the DEP issues its approval.

The bill clarifies that program deductibles, copayments, and contamination assessment report requirements do not count towards expenditures under the low-scored site initiative.

Section 13 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The bill provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The bill allows applicants who were previously denied coverage to reapply.

Section 14 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(q), F.S., a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility (inland port) is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach

County.[24] The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[25]

The bill specifies that any inland multimodal facility that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

Section 15 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

"Zone of Discharge" is defined in Rule 62-520.200(27), F.A.C. It means "a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded." Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

> The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

Further, Rule 62-520.200(10), F.A.C., defines "existing installation" as:

> [A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations don't have a permit or groundwater monitoring plan. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The bill provides that for existing installations, as defined by rule 62-520.200(10), F.A.C., zones of discharge to groundwater are authorized to a facility's or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Exceedance of primary and secondary groundwater standards that occur within a zone of discharge does not create liability

[24] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Jan. 9, 2012).
[25] Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Jan. 9, 2012).

pursuant to chs. 376 or 403, F.S., for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

Section 16 amends s. 403.087, F.S., relating to revocation of permits by DEP.

Currently, the DEP may revoke permits for the following reasons:
- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[26]

The bill narrows those violations that the DEP may consider in revoking a permit. The bill allows the DEP to revoke permits for the following violations:
- The permit holder has violated a law, DEP order, rule or condition, but no longer for violations of regulations;
- The permit holder has failed to submit required operational reports or other information that directly relates to the permit and has refused to correct or cure such violations when requested to do so; and
- The permit holder has refused a lawful inspection at the facility authorized by the permit.

Section 17 amends s. 403.1838, F.S., relating to the small community sewer construction act.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance, or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The bill increases the population size from 7,500 to 10,000 or fewer to qualify as a financially disadvantaged small community. More communities will be eligible to qualify for grants.

Section 18 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The bill clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

[26] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

Section 19 amends 403.707, F.S., relating to permitting of solid waste disposal.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by DEP. Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under this chapter or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The bill deletes the public nuisance requirements in s. 403.707(2), F.S., providing that a permit is not required if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders.

The bill provides that if a facility has a permit authorizing disposal activity, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

The bill also provides that any permit issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a lesser permit term. Existing permit fees for qualifying solid waste management facilities must be prorated to the permit term authorized under current law. This provision applies to all qualifying solid waste management facilities that apply for an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 20 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for general permits for projects which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria that, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[27] Projects include, but are not limited to:

[27] Section 403.814(1), F.S.

- 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.

The bill directs the DEP to create a general permit for construction, alteration and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- Activities will not impact wetlands or other surface waters;
- Activities are not conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale;
- The project does not:
  - Cause adverse water quantity or flooding to receiving waters or adjacent lands;
  - Cause adverse impacts to existing surface water storage and conveyance capabilities;
  - Cause violations of state water quality standards;
  - Cause adverse impacts to the maintenance of surface water or groundwater levels or surface water flows established pursuant to s. 373.042, F.S., or a work of a WMD provided for in s. 373.086, F.S.; and
- The water management system design plans are signed and sealed by a registered professional who attests the system will perform to design specifications and that were designed in accordance to accepted industry standards and scientific principles.

Section 21 amends s. 403.853, F.S., relating to drinking water standards for religious institutions.

Under the federal Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) has promulgated national primary drinking water regulations for contaminants that may adversely affect human health, if it is likely to occur in public water systems often and at levels of public health concern. The EPA will regulate the contaminant if the EPA's Administrator decides that regulating the contaminant will meaningfully reduce health risks for those served by public water systems. The federal act also authorizes states to assume implementation and enforcement. In 1977 Florida adopted the Florida Safe Drinking Water Act (FSDWA), which is jointly administered by the DEP, as lead-agency, and the Department of Health (DOH), which has specific duties and responsibilities of its own. The DOH and its agents have general supervision and control over all private water systems and public water systems not covered or included in the FSDWA. Every county health department in Florida has a minimum degree of mandatory participation in the FSDWA. This minimal level of participation is supportive in nature because most of the county health departments do not have sufficient staff or capability to be fully responsible for the program. In those counties where the county health department is without adequate capability, the appropriate DEP office is heavily involved in administering all aspects of the program.

Under the FSDWA, a regulated "public water system" is a system that provides water for human consumption through pipes or other constructed conveyances and has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.[28] The only exception is for those systems that, in addition to meeting the criteria for being a public water system, also meet all four criteria provided for in s. 403.853(2), F.S. The system:

- Consists of distribution and storage facilities only and cannot treat or collect water;
- Obtains all its water from a public water system but is not owned or operated by it;
- Does not sell water; and
- Is not a carrier of passengers in interstate commerce.

Public water systems are either community or noncommunity. A community water system serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A noncommunity water system is either a nontransient noncommunity system or a transient noncommunity water system. A nontransient noncommunity water system serves at least 25 of the same persons over six months per year. A transient noncommunity water system has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year but does not regularly serve 25 or more of the same persons for more than six months per year.[29]

The bill provides that the DEP, or a local county health department designated by the DEP, is authorized at the request of the owner or operator of a transient noncommunity water system using groundwater as a source of supply and serving religious institutions, except those with school or day care services, to perform a sanitary survey. Upon receipt of satisfactory results, the DEP must reduce the monitoring and reporting requirements for such religious institutions.

Section 22 amends s. 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

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

Under s. 403.973, F.S., OTTED or a Quick Permitting County may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or
- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

[28] *See* s. 403.852(2), F.S.
[29] *See generally* s. 403.852, F.S.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ'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 ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:

- Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
- Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
- Extract natural resources;
- Produce oil; or
- Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The bill revises the structure and process for expedited permitting of targeted industries. The bill expands eligibility for activities qualifying for expedited review to commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs. The bill requires regional teams to be established through the execution of a project-specific MOA. It clarifies that the standard form of the MOA will be used only if the local government participates in the expedited review process. It also fixes several technical errors stemming from the creation of the Department of Economic Opportunity in 2011.

Section 23 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[30]

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent. There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The bill provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The act provided that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender or wholesaler is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

[30] U.S. Department of Energy, *Federal & State Incentives and Laws*, http://www.eere.energy.gov/afdc/incentives_laws_security.html (last visited Jan. 10, 2012).

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with ch. 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The bill clarifies that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted above.

Section 24 creates an unnumbered section of law relating to the installation of fuel tank upgrades.

Rule 62-761.510, F.A.C., provides deadlines for Category-A and Category-B petroleum storage tank systems to meet the standards for secondary containment, Category-C storage tank systems by certain dates. The DEP has been regulating both underground and aboveground petroleum storage tank systems since 1983.[31]

The bill extends the deadline to December 31, 2013, for entities to comply with petroleum tank upgrade requirements for those who bought their facilities in 2009. The extension applies even if the owners of the facilities have previously signed consent orders requiring earlier upgrades.

Section 25 provides an effective of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[31] Florida Dep't of Environmental Protection, *Storage Tank Regulation*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Jan. 10, 2012).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated on an individual basis. Expansion of Internet-based self-certification and additional general permits may also reduce costs for constructing qualifying projects.

Owners or operators of transient noncommunity water systems using groundwater as their source of drinking water serving religious institutions may have reduced reporting and monitoring costs.

Lastly, a child of an original owner or a corporation created to hold title to a contaminated site who gained ownership of that site through the transfer of the property may qualify for financial assistance to aid cleanup of the site. Previous applicants who were denied may reapply. The DEP estimates the average cost to clean up a contaminated site is $380,000.

C. Government Sector Impact:

State Government Impact:

The DEP has estimated there will be an unknown impact to the permit fee trust fund associated with reducing or waiving permit processing fees for entities created by special acts, local ordinances, and interlocal agreements by low-population counties.

Expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. As mentioned above, the average cost of each cleanup is $380,000. The number of additional sites that may be eligible is unknown.

Extending the length of solid waste permits to 20 years may result in cost and time reductions in the amount of time dedicated to permit review.

All other impacts can be absorbed by the DEP by existing staff and resources.

WMD governing boards may have to schedule additional meetings in order to comply with taking action within 60 days of receiving completed permit applications. However, some permits will fall within a normal governing board meeting schedule and will not require any additional costs for a WMD to take action. Meeting costs vary by WMD and cannot be determined at this time.

Local Government Impact:

As with the private sector, when a local government is a permit applicant, reducing environmental permitting requirements, time, necessity and compliance costs will collectively save significant amounts of money; however, the savings cannot be calculated on an individual, local government basis.

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. Conversely, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues. If a local government applies for delegation, it will incur expenses to complete the application. The costs are indeterminate at this time.

When a local government is an ERP permit applicant, shortened permitting time clocks might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for timeclock waivers.

Local governments that operate solid waste management facilities would have permit fees reduced to one-quarter of current costs. Local governments that operate landfills that have caused environmental impacts would be relieved of the costs of addressing these impacts.

Entities created by special acts, local ordinances or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

Financially disadvantaged municipalities with a population between 7,500 and 10,000 will now be eligible for wastewater grants under the Small Community Sewer Construction Assistance Act.

The DEP and the WMDs will see reduced permit revenue from the additional exemptions applied to entities that qualify for a reduction or waiver of permit processing fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Beach erosion and management projects are complex and many take many months or even years to permit. The bill attempts to streamline the permitting process for issuance of joint coastal permits. The bill is not clear whether the 60-day time frame for the DEP to take action on a permit application applies to such permits. If it does, this provision may actually lengthen the current process for permitting beach management projects as the applicant would have to apply for extension after extension to fully permit such projects.

In addition to beach management projects, the WMD governing boards are responsible for approving certain permits. They typically do not meet on a schedule that would allow for consistent action on permits within 60 days. Applicants would either have to apply for extensions or the WMD governing boards would have to schedule additional meetings.

VIII. Additional Information:

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

None.

B. Amendments:

None.