

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 994

INTRODUCER: Senator Dean

SUBJECT: Federal Environmental Permitting

DATE: January 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Yeatman	EP	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes an obsolete Department of Environmental Protection reporting requirement.

This bill substantially amends s. 373.4144, Florida Statutes.

II. Present Situation:

Regulation of Florida’s wetlands includes permitting by both the state and federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899 (Act). This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal CWA and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of certain activities that occur in or near the nation’s wetlands and surface waters. The regulatory plan is intended to control the dredging and filling of wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Act, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The Corps administers the permitting provisions of both federal laws, with EPA oversight, in effect combining CWA and Act permits into a single action. The Corps issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the Corps, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general

permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the Corps in Florida, although the Corps could authorize Florida to issue regional permits on its behalf.

The dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP). The federal CWA requires the same person to obtain a 404 permit from the Corps if the wetlands in question fall within the jurisdiction of the CWA. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the Corps. The SPGP is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas and associated facilities; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. The law required that the mechanism or plan analyze and propose the development of an expanded SPGP program. The DEP was also directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida congressional delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

III. Effect of Proposed Changes:

Section 1 repeals s. 373.4144(2), F.S., directing the DEP to file a report with the Speaker of the House of Representatives and the President of the Senate proposing any required federal and state statutory changes that would be necessary to accomplish consolidation of state and federal wetland permitting programs, and to coordinate with the Florida congressional delegation on any necessary changes to federal law. The section also renumbers the subsequent subsection of law and makes minor language changes.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.