

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 653 Environmental Control

SPONSOR(S): State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Pigman

TIED BILLS: None **IDEN./SIM. BILLS:** SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Gregory	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Helping	Massengale
3) State Affairs Committee	15 Y, 0 N, As CS	Gregory	Camechis

SUMMARY ANALYSIS

The bill makes several changes to environmental control statutes implemented by the Department of Environmental Protection (DEP) and the Water Management Districts (WMDs), including:

- Eliminating two offices within DEP and creating four new offices within DEP to conform to the current organizational structure of the department;
- Creating a new division within DEP to consolidate seven state and federal funding programs under one Division;
- Prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices for agricultural activities;
- Prohibiting WMDs from reducing permitted allocations during the term of a consumptive use permit for agricultural irrigation if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type;
- Directing WMDs to adopt rules providing water conservation incentives, including permit extensions;
- Requiring WMDs to promote expanded cost share criteria for additional water conservation practices;
- Changing the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells by requiring applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency;
- Revising the membership requirements of the Harris Chain of Lakes Restoration Council (Council);
- Allowing the Lake County legislative delegation to waive the qualifications for membership in the Council on a case-by-case basis for good cause and providing for when a vacancy occurs on the Council;
- Providing that the reclamation timing requirements for phosphate mines and the required financial assurance for phosphate mines do not apply to constructed clay settling areas where the clay settling areas' beneficial use has been extended. Thus, mine operators would not have to meet the reclamation timing requirements or provide financial assurances for clay settling areas where clay settling areas' beneficial use has been extended;
- Allowing land set-asides and land use modifications, not otherwise required by state law or permit, that reduce nutrient loads into nutrient impaired surface waters to generate water quality credits for trading;
- Specifying that nothing in the statute prohibits the issuance of moderating provisions for environmental control measures under state law, subject to approval by the Environmental Protection Agency;
- Creating 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 that used an insurance certificate as a form of financial assurance. The solid waste closure account will be funded by proceeds received by DEP as reimbursement from insurance companies for the costs of closing or long-term care of the facility;
- Providing that for local flow control ordinances, a resource recovery facility does not include a landfill gas-to-energy system or facility.

The bill appears to have an indeterminate, insignificant negative fiscal impact on DEP, no fiscal impact on local government, and an indeterminate but positive fiscal impact on the private sector. (See Fiscal Analysis & Economic Impact Statement.)

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0653e.SAC

DATE: 4/16/2015

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Organization of the Department of Environmental Protection

Present Situation

In 1993, the Legislature created the Department of Environmental Protection (DEP).¹ The head of DEP is a secretary who is appointed by the Governor and confirmed by the Senate.² The secretary must appoint three deputy secretaries who supervise, coordinate, and formulate policy for any division, office, or district as assigned by the secretary.³

Within DEP, the statute creates six administrative districts serving the northwest portion of the state, the northeast portion of the state, the central portion of the state, the southeast portion of the state, the southwest portion of the state, and the southern portion of the state.⁴

The statute also creates eight special offices under the supervision of the secretary:

- Office of Chief of Staff;
- Office of General Counsel;
- Office of Inspector General;
- Office of External Affairs;
- Office of Legislative Affairs;
- Office of Intergovernmental Programs;
- Office of Greenways and Trails; and
- Office of Emergency Response.⁵

Further, the statute establishes seven divisions within DEP to implement the department's programs:

- Division of Administrative Services;
- Division of Air Resource Management;
- Division of Water Resource Management;
- Division of Environmental Assessment and Restoration;
- Division of Waste Management;
- Division of Recreation and Parks; and
- Division of State Lands.⁶

Effect of the Proposed Changes

The bill includes the following revisions to s. 20.255, F.S., to conform to changes that have occurred to the organizational structure of DEP:

- Eliminates the Office of Intergovernmental Programs, which is responsible for three separate programs: the Clearinghouse, the Comprehensive Plan, and the Outer Continental Shelf Program. These programs will be implemented by the Florida Coastal Office, which is established by the bill;⁷

¹ Chapter 93-213, Laws of Fla.; Section 20.255, F.S.

² Section 20.255(1), F.S.

³ Section 20.255(2)(a), F.S.

⁴ Section 20.255(2)(b), F.S.; Department of Environmental Protection, *District Offices*, <http://www.dep.state.fl.us/secretary/dist/default.htm> (last visited April 13, 2015).

⁵ Section 20.255(2)(a), F.S.

⁶ Section 20.255(3), F.S.

⁷ Department of Environmental Protection, *Office of Intergovernmental Programs*, <http://www.dep.state.fl.us/mainpage/programs/ip.htm> (last visited April 14, 2015).

- Eliminates the Office of Greenways and Trails, which establishes and manages a statewide system of greenways and trails for recreational and conservation purposes. This program is now implemented by the Division of Recreation and Parks;⁸
- Creates the Office of Technology and Information Services, which is responsible for the management and security of the systems that provide DEP with information technology solutions to promote mission success;⁹
- Creates the Office of Operations, which provides support services for the Division of State Lands and Division of Recreation and Parks;
- Creates the Florida Coastal Office, which currently manages over four million acres of submerged lands and select coastal uplands in Florida, oversees the Florida Coastal Management Program, and oversees the Outer Continental Shelf Program. This program currently exists within DEP under the Deputy Secretary of Ecosystem Restoration;¹⁰
- Creates the Office of the Florida Geological Survey, which undertakes geoscience research and assessments to provide objective quality data and interpretations. The Florida Geological Survey currently exists within DEP under the Deputy Secretary of Regulatory Programs;¹¹
- Renames the “Office of Emergency Response,” which responds to environmental pollution threats, to the “Office of Preparedness and Emergency Response;”¹²
- Specifies that the Inspector General for DEP is appointed by the Chief Inspector General of the Governor’s Office and is subject to the general supervision of the secretary; and
- Creates the Division of Water Restoration Assistance, which will consolidate seven state and federal funding programs under one Division: the Deep Water Horizon response, Clean Water and Drinking Water State Revolving Funds, Beach Funding, Nonpoint source pollution and TMDL Grants, Springs Funding, Water Project Funding, Alternative Water Supply Funding.¹³

Water Conservation and Water Resource Development

Present Situation

A person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD) or the Department of Environmental Protection (DEP) before using surface or groundwater of the state, unless the person is solely using the water for domestic use.¹⁴ To obtain a CUP, an applicant must satisfy three requirements, commonly referred to as the “the three-prong test.” To satisfy the test, an applicant must establish that the proposed use of the water:

- Is for a “reasonable-beneficial use,” meaning the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest;¹⁵
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.¹⁶

Applicants may receive a CUP with duration of twenty years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the

⁸ Department of Environmental Protection, *Office of Greenways and Trails*, <http://www.dep.state.fl.us/mainpage/programs/gwt.htm> (last visited April 14, 2015).

⁹ Department of Environmental Protection, *Office of Technology and Information Services*, <http://www.dep.state.fl.us/mainpage/programs/is.htm> (last visited April 14, 2015).

¹⁰ Department of Environmental Protection, *Florida Coastal Office*, <http://www.dep.state.fl.us/coastal/fco.htm> (last visited April 14, 2015).

¹¹ Department of Environmental Protection, *Office of the Florida Geological Survey*, <http://www.dep.state.fl.us/mainpage/programs/geo.htm> (last visited April 14, 2014).

¹² Department of Environmental Protection, *Office of Emergency Response*, <http://www.dep.state.fl.us/oer/default.htm> (last visited April 14, 2014).

¹³ Department of Environmental Protection, Division of Water Restoration Assistance memo, on file with Agricultural and Natural Resources Subcommittee.

¹⁴ Section 373.219, F.S.

¹⁵ Section 373.019(16), F.S.

¹⁶ Section 373.223(1), F.S.

permit.¹⁷ Otherwise, the WMD or DEP may issue a CUP for a shorter duration which reflects the period for which such reasonable assurances can be provided.¹⁸

When a CUP is issued for a twenty year duration, a WMD or DEP may require the permittee to provide a compliance report every 10 years during the term of the permit to maintain reasonable assurance the conditions of the CUP continue to be met.¹⁹ Following review of a compliance report, the WMD or DEP may modify the CUP to ensure that the use meets the conditions for issuance.²⁰ Permit modifications resulting from review of the compliance report are not subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district.²¹

In several WMDs, when economic conditions or population growth rates result in the actual water use being lower than permitted water use, a modification to reduce the permitted allocation may be made by the WMD only when there is no reasonable likelihood that the allocation will be needed during the permit term.²² However, in order to incentivize conservation of water, if actual water use is less than permitted water use due to documented implementation of water conservation measures, the WMD may not modify the permitted allocation due to these circumstances during the term of the permit.²³

In addition, s. 373.227, F.S., requires DEP, in cooperation with the WMDs, to develop a statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;
- Uses standardized public water supply conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of water conservation programs and practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices.

As part of an application for a CUP, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances.²⁴ If the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the appropriate WMD, the WMD must approve the plan.²⁵ The

¹⁷ Section 373.236(1), F.S.

¹⁸ Id.

¹⁹ Section 373.236(4), F.S.

²⁰ Id.

²¹ Id.

²² Suwannee River Water Management District, *Water Use Permit Applicant's Handbook*, section 4.4, incorporated by reference in Rule 40B-2.301, F.A.C.; St. Johns River Water Management District, *Applicant's Handbook, Consumptive Uses of Water*, section 1.5.4, incorporated by reference in Rule 40C-2.101, F.A.C.; Rule 40D-2.371, F.A.C.; South Florida Water Management District, *Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District*, section 4.4, incorporated by reference in Rule 40E-2.091, F.A.C.

²³ Id. See also Rule 62-40.412(4), F.A.C.

²⁴ Section 373.227(4), F.S.

²⁵ Id.

approved plan will satisfy water conservation requirements imposed as a condition of obtaining a CUP.²⁶

Effect of Proposed Changes

This bill creates s. 373.227(5), F.S., to incentivize water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including but not limited to, those measures identified in best management practices for agricultural activities. This change appears to be consistent with rules adopted by DEP, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. The bill also directs the WMDs to adopt rules providing water conservation incentives, including permit extensions.

Further, the bill creates s. 373.227(6), F.S., to prohibit WMDs from reducing permitted allocations during the term of a consumptive use permit for agricultural irrigation if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type.

Lastly, the bill creates s. 373.705(5), F.S., to require WMDs to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures.

Water Well Contractors License

Present Situation

Each person who engages in the business of a water well contractor must obtain a license from a WMD.²⁷ Persons must submit an application at the WMD in which they reside or in which his or her principal place of business is located.²⁸ In order to take the licensure exam, an applicant must be eighteen years old; have two years of experience in constructing, repairing, or abandoning water wells; and complete the an application form and pay a nonrefundable fee.²⁹

An applicant must submit a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency in order to demonstrate two years of experience in constructing, repairing, or abandoning water wells.³⁰ Further, an applicant must submit a list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.³¹

Effects of Proposed Change

This bill amends s. 373.323(3)(b)1., F.S., relating to the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. A letter from both will no longer be required.

Harris Chain of Lakes Restoration Council

Present Situation

²⁶ Id.

²⁷ Section 373.323(1), F.S.

²⁸ Section 373.323(2), F.S.

²⁹ Section 373.323(3), F.S.

³⁰ Id.

³¹ Id.

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area and is in Lake and Orange Counties.³² The area contains tens of thousands of acres of lakes and wetlands that represent the headwaters of the Ocklawaha River.³³ These waterways provide wildlife habitat for fish, birds, and game and offer recreational opportunities for the residents of Lake County and visitors to the area.³⁴

In 2001, the Legislature found that the Lake County waterways were plagued by toxic algae sedimentation and excessive growth of aquatic plants.³⁵ These issues degraded the waterways' water quality and recreational value.³⁶

Thus, the Legislature created the Harris Chain of Lakes Restoration Council (Council). The Council consists of nine voting members. The members are:

- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- An environmental engineer;
- A person with training in biology or another scientific discipline;
- A person with training as an attorney;
- A physician;
- A person with training as an engineer; and
- Two residents of Lake County appointed by the Lake County legislative delegation who do not meet any of the other qualifications for membership on the Council.³⁷

The Council works with an advisory group composed of one representative from:

- The St. Johns River Water Management District, which also provides staff for the Council;
- The DEP;
- The Department of Transportation;
- The Fish and Wildlife Conservation Commission;
- The Lake County Water Authority;
- The U.S. Army Corps of Engineers; and
- The University of Florida.³⁸

The Council's duties are to:

- Review audits and all data related to lake restoration techniques and sport fish population recovery strategies;
- Evaluate whether additional studies are needed;
- Explore all possible sources of funding to conduct the restoration activities; and
- Report to the President of the Senate and the Speaker of the House of Representatives yearly before November 25 on the progress of the Harris Chain of Lakes restoration program and provide any recommendations for the next fiscal year.³⁹

The Council, the Fish and Wildlife Conservation Commission, the St. Johns River Water Management District, the Department of Environmental Protection, and pertinent local governments:

- Review existing restoration proposals to determine which ones are the most environmentally sound and economically feasible methods of improving the fish and wildlife habitat and natural systems of the Harris Chain of Lakes;
- Develop tasks for the enhancement of fish and wildlife habitat; and

³² Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and What Does the Restoration Council Do?*, <http://harrischainoflakescouncil.com/> (last visited Apr. 8, 2015).

³³ *Id.*

³⁴ Chapter 2001-246, Laws of Fla.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 373.467(1)(a), F.S.

³⁸ Section 373.467(1)(b), F.S.

³⁹ Section 373.467(4), F.S.

- May award contracts through competitive bid to implement the activities of the Harris Chain of Lakes restoration program.⁴⁰

Effect of the Proposed Change

The bill amends s. 373.467, F.S., to revise the membership requirements for the Council. One member must be a person with experience in environmental science or regulation, rather than an environmental engineer. The bill requires an attorney and an engineer to serve on the Council, rather than people that have training in either discipline.

The bill also states that the two members, who are residents of the county, are not required to meet any additional qualifications for membership to be appointed to the Council.

The bill allows the Lake County legislative delegation to waive the qualifications for membership on a case-by-case basis for good cause. The bill provides that a vacancy is created by resignation of a Council member or the failure of a Council member to attend three consecutive meetings without being excused by the chair of the Council.

Financial Assurances Phosphate Reclamation

Present Situation

Phosphate mining in Florida is a very land intensive activity, disturbing between 5,000 and 6,000 acres annually.⁴¹ Approximately 25-30% of these lands are isolated wetlands or wetlands connected to waters of the state.⁴² To mine phosphate the surface of the land must be disturbed and waste material is produced.⁴³ Therefore, the Legislature required that mining operators reclaim mined lands to a beneficial use in a timely manner.⁴⁴ Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity, revegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.⁴⁵ The reclamation requirements do not apply to lands mined for phosphate prior to 1975.⁴⁶

A mine operator must provide appropriate financial assurance to the state to assure the reclamation of mined lands will be completed in a timely manner.⁴⁷ A mine operator is deemed to have met the financial assurance requirement if it completes reclamation on the following schedule:⁴⁸

- For the period July 1, 1975, to December 31, 1980, for existing mines or the first 5-year period of mining for new mines, reclamation may not be required, and any reclamation that is completed must be credited forward;
- For the period January 1, 1981, to December 31, 1985, for existing mines or the second 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 15 percent of the acres mined during the period July 1, 1975, to December 31, 1980, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- For the period January 1, 1986, to December 31, 1990, for existing mines or the third 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 60 percent of the acres mined during the period January 1, 1981, to

⁴⁰ Section 373.468, F.S.

⁴¹ Department of Environmental Protection, *Mandatory Phosphate Program*, <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited April 13, 2015).

⁴² *Id.*

⁴³ Section 378.202(1), F.S.

⁴⁴ *Id.*

⁴⁵ Department of Environmental Protection, *Mandatory Phosphate Program*, <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited April 13, 2015).

⁴⁶ Section 378.204, F.S.

⁴⁷ Section 378.208(1), F.S.

⁴⁸ *Id.*

December 31, 1985, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;

- For the period January 1, 1991, to December 31, 1995, for existing mines or the fourth 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 75 percent of the acres mined during the period January 1, 1986, to December 31, 1990, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward; and
- For the period January 1, 1996, to December 31, 2000, for existing mines or the fifth 5-year period of mining for new mines, and each 5-year period thereafter, reclamation of acres mined must be completed at the rate of an acreage equivalent of 100 percent of acres mined during the immediately preceding 5-year period. Reclamation in excess of the required percentage must be credited forward.⁴⁹

Section 378.209, F.S., requires that reclamation should be completed within two years after the completion of mining operations, exclusive of a growing season required to ensure establishment of vegetation. Completion of reclamation occurs when initial revegetation is completed and not at the time of final release of the reclamation area.⁵⁰

Effect of the Proposed Changes

The bill adds subsection (4) to s. 378.209, F.S., to provide that the rate of reclamation requirements and the financial assurance requirements for lands mined for phosphate do not apply to constructed clay settling areas where the clay settling areas' beneficial use has been extended. Thus, mine operators would not have to meet the reclamation time period requirements or provide financial assurances for constructed clay settling areas where the clay settling areas' beneficial use has been extended.

Water Quality Credit Trading

Present Situation

Water Quality Credit Trading (WQCT) or "pollutant trading" is a voluntary, market based approach designed to efficiently meet Florida's water quality goals and meet the goals of the federal Clean Water Act (CWA).⁵¹

In order to comply with the CWA, Florida, through the Department of Environmental Protection (DEP), must develop total maximum daily loads (TMDLs) to promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution.⁵² The CWA requires states to submit to the Environmental Protection Agency (EPA) lists of impaired surface waters that do not meet applicable water quality standards after implementation of technology based effluent limitations or the application of other pollution control programs.⁵³ States must set a TMDL once a water body is listed as impaired.⁵⁴ TMDLs establish the maximum amount of pollutants an impaired water body can assimilate without exceeding water quality standards for pollutants.⁵⁵ Once water quality criteria are met, the surface water may be removed from the TMDL list.⁵⁶

⁴⁹ Section 378.209(1)(a)-(e), F.S.

⁵⁰ Section 378.209(1), F.S.

⁵¹ Susan Roeder Martin, *Water Quality Credit Trading – A Regulator's Perspective*, The Florida Bar Journal, May 2007, Volume 81, No. 5. at 56. citing U.S. Env'tl. Prot. Agency (EPA), Draft Framework for Watershed-based Trading-Executive Summary at 2, EPA 800-R-96-001 (May 1996); see also EPA, Water Quality Trading, www.epa.gov/waterqualitytrading.

⁵² Section 403.067(1), F.S.

⁵³ 33 U.S.C. 1313(d) (2014).

⁵⁴ Id.

⁵⁵ Section 403.067(6)(a)2., F.S.

⁵⁶ Section 403.067(5), F.S.

To meet water quality criteria, DEP is authorized to develop Basin Management Action Plans (BMAPs) to implement TMDLs.⁵⁷ BMAPs integrate management strategies through existing water quality protection programs to achieve the TMDLs and may provide for phased implementation of these management strategies to promote timely, cost-effective actions.⁵⁸ A BMAP must equitably allocate pollutant reductions to individual basins and identify mechanisms by which potential future increases in pollutant loading will be addressed.⁵⁹ These pollutant reduction measures must be incorporated into permits for regulated facilities and otherwise accounted for through best management practices and other pollution control measures.⁶⁰

WQCT is one method regulated facilities may use to meet pollutant reduction measures.⁶¹ While the CWA does not specifically provide for trading, the EPA strongly promoted the use of watershed-based trading through the adoption of a water quality credit trading policy.⁶² WQCT is based on the fact that different sources in a watershed can face very different costs to control the same pollutant.⁶³ WQCT is designed to encourage pollutant “sources to create pollutant reduction credits by making reductions greater than required to meet a regulatory requirement.”⁶⁴ “Under a trading program, other sources may then purchase these pollutant reduction credits to meet their own water quality-based regulatory limit.”⁶⁵ WQCT may accelerate pollutant reduction because an individual discharger's high costs to reduce pollutants could be addressed through a more economical offset of water quality credits.⁶⁶

DEP adopted a WQCT rule, chapter 62-306, F.A.C., in 2010 to establish a pilot WQCT program in the Lower St. Johns River Basin. In 2013, the Legislature revised s. 403.067, F.S., to eliminate the provision that limited WQCT to the Lower St. Johns River Basin and authorized DEP to implement WQCT on an ongoing basis in adopted BMAPs or other applicable pollution control programs.⁶⁷ DEP is currently undertaking rule development to update this WQCT rule to apply statewide.⁶⁸

Pollutant discharge permits and other legally binding authorizations implement WQCT. Trading must be consistent with federal law and regulations. DEP establishes the pollutant load reduction values and water quality credits and authorizes their use. A person who buys water quality credits (“buyer”) must submit to DEP an affidavit, signed by the buyer and the credit generator (“seller”), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. DEP may not participate in the establishment of credit prices. Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based. Buyers of water quality credits are responsible for complying with the terms of the DEP water discharge permit. DEP must take appropriate action to address the failure of a credit seller to fulfill its obligations. Lastly, DEP may authorize WQCT in adopted BMAPs.⁶⁹

Individuals may generate credits by:

- Installing or modifying water pollution control equipment;
- Making operational changes or modifications of a process or process equipment that reduce the quantity of water discharged that reduce the load of nutrients discharged;
- Implementing structural nonpoint source management controls;
- Installing, operating, and maintaining drainage projects designed to control stormwater as part of a city or county drainage improvements; and

⁵⁷ Section 403.067(7)(a)1., F.S.

⁵⁸ Id.

⁵⁹ Section 403.067(7)(a)2., F.S.

⁶⁰ Id.

⁶¹ Section 403.067(8), F.S.

⁶² Martin at 56.

⁶³ Environmental Protection Agency, Water Quality Trading, www.epa.gov/waterqualitytrading (last visited February 24, 2015).

⁶⁴ Martin at 56.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Chapter 2013-146, F.S.

⁶⁸ 40 Fla. Admin. R. 138 (July 17, 2014).

⁶⁹ Section 403.067(8), F.S.

- Using similar pollution controls or management practices with a demonstrated ability to reduce the load of nutrients discharged.⁷⁰

Section 403.067(8), F.S., and rule 62-306.400, F.A.C., currently do not list land set-asides and land use modifications as activities that are eligible to generate credits. Further, rule 62-306.400(3)(b), F.A.C., specifically states that land use changes may not be eligible to generate credits unless the change results in post development pollutant loading being equal to or less than loading under natural conditions for the property.

Effect of the Proposed Changes

The bill amends s. 403.067(8), F.S., to allow land set-asides and land use modifications not otherwise required by State law or permit requirements, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits. These land set-asides and land use modifications must reduce nutrient loads into nutrient impaired surface waters in order to generate water quality credits.

This change may require amendment of rule 62-306.400, F.A.C.

Variances

Present Situation

Section 403.201, F.S., authorizes DEP to grant a variance from the provisions of the Florida Air and Water Pollution Control Act⁷¹ 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. A variance granted for this reason must prescribe a timetable for the taking of the measures required.
- 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.⁷²

Such variances can apply to criteria such as antidegradation requirements,⁷³ water quality criteria,⁷⁴ and mixing zones.⁷⁵

DEP may not grant variances 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 for solid or hazardous waste facilities.⁷⁶

“Moderating provisions” are generally applicable water quality standards.⁷⁷ A moderating provision is a condition in the permit that is authorized under state and federal law and applied when natural

⁷⁰ Rule 62-306.400(2), F.A.C.

⁷¹ Chapter 403, F.S.

⁷² Section 403.201(1), F.S.

⁷³ Rule 62-4.242, F.A.C.

⁷⁴ Rule 62-4.243, F.A.C.

⁷⁵ Rule 62-4.244, F.A.C.

⁷⁶ Section 403.201(2), F.S.

⁷⁷ St. Johns Riverkeepers, Inc. and Henry O. Plamer, v. Department of Environmental Protection and Florida Pulp & Paper Association Environmental Affairs, Inc., and Buckeye Florida, LP, Case No. 09-7054RX, Conclusion of Law No. 20 (Fla. DOAH July 14, 2010); see also Rule 62-302.200(42), F.A.C.

conditions prevent attainment of the criterion or when existing technology is not available to achieve the criterion.⁷⁸ Moderating provisions may be, but are not necessarily, variances.

According to DEP, the current limitation on the use of the variance is necessary for implementation of federally delegated and approved programs.⁷⁹

Effects of Proposed Changes

The bill amends s. 403.201(2), F.S., to specify that nothing in the section prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval. This will allow DEP to permit moderating provisions for the control of pollutants without the limitations put on variances. Examples of moderating provisions include certain exemptions, variances, mixing zones, site specific alternative criteria, and equitable allocations for meeting water quality standards.⁸⁰ These actions may not be less stringent than federal provisions or requirements. These moderating provisions will likely require approval by the EPA.⁸¹

Further, the bill reenacts s. 373.414(17), F.S., to incorporate the proposed changes in s. 403.201, F.S.

Solid Waste Management Trust Fund

Present Situation

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Annual revenues from registration fees, waste tire fees, license and permit fees, and solid waste fines and penalties must be deposited into the SWMTF.⁸² DEP must allocate these funds in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.
- 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 use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services 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.⁸³

Operators who run solid waste disposal units must receive a closure permit to close a landfill.⁸⁴ Solid waste disposal units must close within 180 days after they cease receiving waste by:

- Properly sloping the sides;
- Covering the waste with two feet of dirt and, in some cases, a barrier layer;
- Vegetating the dirt; and
- Establishing a stormwater system.⁸⁵

⁷⁸ Department of Environmental Protection, *Water Quality Q & A*, http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm#4 (last visited February 19, 2015).

⁷⁹ Florida Department of Environmental Protection, Agency Analysis of 2015 Senate Bill 714, p. 2 (February 23, 2015).

⁸⁰ Section 403.067(6)(b), (11), F.S., see also Florida Department of Environmental Protection, TMDL Protocol, Version 6.0 (2006) available at Florida Department of Environmental Protection.

⁸¹ See 33 U.S.C. 1313(c)(2)(A), 40 CFR 124.62, 40 CFR 131.21; *Water Legacy v. U.S.E.P.A.*, 300 F.R.D. 332, 335 (D. Minn. 2014).

⁸² Sections 403.413, 403.7046, 403.708, 403.709, 403.7186, 403.759, F.S.

⁸³ Section 403.709(1), F.S.

⁸⁴ Rule 72-701.600(2), F.A.C.

⁸⁵ Rule 62-701.600(3), F.A.C.

These facilities must also perform long-term care for thirty years.⁸⁶ This includes monitoring ground water and gas, maintaining the final cover, and maintaining the stormwater system.⁸⁷

Prior to operating a landfill or construction and demolition debris disposal facility, the owners or operators of the facility must provide financial assurance in favor of DEP to assure the availability of financial resources to properly close and provide long-term care of the landfill.⁸⁸ To establish the amount of financial assurance, the owner estimates the cost of closure and long term maintenance and DEP approves this figure.⁸⁹ The owner must update the cost estimate annually.⁹⁰ DEP lists the allowable financial mechanisms in rule 62-701.630, F.A.C., including an insurance certificate. Applicants may choose a financial assurance mechanism listed in the rule. Government entities that operate a landfill may use an escrow account as a financial assurance instrument.⁹¹

DEP identified five facilities that that used an insurance certificate to provide financial assurance and have been abandoned or were ordered closed.⁹² These facilities require closure to minimize adverse environmental impacts.⁹³ DEP does not have a mechanism to access the insurance money to pay third party contractors to perform closure and long-term care activities.⁹⁴

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 to pay for the closing and long-term care of a solid waste management facility if:

- 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. The bill provides an appropriation of \$2,339,764 for DEP to enter into a contract with a third-party for closure construction and related environmental services to close facilities where an insurance policy was used to provide financial assurance.

Solid Waste and Recovered Materials Flow Control Ordinances

Present Situation

⁸⁶ Rule 62-701.620, F.A.C.

⁸⁷ Id.

⁸⁸ Sections 403.707(9)(c), 403.7125, F.S.; Rule 62-701.630(2), F.A.C.

⁸⁹ Rule 62-701.630(3), F.A.C.

⁹⁰ Rule 62-701.630(4), F.A.C.

⁹¹ Rule 62-701.630(2)(b), (5), F.A.C.

⁹² Florida Department of Environmental Protection, Agency Analysis of 2015 Senate Bill 714, p. 3. (February 23, 2015).

⁹³ Id.

⁹⁴ DEP recently amended Rule 62-701.630(6)(e), F.A.C., to require landfill operators who use insurance certificates as a financial assurance instrument to provide a standby trust account to accompany the certificate of insurance. Thus, funds from the insurance can flow into the trust account to be used as needed and directed by DEP. This would eliminate the need for the solid waste landfill closure account for future landfills that use insurance certificates as a form of financial assurance.

“Resource recovery” is the process of recovering materials or energy from solid waste.⁹⁵ As of 2011, eleven waste-to-energy facilities operated in Florida.⁹⁶ A local government that undertakes resource recovery from solid waste may institute a solid waste flow control ordinance to ensure that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction.

Landfill gas (LFG) is created when organic waste in a municipal solid waste landfill decomposes.⁹⁷ This gas consists of about 50% methane (the primary component of natural gas), about 50% carbon dioxide (CO₂), and a small amount of non-methane organic compounds (NMOCs).⁹⁸ Instead of being allowed to escape into the air, LFG can be captured, converted, and used as an energy source.⁹⁹ Using LFG helps to reduce odors and other hazards associated with LFG emissions, and helps prevent methane from migrating into the atmosphere and contributing to local smog and global climate change.¹⁰⁰

Effect of Proposed Changes

The bill adds subsection (3) to s. 403.713, F.S., to state that for local solid waste flow control ordinances, a resource recovery facility does not include a landfill gas-to-energy system or facility.

B. SECTION DIRECTORY:

- Section 1. Amends s. 20.255, F.S., relating to the Department of Environmental Protection.
- Section 2. Amends s. 373.227, F.S., relating to water conservation.
- Section 3. Amends s. 373.323, F.S., relating to licensure of water well contractors.
- Section 4. Amends s. 373.467, F.S., relating to the Harris Chain of Lakes Restoration Council.
- Section 5. Amends s. 373.705, F.S., relating to water resource development.
- Section 6. Amends s. 378.209, F.S., relating to timing of phosphate reclamation.
- Section 7. Amends s. 403.067, F.S., relating to total maximum daily loads.
- Section 8. Amends s. 403.201, F.S., relating to variances.
- Section 9. Amends s. 403.709, F.S., relating to the Solid Waste Management Trust Fund.
- Section 10. Amends s. 403.713, F.S., relating to ownership and control of solid waste and recovered materials.
- Section 11. Reenacting s. 373.414(17), F.S., to incorporate the changes made in s. 403.201, F.S.
- Section 12. Provides an appropriation.
- Section 13. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁹⁵ Section 403.703(28), F.S.

⁹⁶ Department of Environmental Protection, *Waste-To-Energy Main Page*, http://www.dep.state.fl.us/waste/categories/solid_waste/pages/wte.htm (last visited April 13, 2015).

⁹⁷ Environmental Protection Agency, *LFG Energy Projects*, <http://www.epa.gov/outreach/lmop/faq/lfg.html> (last visited April 13, 2015).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

The bill appears to have an insignificant negative fiscal impact on DEP because the department will likely need to revise their WQCT rules as a result of the statutory changes in the bill. This impact can be absorbed by existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive fiscal impact on entities that wish to create water quality credits by allowing them to use land set-asides and land use changes to generate water quality credits in addition to other permissible methods. Thus, the bill creates more opportunity to generate and sell credits by reducing pollutants.

The bill may have an indeterminate, positive fiscal impact on entities that must meet environmental standards in chapter 403, F.S., by allowing them to use moderating provisions under state law. This allows such entities to use an additional tool to meet water quality criteria when other methods are not feasible.

The bill may have an indeterminate, positive fiscal impact on phosphate mine operators by not requiring them to provide financial assurances for constructed clay settling areas where its beneficial use has been extended.

D. FISCAL COMMENTS:

The bill directs DEP to deposit funds received from an insurance company as reimbursement into the solid waste landfill closure account. The bill provides \$2,339,764 in budget authority from the SWMTF in order to execute contracts with a third-party for the closure of five landfills. The amount of funds requested represents the sum of the total approved closure cost estimates for the facilities listed previously in the analysis. (Coyote East, Coyote Navarre, Coyote West, Cerny Road, and Williams Road.) All five of the landfills have Long Term Care components included in their closure insurance policy. The department would contract to close the landfills and seek reimbursement for costs required to close the landfills. The reimbursement of funds provided to DEP for landfill closures would result in a neutral impact to the SWMTF.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

None.

B. RULE-MAKING AUTHORITY:

DEP has sufficient rule-making authority to amend rule 62-306.400, F.A.C., to conform to changes made in the statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Agriculture & Natural Resources Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Allows land use modifications and land set-asides not otherwise required by State law or permit requirements, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits;
- Incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices for agriculture activities;
- Directs the WMDs to adopt rules providing water conservation incentives, including permit extensions.
- Amends the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. The statute previously required both;
- Requires water management districts to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures; and
- Specifies that nothing in the provision restricting when a variances to an environmental standard may be issued prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval.

On April, 7, 2015, the Agriculture & Natural Resources Appropriations Subcommittee adopted one amendment to provide \$2,339,764 in nonrecurring budget authority from the Solid Waste Management Trust Fund for the closing and long-term care of solid waste management facilities.

On April 14, 2015, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made the following revisions to the bill:

- Adds and removes special offices under the supervision of the secretary of the Department of Environmental Protection;
- Adds an additional division within the Department of Environmental Protection;
- Prohibits WMDs from reducing permitted allocations during the term of a consumptive use permit for agricultural irrigation if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions, or changes in crop type;
- Revises the membership requirements of the Harris Chain of Lakes Restoration Council;
- Allows the Lake County legislative delegation to waive the qualifications for membership on the Harris Chain of Lakes Restoration Council;
- Provides for when a vacancy occurs on the Harris Chain of Lakes Restoration Council;
- Provides that the rate of reclamation requirements and the financial assurance requirements for lands mined for phosphate do not apply to constructed clay settling areas where the clay settling areas' beneficial use has been extended; and

- States that for local solid waste flow control ordinances, a resource recovery facility does not include a landfill gas-to-energy system or facility.

This analysis is drafted to the bill as passed by the State Affairs Committee.