HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 703 Environmental Regulation
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Patronis
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 2 N, As CS	Renner	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 4 N	Helpling	Massengale
3) State Affairs Committee			

SUMMARY ANALYSIS

This is a comprehensive bill that changes multiple areas of state law, including the following:

- Prevents counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations for agricultural lands after July 1, 2003, by modifying, amending, or readopting regulations adopted prior to July 1, 2003.
- Reduces the voting requirement for approval of a local government's proposed comprehensive plan or plan amendment by requiring approval by a "simple majority" vote of the members of the governing body, rather than requiring approval by "at least a simple majority."
- Prohibits a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.
- Exempts a lessee of sovereign submerged lands for a private residential multi-family dock from permit fees for a certain area of the dock.
- Prohibits local governments from requiring water control districts to meet additional regulatory requirements for certain structures included within a water control plan if an environmental resource permit or federal dredge and fill permit has been issued and the structures are incorporated in a plat of the county or city within which the water control district lies.
- Authorizes WMDs and DEP to issue a consumptive use permit (CUP) for up to 50 years to landowners who, individually or collectively, make available lands to enable the expeditious development of dispersed water storage projects that provide water resource benefits and alternative water supply development.
- Authorizes WMDs or DEP to issue a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.
- Requires certain local governments to follow water well construction criteria and applicable standards adopted by DEP or a WMD and preempts additional local government water well construction permitting regulations.
- Allows an applicant for a mitigation bank permit to satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.
- Requires regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order.
- Specifies that the provision of law authorizing the issuance of variances by DEP for discharges of waste into waters of the state or for hazardous waste management requirements does not prohibit the issuance of moderating provisions.
- Creates a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.
- Provides a two-year extension for certain state environmental permits and local government development permits.

The bill has an indeterminate but likely insignificant negative fiscal impact on state government. The bill has a positive and negative insignificant fiscal impact on local governments. The bill has an insignificant but positive impact on the private sector. (See Fiscal Analysis and Economic Impact Statement section for more details).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Agricultural Lands and Practices

Present Situation

Section 163.3162, F.S., prohibits governmental entities[1] from adopting or enforcing any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation[2] on agricultural land if such activity is:

- Regulated through implemented best management practices (BMPs), interim measures, or regulations adopted as rules under ch. 120, F.S., by the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), or a water management district (WMD) as part of a statewide or regional program; or
- Expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.

However, s. 163.3162(3)(i), F.S., provides that the prohibition on governmental entities adopting or enforcing certain duplicative ordinances, resolutions, regulations, rules, or policies does not limit a county's power to enforce wetlands, springs protection, or stormwater ordinances, regulations, or rules adopted before July 1, 2003.

Effect of Proposed Changes

The bill amends s. 163.3162(3)(i), F.S., to prevent counties from continuing to adopt duplicative wetlands, springs protection, and stormwater regulations after July 1, 2003, by modifying, amending, or readopting regulations that were originally adopted prior to July 1, 2003.

Section 2. Process for Adoption of Comprehensive Plan or Plan Amendment

Present Situation

Section 163.3184, F.S., sets forth the state's review process for the adoption of local government comprehensive plans (plans) and plan amendments. Generally, plan amendments adopted by local governments follow the expedited review process.[3] However, plan amendments that are in an area of critical state concern, propose a rural land stewardship area, propose a development of regional impact, or are new plans for newly incorporated municipalities must follow the state coordinated review process.[4]

Under the expedited and coordinated review process, each local governing body proposing a plan or plan amendment must transmit the proposed comprehensive plan or plan amendment to the reviewing agencies[5] within 10 working days after the first public hearing.

[1] Section 163.3162(2)(d), F.S., defines a 'governmental entity' as municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. It does not include a WMD, a water control district established under ch. 298, F.S., or a special district created by special act for water management purposes.
[2] Bona fide farm or farm operation is defined in s. 193.461, F.S., as good faith commercial agricultural use of the land based on the length of time the land has been so used, whether the use has been continuous, indication that an effect has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, and size as it relates to the specific agricultural use, among other things.
[3] Section 163.3184(3), F.S.
[4] Section 163.3184(4), F.S.
[5] Pursuant to s. 163.3184(1)(c), F.S., 'reviewing agencies' means: 1. The state land planning agency; 2. The appropriate regional planning council; 3. The appropriate WMD; 4. DEP; 5. The Department of State; 6. The Department of Transportation; 7. In the case of plan amendments relating to public schools, the Department of Education; 8. In the case of plans or plan amendments that affect a military installation, the commanding officer of the affected military installation; 9. In the case of county plans and plan amendments, the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services; and 10. In the case of municipal plans and plan amendments, the county in which the municipality is located.

Section 163.3184(11), F.S., provides that the procedure for transmittal of a proposed plan or plan amendment must be by an affirmative vote of *not less than a majority* of the members of the governing body present at the hearing.

Effect of Proposed Changes

The bill amends s. 163.3184(11), F.S., reducing the voting requirement for the procedure for transmittal of a proposed plan or plan amendment by specifying that affirmative votes from only a "simple majority" of the members of the governing body present at the hearing are required, rather than "not less than a majority" of those members. Therefore, voting requirements adopted by a local government for proposed plans or plan amendments that are more stringent than a simple majority, such as a super majority vote, would be prohibited.

Section 3. Agricultural Lands Affected by a Comprehensive Plan

Present Situation

Local governments have the authority to establish land use designations for lands within their jurisdictional boundary. These land use designations generally include agricultural, residential, and industrial. Local governments can also amend the designated land uses to allow for more intensive or less intensive uses. In some instances, a landowner of agricultural land may request a local government to approve a land use change authorizing the land to be used for a more intensive purpose, such as for residential instead of agricultural. Many times a landowner may seek a more intensive land use authorization knowing that actual development of the land may not occur for some years in the future. There have been reports that certain local governments have approved more intensive land uses for lands classified as agricultural for ad valorem property tax purposes and then rescinded the land use changes when the agricultural property owner continued to use the land for a bona fide agricultural purpose qualifying for an agricultural classification.

Section 163.3194(5), F.S., provides that the agricultural classification of land for ad valorem property taxation purposes cannot be affected by any adopted comprehensive plan, but nothing prohibits a local government from rescinding a land use change where the land maintains its agricultural classification.

Effect of Proposed Changes

The bill amends s. 163.3194(5), F.S., to prohibit a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification.

Section 4. Lease of Sovereignty Submerged Lands for Private Residential Docks and Piers

Present Situation

Upon statehood, Florida gained title to all sovereign submerged lands[6] within its boundaries, to be held in trust for the public.[7] The Board of Trustees of the Internal Improvement Trust Fund (BOT) is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of such lands.[8] The Florida Constitution authorizes the sale of sovereign submerged lands, but only when in the public interest, and authorizes private use of portions of such lands, but only when not contrary to the public interest.[9]

Section 253.03(7), F.S., specifies that, when disposing of sovereign submerged lands, the BOT is required to "ensure maximum benefit and use." The BOT also has the authority to adopt regulations

[6] In Florida, "submerged lands" are "publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state." Section 253.03(8)(b), F.S.
[7] *Broward v. Marbry*, 50 So. 826, 829-30 (Fla. 1909).
[8] Section 253.03(1), F.S.
[9] Article X, Section 11 of the Florida Constitution.

pertaining to anchoring, mooring, or otherwise attaching to the bottom and the establishment of anchorages on sovereign submerged lands.

Florida recognizes “riparian rights" for landowners with waterfront property bordering on navigable waters.[10] Section 253.141(1), F.S., specifies that these rights include ingress, egress, boating, bathing, fishing, and others as defined by law. Riparian landowners must obtain the BOT’s authorization for installing and maintaining docks, piers, and boat ramps on sovereign submerged land.[11] Under the BOT’s rules, “dock” generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[12] Authorization may be in the form of consent by rule, letter of consent, or lease.[13] All leases authorizing activities on sovereign submerged lands must include provisions for lease fee adjustments and annual payments.[14]

Section 253.0347, F.S., establishes the sovereign submerged lands lease requirements for a private residential single-family and multi-family dock. Section 253.0347(2)(f), F.S., provides that a lessee of sovereign submerged lands for a private residential multi-family dock designed to moor boats up to the number of units within the multi-family development *is not required to pay lease fees* for a preempted area equal to or less than 10 times the riparian shoreline along sovereign submerged land on the affected waterbody times the number of units with docks in the private multi-family development.[15] For example, if a large condominium building owns 1,000 square feet of shoreline and has 100 units with docks, the condominium association would be exempt from paying lease fees on a preempted area of 1 million square feet of sovereign submerged lands (10 x 1000 sq ft of shoreline x 100 units = Preempted area of 1 million sq ft).

Under current law,[16] statewide environmental resource permits are required to construct private residential single-family and multi-family docks on sovereign submerged lands. DEP also requires that applicants for such permits pay a one-time permit fee. Multi-family docks that are less than 1,000 square feet are exempt and do not require a permit or permit fee.[17] A general permit is required for multi-family docks that do not exceed 2,000 square feet and the permit fee is $250.[18] Individual permits are required for all other multi-family docks that do not qualify as an exempt or general permit and the permit fee begins at $420 and can increase depending on the number of slips and size of the dock.[19]

Effect of Proposed Changes

The bill amends s. 253.0347(2)(f), F.S., to provide that a lessee of sovereign submerged lands for a private residential multi-family dock is not required to pay permit fees, as discussed above, for the preempted area.

Section 5. Water Control Plans

Present Situation

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state’s first general drainage law, the General Drainage Act of 1913 (now codified in

[10] Section 253.141(1), F.S. These rights are appurtenant to and inseparable from the riparian land; the rights inure to the property owner, but the rights are not proprietary in nature. *Id*.
[11] Rule 18-21.005(1)(d), F.A.C.
[12] *See* Rule 18-20.003(19), F.A.C.; Rule 18-21.003(2), F.A.C.
[13] Rule 18.21.005(1), F.A.C.
[14] Rule 18-21.008(1)(b)(2), F.A.C.
[15] Section 253.0347, F.S.
[16] Section 373.4131(1)(a), F.S.
[17] Rule 62-330.051, F.A.C.
[18] Rule 62-300.427, F.A.C.
[19] Rule 62-300.054, F.A.C.

Chapter 298, F.S.), to establish a single procedure for creating drainage districts and to provide general law provisions governing the operation of these districts. Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to 'water control districts.'

Chapter 298, F.S., contains provisions governing the creation and operation of water control districts. Section 298.01, F.S., restricts the creation of new water control districts to special acts of the Legislature (independent water control districts) and under the provisions of s. 125.01, F.S. (dependent water control districts).

Effective October 1998, any plan of reclamation, water management plan, or plan of improvement developed and implemented by a water control district is considered a "water control plan."

A water control plan for a district must contain the following, if applicable:[20]

- Descriptions of the district's statutory authority;
- Maps delineating all boundaries of the district and subdistricts;
- Descriptions of all land and facility uses;
- Engineering descriptions for each facility's ability to store water;
- Descriptions of any environmental or water quality program that the water control district has implemented or plans to implement;
- Map of areas outside the district where the district provides service;
- Detailed descriptions of proposed facilities in the next 5 years; and
- Descriptions of the administrative structure of the district.

Before adopting a water control plan or plan amendment, the district's board of supervisors must submit the proposed plan or amendment to the jurisdictional water management district for review.[21]

Section 298.225(6), F.S., provides that the review or approval of the water control plan by the applicable WMD does not constitute the granting of any permit necessary for the construction or operation of any water control district work and cannot be relied upon as any future agency action on a permit application. Water control district projects are not exempt from obtaining all applicable state and federal environmental permits.

Effect of Proposed Changes

The bill amends s. 298.225(6), F.S., to prohibit local governments from requiring additional authorizations or permits for certain structures, such as ditches, dikes, water control structures, canals, or pump stations included within a water control plan if an environmental resource permit or federal s. 404 dredge and fill permit has been issued, and such structures are incorporated in a plat of the county or city within which the water control district lies.

Section 6. Dispersed Water Storage

Present Situation

Consumptive Use Permitting

For water uses other than private wells for domestic use, DEP and the WMDs have the authority to require any person seeking to use 'waters in the state'[22] to obtain a consumptive use permit (CUP). A

[20] Section 298.225(3), F.S.
[21] Section 298.225(5), F.S.
[22] Section 373.019(22), F.S., defines 'water' or 'waters in the state' to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

CUP establishes the duration and type of allowed water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as 'the three-prong test.' Specifically, the proposed water use:

1. Must be a reasonable-beneficial use.[23]
2. May not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.[24]

Duration of Permits

Multiple sections of law allow for CUPs of varying durations to be issued depending on the circumstances, including:

- CUPs must be granted for a period of 20 years if requested by the applicant and there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided.[25]
- CUPs may be granted for up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation if a long-term permit is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.[26]
- CUPs approved for the development of alternative water supplies must have term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. However, if the permittee issues bonds for the construction of the project, upon request of the permittee before the expiration of the permit, the permit must be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of the bonds, if the governing board determines that the use will continue to meet the conditions for the issuance of the permit.[27]
- CUPs for alternative water supply projects for a period of 30 to 37 years, if certain criteria are met.[28]

In addition, s. 373.236(6), F.S., provides that where landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of alternative water supply development projects, WMDs and DEP may grant CUPS for those projects for up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities.

Effect of Proposed Changes

The bill amends s. 373.236(6), F.S., to authorize WMDs and DEP to grant CUPs for up to 50 years to landowners, individually or collectively, who make available lands to enable the expeditious development of projects involving dispersed surface water storage and release or surface water storage and recharge that provide water resource benefits and alternative water supply development.

The bill also allows a CUP to authorize water uses by individual project participants to commence on different dates if the CUP is issued to landowners who make land available for dispersed water storage or to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities engaged in alternative water supply projects.

[23] Section 373.019(16), F.S., defines 'reasonable-beneficial use' to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[24] Section 373.223(1), F.S.
[25] Section 373.236(1), F.S.
[26] Section 373.236(3), F.S.
[27] Section 373.236(5)(a), F.S.
[28] Section 373.236(5)(b), F.S.

Section 6. 30-year Consumptive Use Permit for a Development of Regional Impact Located within a Rural Area of Critical Economic Concern

Present Situation

Section 380.06, F.S., defines the term "development of regional impact" (DRI) as any development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county. This section also sets statewide guidelines and standards to be used in determining whether particular developments will undergo development of regional impact review.

Section 288.0656, F.S., defines the term "rural area of critical economic concern" as a rural community, or a region composed of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.

Effect of Proposed Changes

The bill authorizes WMDs and DEP to grant a CUP for up to 30 years for an approved development of regional impact that is located in a rural area of critical economic concern.

Section 7. Implementation of Programs for Regulating Water Wells

Present Situation

Section 373.308, F.S., directs DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells. Upon authorization from DEP, issuance of well permits is the sole responsibility of the WMD, delegated local government, or local county health department. The statute prohibits other local governmental entities from imposing additional or duplicate requirements or fees or establish a separate program for the permitting of the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well. DEP is authorized to prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to require a delegated local government to follow water well construction criteria and applicable standards adopted by DEP or a WMD. In addition, the bill specifies that the DEP or WMD criteria and standards preempt additional local government water well construction permitting regulations.

Section 8. Licensure of Water Well Contractors

Present Situation

Any person wishing to engage in business as a water well contractor must obtain a license from a WMD.[29] The WMD licensure is the only water well contractor license required for the location, construction, repair, or abandonment of water wells in the state or any political subdivision.

Each person seeking a license must apply to take the licensure examination. Applications must be made to the WMD where the applicant resides or where the principal business is located. In order to take the licensure examination, the applicant must:[30]

[29] Section 373.323, F.S.
[30] Section 373.323(3), F.S.

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells, which must be verified by providing:
    - Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from three of the following persons:
        - A water well contractor.
        - A water well driller.
        - A water well parts and equipment vendor.
        - A water well inspector employed by a governmental agency.
    - A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant.
- Have completed the application form and remitted a nonrefundable application fee.

Effects of Proposed Changes

The bill revises the requirements for licensure as a water well contractor by deleting a water well driller and a water well parts and equipment vendor from the list of persons who may attest to the length of time an applicant has been engaged in the water well contractor business. Therefore, two letters will be required, one from a water well contractor and a water well inspector employed by a governmental agency.

Sections 9 and 10. Mitigation Bank Permits

Present Situation

Section 373.4135, F.S., directs DEP and the WMDs to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre.[31] The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by DEP or a WMD.

Section 373.4136(1), F.S., and Rule 62-342, F.A.C., provide the framework for the establishment and operation of mitigation banks. A mitigation bank permit constitutes authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must, among other things, provide reasonable assurance that the applicant can meet the financial responsibility requirements prescribed for mitigation banks. Financial responsibility may be established by surety bonds, performance bonds, irrevocable letters of credit, or trust funds.[32] If a bond or an irrevocable letter of credit is used as the financial mechanism, a standby trust fund must be established, in which all payments under the bonds or irrevocable letter of credit must be directly deposited.[33]

Effect of Proposed Changes

The bill amends s. 373.4136(1), F.S., to allow an applicant for a mitigation bank permit to show that he or she can meet the financial responsibility requirements prescribed for mitigation banks by submitting proof of insurance in a form approved by DEP or a WMD. The bill also directs DEP and each WMD to adopt rules by January 1, 2015, to implement this provision.

[31] *See* DEP website on 'Mitigation and Mitigation Banking.' This information may be viewed at http://www.dep.state.fl.us/water/wetlands/mitigation/mitigation_banking.htm.
[32] Rule R62-342.700, F.A.C.
[33] *Id.*

Section 11. Regional Water Supply Planning

Present Situation

Regional Water Supply Planning

Section 373.709(1), F.S., requires the governing board of each WMD to conduct water supply planning for a water supply planning region within the district where it determines that existing sources of water are not adequate to:

- Supply water for all existing and future reasonable-beneficial uses; and
- Sustain the water resources and related natural systems for the planning period.

The planning must be conducted in an open public process and in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, DEP, DACS, and other affected and interested parties. A determination by the WMD governing board that initiation of a regional water supply plan for a specific planning region is not needed must be reevaluated by the board at least once every five years and the board must initiate a regional water supply plan, if needed.

Section 373.709(2), F.S., provides that each regional water supply plan must be based on at least a 20-year planning period, and must include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy for water resource development projects;
- The impacts on the public interest, costs, natural resources, etc.;
- Technical data and information;
- Any minimum flows and levels (MFLs) established for the planning area;
- Reservations of water adopted by rule within each planning region;
- Identification of the water resources for which future MFLs are scheduled to be developed; and
- An analysis of areas where variances may be used to create water supply development or water resource development projects.

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial use needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.[34] Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water. Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Long-term Master Plan

Section 163.3245, F.S., authorizes local governments, or combinations of local governments, to adopt a sector plan[35] into their comprehensive plans. Sector plans must encompass a long-term master plan for the entire planning area as part of the comprehensive plan and adoption by local development order of two or more detailed specific area plans that implement the long-term master plan.

[34] *See* the DEP website on "Regional Water Supply Planning." This information may be viewed at http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm

[35] Sector plans are defined in s. 163.3164, F.S., as the process in which one or more local governments engage in long-term planning for a large area and address regional issues through adoption of detailed specific area plans within the planning area as a means of fostering innovative planning and development strategies, reducing overlapping data and analysis requirements, protecting regionally significant resources and facilities, and addressing extrajurisdictional impacts.

Long-term master plans must include maps, illustrations, and text supported by data and analysis to address the following which includes, but is not limited to, land uses, water supply and conservation measures, and regionally significant natural resources and policies setting forth the procedures for protection or conservation.

Once a long-term master plan becomes legally effective, the water needs, water sources and water resource development, and water supply development projects must be incorporated into the applicable district and regional water supply plans.[36] A WMD may also issue CUPs for durations commensurate with the long-term master plan or detailed specific area plan while considering the ability of the master plan area to contribute to regional water supply availability and the need to maximize reasonable-beneficial use of the water resource.[37]

Master Plan Development Order

A development of regional impact (DRI) is defined as any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.[38] Section 380.06(2), F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional Planning Councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Economic Opportunity as the state land planning agency, for compliance with state law and to identify the regional and state impacts of large-scale developments.

If a development project includes two or more DRIs, a developer may file a comprehensive DRI application.[39] If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement must be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction.[40]

Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction must review the draft of the development order to ensure that anticipated regional impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application must specify the information which must be submitted with an incremental application and must identify those issues which can result in the denial of an incremental application.

The review of subsequent incremental applications must be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.

Effect of Proposed Changes

The bill amends s. 373.709, F.S., to require regional water supply plans to incorporate the water needs, water sources, water resource development projects, and water supply development projects identified in an adopted long-term master plan or a master plan development order, and these projects are exempt from the analyses required in s. 373.709(2), F.S., described above.

Section 12. Variances

[36] Section 163.3245(4)(b), F.S.
[37] *Id.*
[38] Section 380.06(1), F.S.
[39] Section 380.06(21)(a), F.S.
[40] Section 380.0621(b), F.S.

Present Situation

Section 403.201, F.S., authorizes DEP to grant a variance from the provisions of the Florida Air and Water Pollution Control Act[41] or the rules and regulations adopted pursuant to the act.

DEP may grant a variance or a renewal of a variance for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time.
- To relieve or prevent another kind of hardship. Variances and renewals granted under this provision must be limited to a period of 24 months, except that variances granted for electrical power plant and transmission line siting may extend for the life of the permit certification.

Variances will not be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management that would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except for research, development, and demonstration permits under s. 403.70715, F.S.

Examples of moderating provisions include, but are not limited to, allowing certain exemptions, establishing mixing zones, using best available technology standards for meeting water quality standards under certain circumstances, etc.

Effects of Proposed Changes

The bill amends s. 403.201, F.S., to specify that nothing in the section prohibits the issuance of moderating provisions under state law.

Section 13. Solid Waste Management Trust Fund

Present Situation

A solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by DEP.[42]

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues from waste tire fees and license and permit fees deposited into the SWMTF are allocated for certain activities in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 11 percent to DACS for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 40 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.
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Pursuant to s. 403.704(9), F.S., DEP must develop rules to require closure of solid waste management facilities under certain circumstances. The rules currently require that all disposal facilities close within six months after they cease receiving waste by properly sloping the sides; covering the waste with two

[41] Chapter 403, F.S.
[42] *See* s. 403.707(1), F.S.

feet of dirt and, in some cases, a barrier layer; vegetating the dirt; and establishing a stormwater system.[43] The rules also require disposal facilities to perform long-term care for between 5 and 30 years, which includes monitoring ground water and gas, maintaining the final cover, and maintaining the stormwater system.[44]

Section 403.7125, F.S., requires owners or operators of landfills to provide financial assurance that they can cover closure costs. Section 403.707(9)(c), F.S., applies this requirement to construction and demolition debris disposal facilities. Both sections allow DEP to specify allowable financial mechanisms, but neither specifically requires that insurance be allowed. In Rule 62-701.630, F.A.C, DEP authorizes owners and operators to offer closure insurance as proof of financial assurance.

DEP has identified eight facilities that have been abandoned or were ordered closed, and pose or are expected to pose an environmental threat if closure is not completed. All eight used insurance to provide financial assurance. In all of these cases, the owner/operator was a limited liability company financially unable to pay for closure costs. DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.

Effect of Proposed Changes

The bill amends s. 403.709, F.S., to create a solid waste landfill closure account within the SWMTF to provide funding for the closing and long-term care of solid waste management facilities. DEP may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

[43] Rule 62-701.600, F.A.C.
[44] Rule 62-701.620, F.A.C.

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or has been ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

Funds received by DEP as reimbursement from the insurance company for the costs of closing or long-term care of the facility must be deposited into the solid waste landfill closure account.

Section 14. Providing a 2-year Permit Extension.

Present Situation

In 2009,[45] the Legislature provided a 2-year extension and renewal for the following permits that at the time had an expiration date of September 1, 2008, through January 1, 2012:

- Any environmental resource permit issued by DEP or a WMD; and
- Any local government-issued development order or building permit.

The 2-year extension also applied to certain build out dates.

Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The 2-year extensions did not apply to a permit or authorization:

- Under any programmatic or regional general permit issued by the Army Corps of Engineers;
- Held by an owner or operator determined to be in significant noncompliance with the conditions of the permit; and
- That would delay or prevent compliance with a court order if extended.

Extended permits continued to be governed by the rules in effect at the time the permit was issued, except when it could be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

The Legislature in 2010[46] reauthorized the 2-year extensions granted in 2009 because the underlying law was being challenged in court.[47]

In 2010,[48] the Legislature also provided another 2-year extension and renewal from the date of expiration for permits that at the time had an expiration date of September 1, 2008, through January 1, 2012. The types of permits eligible for the extension were identical to the types eligible in 2009. The 2-year extension granted in 2010 was in addition to the 2-year extension granted in 2009. Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the

[45] s. 14, ch. 2009-96, L.O.F.
[46] s. 47, ch. 2010-147, L.O.F.
[47] Because ch. 2009-96, L.O.F., was involved in pending litigation, s*ee City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010), the Legislature in 2010 reauthorized the permit extensions granted in ch. 2009-96, L.O.F. in order to protect those who had relied on the extensions.
[48] s. 46, ch. 2010-147, L.O.F.

authorizing agency in writing by December 31, 2010, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

Because the 2-year extensions granted in 2009 and 2010 only applied to those permits and authorizations that had expiration dates of September 1, 2008 through January 1, 2012, there were certain permits and authorizations that were extended beyond the September 1, 2008, to January 1, 2012, window by the 2009 2-year extension, and therefore, were unable to take advantage of the 2010 2-year extension.

In 2011, the Legislature[49] again extended and renewed permits previously extended in 2009 and 2010 for a period of 2 additional years from their previously scheduled expiration date. The holder of a valid permit or authorization eligible for this 2-year extension was required to notify the authorizing agency in writing by December 31, 2011, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization. Permits that were extended by a total of 4 years pursuant 2009 and 2010 extensions were not eligible for this extension.

The bill also, in recognition of the 2011 real estate market conditions, extended and renewed for a period of 2 more years with conditions, any building permit, and any environmental resource permit issued by DEP or by a WMD, which had an expiration date from January 1, 2012, through January 1, 2014. This extension included any local government-issued development order or building permit including certificates of levels-of-service and is in addition to any existing permit extension. Development of Regional Impact development order extensions were not eligible for this extension and any permit that has received a cumulative extension of 4 years pursuant to the 2009 and 2010 extensions were not eligible for this 2-year extension.

In 2012, the Legislature enacted a law[50] providing that any building permit, and any environmental resource permit issued by DEP or a WMD, which had an expiration date from January 1, 2012, through January 1, 2014, was extended and renewed for 2 years after its previously scheduled date of expiration. This extension included any local government-issued development order or building permit including certificates of levels of service. This did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Under HB 503, any permit extensions that were granted pursuant to this bill and the previous extensions in 2009, 2010, and 2011, could not exceed 4 years in total.

Effect of Proposed Changes

The bill renews the extension from previous years by providing that any building permit, and any environmental resource permit issued by DEP or a WMD, that has an expiration date from January 1, 2012, through January 1, 2015, is extended and renewed for 2 years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit, including certificates of levels of service. This does not prohibit conversion from the construction phase to the operation phase upon completion of construction. This extension is in addition to any existing permit extension; however, permit extensions granted pursuant to this bill and the 2009, 2010, and 2011 extensions cannot exceed five years in total.

The dates for commencement and completion for any required mitigation associated with a phased construction project are also extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

The extension does not apply to the following:

- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.
- A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the

[49] s. 79, ch. 2011-139, L.O.F.
[50] s. 24, ch. 2012-205, L.O.F.

issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.
- A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

Permits extended under this section of the bill will continue to be governed by the rules in effect at the time the permit was issued, unless it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification does not extend the time limit beyond two additional years.

The provisions in this section of the bill do not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2. Amends s. 163.3184, F.S., relating to the process for adoption of comprehensive plans or plan amendments.

Section 3. Amends s. 163.3194, F.S., relating to the legal status of comprehensive plans.

Section 4. Amends s. 253.0347, F.S., relating to the lease of sovereignty submerged lands for private residential docks and piers.

Section 5. Amends s. 298.225, F.S., relating to water control plans.

Section 6. Amends s. 373.236, F.S., relating to the duration of permits for alternative water supply development projects.

Section 7. Amends s. 373.308, F.S., relating to the implementation of programs for regulating water wells.

Section 8. Amends s. 373.323, F.S., relating to the licensure of water well contractors.

Section 9. Amends s. 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Section 10. Directs DEP and the WMDs to adopt rules relating to the use of insurance as a mechanism for providing financial responsibility.

Section 11. Amends s. 373.709, F.S., relating to regional water supply planning.

Section 12. Amends s. 403.201, F.S., relating to variances.

Section 13. Amends s. 403.709, F.S., relating to the Solid Waste Management Trust Fund.

Section 14. Providing a two-year extension for certain permits.

Section 15. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments Section.

2. Expenditures:

The bill has a potentially positive fiscal impact on water control districts that do not need additional local government authorizations or permits if they have been issued certain permits.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive but likely insignificant fiscal impact on a lessee of sovereignty submerged lands for a private residential multifamily dock who do not have to pay permit fees for a certain preempted area.

The bill has an indeterminate but likely insignificant positive fiscal impact on landowners who receive 50 year CUP permits for alternative water supply development projects.

The bill has an indeterminate but likely insignificant positive fiscal impact for applicants for a mitigation bank permit that can satisfy the financial responsibility requirement by submitting proof of insurance in a form approved by DEP or a WMD.

The bill has a potentially positive fiscal impact on those that have certain permits that are being extended and renewed for two years.

D. FISCAL COMMENTS:

This bill has an indeterminate but likely insignificant impact on DEP for the loss of permit fees for private residential multi-family docks on sovereign submerged lands.

The bill has an indeterminate but likely insignificant negative fiscal impact on DEP and the WMDs for issuing 50-year permits. This provision may result in DEP and the WMDs issuing fewer CUP permits and, thus, receiving fewer permit fees.

The bill has an indeterminate but likely insignificant impact on DEP for rule development to implement the insurance provisions within the mitigation bank program.

DEP may use funds from the solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) to pay third party contractors to perform closure and long-term care activities, if necessary. DEP expects that the insurance company insuring landfill closure will either pay the third party directly or under the bill will be required to reimburse DEP for any payments DEP makes to the third party. Where DEP is required to pay contractors directly for closure activities and then be reimbursed by the insurance company, DEP will be required to expend funds from the SWMTF. The bill requires DEP to have written documentation that states the insurance company will provide or reimburse funds expended from the SWMTF to complete closing and long-term care of a facility resulting in a neutral fiscal impact to the fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill may implicate the single subject requirement in Art. III, s. 6 of the Florida Constitution, which requires that "every law shall embrace but one subject and matter properly connected therewith." However, with regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.[51] It is unclear whether a court would find that any of the provisions in the bill violates the single subject constitutional provision.

B. RULE-MAKING AUTHORITY:

The bill directs DEP and each WMD to adopt rules by January 1, 2015, to implement the provision allowing applicants to satisfy the financial responsibility requirement for a mitigation bank permit by submitting proof of insurance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[51] *Franklin vs. State,* 887 So. 2d 1063 (Fla. 2004).