

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 912

INTRODUCER: Rules Committee; Environment and Natural Resources Committee; and Senator Albritton

SUBJECT: Tolling and Extension of Permits and Other Authorizations During States of Emergency

DATE: April 1, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Paglialonga	Ryon	CA	Favorable
2. Anderson	Rogers	EN	Fav/CS
3. Paglialonga	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Section 252.363, F.S., of the State Emergency Management Act, provides that a state of emergency issued by the Governor for a natural emergency tolls¹ the period remaining for a party to exercise rights under certain permits and other authorizations. The period remaining to exercise such rights is suspended for the duration of the state of emergency, plus an additional six months. The emergency tolling and extension afforded by this statute currently applies to the expiration of a development order issued by a local government, a building permit, and an environmental resource permit issued pursuant to Part IV of ch. 373, F.S.

CS/CS/SB 912 specifies additional permits and authorizations that may be tolled and extended during a state of emergency. These include consumptive use permits issued under Part II of ch. 373, F.S., and development permits and development agreements.

The bill applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Under this retroactive application, existing permits and authorizations added by the bill may receive the emergency tolling and extension for the state of emergency declared in response to the COVID-19 pandemic.

¹ Toll means “[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant’s absence from the jurisdiction and during the plaintiff’s minority.” Black’s Law Dictionary (6th ed. 1990).

II. Present Situation:

The State Emergency Management Act

The State Emergency Management Act in ch. 252, F.S., describes how Florida prepares, responds, recovers, and mitigates emergencies. Chiefly, this Act endows the Governor with authority to declare a state of emergency.² In a state of emergency, the Governor and local governments have broad power to perform necessary actions to ensure the health, safety, and welfare of Floridians.³ A state of emergency grants the Governor with additional statutory authority to perform actions not otherwise allowed by law, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.⁴ To facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.⁵ The Governor may delegate this and other emergency powers to executive agencies and local governments.⁶

Declaration and Duration of a State of Emergency

Florida law does not condition the Governor's ability to declare a state of emergency on any specific prerequisite other than the existence of an actual or impending "emergency."⁷ The Governor declares a state of emergency by issuing an executive order to that effect. The declaration of a state of emergency activates local emergency management plans, which allow for state and intergovernmental assistance such as the distribution of necessary supplies and equipment,⁸ and vests authority in the Governor as commander-in-chief of the Florida National Guard and "all other forces available for emergency duty."⁹

The State Emergency Management Act does not provide a statutory limit on the duration of a state of emergency. Section 252.36(2), F.S., states that "[t]he state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor." Alternatively, a state of emergency may also be terminated by concurrent resolution of the Florida Legislature.¹⁰

² Section 252.36(2), F.S.

³ Section 252.36, F.S.; *see also Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

⁴ Section 252.36(5), F.S.

⁵ Section 252.36(1)(b), F.S.

⁶ Section 252.35(2)(v), F.S.

⁷ Section 252.36(2), F.S. An "emergency" is defined as "any occurrence, or threat thereof, . . . which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

⁸ Section 252.36(3)(b), F.S.

⁹ Section 252.36(4), F.S.

¹⁰ Section 252.36(2), F.S.

Emergency Tolling and Extension of Permits and Other Authorizations

Under s. 252.363, F.S., when the Governor declares a state of emergency for a natural emergency,¹¹ the period to exercise rights under a permit or other authorization is tolled for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period.

The emergency tolling and extension expressly applies to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.; or
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.¹²

To receive the benefit of tolling and extension of a permit, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permitholder must provide written notice of the intent to exercise the tolling and extension. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted as a matter of law, and no further action on the part of the issuing authority is needed.¹³

The tolling and extension of permits and other authorizations does not apply to the following:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and
- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.¹⁴

¹¹ The Florida Supreme Court has ruled that a pandemic is a “natural emergency” within the meaning of s. 252.34(8), F.S. (“Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.) *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).

¹² Section 252.363(1)(a), F.S.

¹³ “Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute.” *See Op. Att’y Gen. Fla. 12-13* (2012), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDDBEC852579EB00743D48> (last visited Mar. 16, 2021).

¹⁴ Section 252.363(1)(d), F.S.

The COVID-19 State of Emergency

In response to the COVID-19 pandemic, Governor DeSantis officially declared a state of emergency on March 9, 2020, via Executive Order 20-52.¹⁵ The state of emergency declared by Executive Order 20-52 has been continuously renewed by Governor DeSantis since the initial declaration. The next expiration date by which the state of emergency must be renewed is April 26, 2021.¹⁶

The Florida Water Resources Act

Florida law addresses water resources in ch. 373, F.S. This area of law creates a comprehensive regulatory system that provides more certainty in water rights, water uses, planning, and regulation to protect the quality and quantity of Florida's water resources. DEP and the state's five water management districts¹⁷ are provided statutory authority to ensure effective implementation of Florida's water resource laws.¹⁸ These statutory responsibilities include various aspects of the statewide permitting system relating to water resources.

Permitting of Consumptive Uses of Water, Part II of ch. 373, F.S.

Part II of ch. 373, F.S., establishes the permitting system for consumptive uses of water. DEP and Florida's five water management districts are tasked with various aspects of the consumptive use permit (CUP) system. The water management districts are responsible for issuing CUPs.¹⁹

A CUP allows the holder to withdraw a specified amount of water from the ground (aquifers) or a canal, lake, or river (surface water) for reasonable-beneficial uses in a manner that does not interfere with other existing legal water uses and protects water resources from harm.²⁰ The water can be used for public supply (drinking water), agricultural and landscape irrigation, golf course irrigation, commercial use, dewatering/mining activities, and power generation. Water uses not covered by CUPs include domestic uses, home irrigation, and water used for fighting fires. CUPs require water conservation to prevent wasteful uses, require reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.²¹

¹⁵ Executive Order 20-52 (Mar. 9, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 16, 2021).

¹⁶ The state of emergency declared in Executive Order 20-52, as extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316 will be extended for 60 days following the issuance of this order for the entire State of Florida. See Executive Order 21-45 (Feb. 26, 2021), available at https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-45.pdf (last visited Mar. 16, 2021).

¹⁷ Florida's five districts are the Northwest Florida Water Management District, 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. See Florida Department of Environmental Protection, *Water Management Districts*, available at <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Mar. 16, 2021).

¹⁸ Section 373.016, F.S.

¹⁹ See South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Mar. 16, 2021).

²⁰ *Id.*

²¹ Florida Department of Environmental Protection, *2021 Florida Water Plan*, available at <https://fdp.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c> (last visited Mar. 16, 2021).

Section 373.236(1), F.S., provides in part that CUPs "shall be granted for a period of 20 years[.]" However, the precise duration of a CUP largely depends on circumstances and facts related to the specific water resource and water use.²² CUP renewal applications are treated in the same manner as the initial permit application.²³ Some activities requiring a CUP cannot be issued until an applicable permit under Part IV of ch. 373, F.S., is complete and receives staff recommendations for approval.²⁴

Management and Storage of Surface Water, Part IV of ch. 373, F.S.

Part IV of ch. 373, F.S., provides DEP and Florida's five water management districts with the statutory authority to collectively regulate structures or construction affecting surface water resources. DEP and water management districts proscribe rules and regulations related to the management and storage of surface water and administer surface water permitting.²⁵

Surface water management and storage addressed in Part IV of ch. 373, F.S., includes the construction, alteration, operation, maintenance, abandonment, and removal of water management systems, such as dams, impoundments, reservoirs, works, and appurtenant works.²⁶ Furthermore, projects which involve dredging, filling, and activities that create canals, ditches, culverts, impoundments, fill roads, buildings, and other impervious surfaces affecting surface water are subject to the requirements of Part IV of ch. 373, F.S., and are within the oversight of DEP and water management districts.²⁷

Permitting thresholds and requirements may vary between water management districts. Water quality and quantity considerations and general environmental concerns are addressed in the permit application process. Permit revocation or modification of a permit may occur if the permit conditions or statutory mandates are not met. Permit duration will vary depending on the project.²⁸

Community Planning and Development

The Community Planning Act²⁹ largely governs community planning and development in Florida. The Community Planning Act details how local governments create, adopt, and maintain their local comprehensive plans, which address a broad array of property rights, land use, and planning aspects of the land area within their jurisdiction.³⁰ A crucial aspect of a local government's community planning activities involves the granting and denying of rights related to the use and development of real property.

²² See s. 373.236, F.S.

²³ Section 373.239(3), F.S.

²⁴ Florida Department of Environmental Protection, *2021 Florida Water Plan*, available at <https://fddep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c> (last visited Mar. 16, 2021).

²⁵ Section 373.4131, F.S.

²⁶ See Environmental Resource Permit Applicant's Handbook, available at https://www.flrules.org/gateway/readRefFile.asp?filename=010_4a--AHI_thruAppendix_D_ADA_3-5-14.doc&refId=3174 (last visited Mar. 16, 2021).

²⁷ *Id.*

²⁸ *Id.* at 6-1.

²⁹ Part II of ch. 163, F.S.

³⁰ Section 163.3167(1)(b), F.S.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."³¹ When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."³² Once a local government has officially granted or denied a development permit, the official action constitutes a development order.³³

The Florida Local Government Development Agreement Act

In furtherance of community planning and development, the Legislature enacted the Florida Local Government Development Agreement Act.³⁴ This Act standardizes the procedures and requirements needed for a local government to enter into a development agreement.³⁵ A development agreement is a contract between a local government and a property owner/developer. These agreements provide a property owner/developer with vested rights applicable to a property. Typically, local governments provide these vested rights in exchange for public benefits provided by the property owner/developer.³⁶ A development agreement's duration may not exceed 30 years unless the local government and property owner/developer mutually consent to extend the agreement.³⁷

III. Effect of Proposed Changes:

Section 1 amends s. 252.363, F.S., to provide for the tolling and extension of certain permits and agreements during a state of emergency. Under the bill, the expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S., may be tolled and extended during a state of emergency, as long as the permit is related to land subject to a development agreement and the permittee and developer are the same or a related entity. Additionally, the bill provides that the expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity, may be tolled and extended during a state of emergency.

Section 2 provides that the provisions of the bill apply retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Thus, permits or authorizations added to the statute may receive tolling and extension for the state of

³¹ Section 163.3164(14), F.S.; *see* s. 380.04(1), F.S.

³² Section 163.3164(16), F.S.

³³ *See* s. 163.3164(15), F.S. "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

³⁴ *See* s. 163.3220, F.S.

³⁵ Section 163.3227, F.S.; *see* ss. 163.3220-163.3243, F.S.

³⁶ *See Preserve Palm Beach Political Action Committee v. Town of Palm Beach*, 50 So.3d 1176 (Fla. 4th DCA 2010).

³⁷ Section 163.3229, F.S.

emergency Governor DeSantis declared on March 9, 2020, in response to the COVID-19 pandemic.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The holders of permits added to the emergency tolling and extension statute may realize a nominal net positive fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.363 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on March 31, 2021:

The committee substitute clarifies that the emergency tolling and extension of a consumptive use permit issued by the DEP or a water management district only applies when land is subject to a development agreement and the permittee and developer are the same or a related entity.

CS by Environment and Natural Resources on March 22, 2021:

Makes a technical change.

- B. **Amendments:**

None.