The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/CS/SB 2026

INTRODUCER: Environmental Preservation and Conservation Committee; Community Affairs Committee and Senator Altman

SUBJECT: Regulatory Reform

DATE: April 14 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	**Fav/CS**
2.	Kiger	Kiger	EP	**Fav/CS**
3.			CM	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The CS/CS/SB 2026 (the bill) provides a retroactive 2-year extension from the date of expiration for any permit issued by the Department of Environmental Protection (DEP), any permit issued by a water management district (WMD) under part IV of ch. 373, F.S., any development order issued by the Department of Community Affairs (DCA), pursuant to s. 380.06, F.S., and any development order, building permit, or other land use approval issued by a local government which expired or will expire on or after September 1, 2008 to September 1, 2011. Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension.

The bill provides for electronic notice of administrative hearing rights, provides requirements for the placement of dredge and fill material on submerged lands, and provides for 50-year consumptive use permits for specified alternative water supply projects. The bill transfers responsibilities for the expedited permitting of certain economic development projects from the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the DEP.

The bill creates the "Florida Springs Protection Act," providing definitions, designating spring protection zones, establishing compliance deadlines for activities within the protection zones, providing compliance requirements for individuals, developments, and counties and municipalities, creating a onsite sewage treatment and disposal system compliance grant program, requiring that comprehensive plans be updated to include springs protection measures, creating mandatory statewide septic tank inspection program and providing for the transfer of the Bureau of Onsite Sewage in the Department of Health (DOH) to the DEP.

Additional provisions of the bill: provide for the creation by the DEP of a Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes and require its adoption in certain areas with impacted water bodies; create an urban turf fertilizer standard that prohibits the use of fertilizers containing certain levels of phosphorus; clarify the method used in the Wekiva Study Area.

The bill replaces the term "xeriscape" with "Florida-friendly landscape;" elaborates on the factors to be considered as part of Florida-friendly landscapes; specifies the experience that water well contractors should have; clarifies penalties for unlicensed water well contractors; and provides conforming and technical changes.

The bill creates a task force of industry and government representatives to determine how certain licensed professionals can demonstrate competency in stormwater management system design and to develop appropriate grandfathering provisions for those already designing these systems.

The bill provides that the act shall take effect unless otherwise expressly provided.

This bill amends the following sections of Florida Statutes: 120.569, 120.60, 125.022, 125.568, 163.3177, 166.033, 166.048, 253.034, 255.259, 258.42, 259.105, 335.167, 369.317, 373.026, 373.079, 373.083, 373.118, 373.185, 373.228, 373.236, 373.243, 373.323, 373.333, 373.406, 373.4141, 373.441, 380.061, 381.0065, 388.291, 403.061, 403.1835, 403.813, 403.814, 403.973, 481.303, and 720.3075.

This bill creates sections 161.032, Part IV, Ch. 369, 373.187, 373.4061, 403.9335, and 403.9337, Florida Statutes, and creates two undesignated sections of law.

II. Present Situation:

Permits Issued by State and Local Government

State agencies and the five water management districts have statutory authority to issue permits for a variety of issues including but not limited to, coastal construction, the use of sovereign submerged lands, consumptive use permits relating to groundwater, well construction, management and storage of surface water (dredge and fill permits, environmental resource permits, NPDES permits delegated by the federal government), phosphate mining and land reclamation; limestone mining and reclamation; heavy mineral mining; pollutant discharge and domestic wastewater discharge, drinking water facilities, pollutant discharge permits, total maximum daily loads, and permits issued by the Department of Health related to the public health and safety.

Under home rule authority, counties and cities have the authority to regulate development within their jurisdictional boundaries, including issuing permits and development orders, and imposing impact fees. The "Local Government Comprehensive Planning and Land Development Regulation Act" was created in chapter 163, F.S., to assist local governments in planning for future development and growth through the creation and adoption of the local government comprehensive plan containing required and optional elements, including a capital improvements element, a future land use plan element, a traffic circulation element, and an intergovernmental coordination element.

Development of Regional Impact Program and Date of Buildout

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[1] For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Chapter 28-24, Florida Administrative Code. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas and dry storage; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and schools.

Section 380.06(19)(c), F.S, provides in part:

In recognition of the 2007 real estate market conditions, all phase, buildout, and expiration dates for projects that are developments of regional impact and under active construction on July 1, 2007, are extended for 3 years regardless of any prior extension. The 3-year extension is not a substantial deviation, is not subject to further development-of-regional impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under this subsection.

During the 2008 Regular Session, the Legislature considered a proposal to provide a 3-year extension for all development order, phase, buildout, commencement and expiration dates, and all related local government approvals for DRIs and Florida Quality Development if the development was under active construction on July1, 2007, or for which a development order was adopted after July 1, 2006.[2]

Alternative Water Supply

In 2005, the Legislature enacted chapter 2005-291, Laws of Florida, to recognize the importance of alternative water supply in sustaining the state's economic growth and reducing the impact to groundwater supplies. The Legislature recognized that the demand for natural supplies of water would continue to increase, but that cooperation among all water users is necessary to develop county-wide and multi-county projects to achieve economies of scale. The legislation defined the

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[1] S. 380.06(1), F.S.

[2] CS/CS/SB 474 by the Transportation Committee, the Community Affairs Committee, and Senator Garcia, relating to Growth Management.

role of the water management districts and local governments in the development of alternative water supply projects, including the formulation and implementation of strategies and programs to efficiently and effectively provide for the development and use of alternative water supplies.

Sovereign Submerged Lands

Chapter 253, F.S., designates the Board of Trustees of the Internal Improvement Trust Fund, which consists of the Governor, the Attorney General, the Commission of Agriculture, and the Chief Financial Officer, as the custodians of the state's sovereign submerged lands. Section 253.03, F.S., provides for the assessment of fees for the severance of spoil materials dredged from sovereignty submerged lands, and directs the DEP to review all applications for the use of state-owned submerged lands

Mitigation

The Legislative Committee on Intergovernmental Relations issued a report in March, 2007, as a result of a project to review permitting practices to identify opportunities to improve the consistent and predictability in permitting water-related facilities in Florida. The report noted that a marine construction project is subject to regulatory mitigation requirements, and if involving sovereign submerged lands, is subject to proprietary or public interest mitigation requirements as well. Regulatory mitigation is designed to directly offset environmental impacts, but proprietary or public mitigation involves compensation for the use of public property as well as action to offset impacts. The report noted that "environmental permitting staff and the marine construction industry would benefit from a transparent process for identifying activities to serve as public interest and regulatory mitigation projects."[3]

E-permitting

The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on adjacent uplands if the dock is the sole dock on the parcel. An applicant can easily determine if a private single family dock can be constructed without further notice or review by the DEP. Also, the five water management districts have designed and support a shared permitting portal. The portal is designed to direct the user to the appropriate district website for information on district permitting activities.

With respect to self-certification, the LCIR report indicated that some local governments do not accept self-certification for permit-exempt projects identified in statute, rule, or listed under the DEP's self-certification process for single-family docks. Some local governments require a signoff from the DEP permit review staff to verify the exempt status of the project submitted under self-certification.

Expedited Permitting

Section 403.973, F.S., authorizes the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor, or a Quick Business County to certify certain businesses as eligible to use an expedited permitting and review of comprehensive plan amendment process for projects that strengthen and diversity the state's economy. Recommendations for eligible projects come from Enterprise Florida, any county or city, or the Rural Economic Development

[3] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf (last visited March 2009)

Initiative. Eligibility criteria provide that the business create at least 100 jobs, or, if located within specified areas such as an enterprise zone, 50 jobs. Benefits for certified projects include identification of all permits and approvals needed, designation of a project coordinator and regional team permit action team contacts, final agency action on permit applications within 90 days of receipt of complete application, waiver of the twice-a-year limitation on comprehensive plan amendments, and waiver of interstate highway concurrency with approved mitigation.

Florida Springs

Florida has more than 700 recognized springs; 33 first magnitude springs with a flow of more than 100 cubic feet per second that discharge more than 64 million gallons of water per day; 191 second magnitude springs with an average flow of 10 to 100 cubic feet per second that discharge from 6.46 to more than 64 million gallons of water per day; 151 third magnitude springs with a flow of 1 to 10 cubic feet per second that discharge 600,000 to 6.46 million gallons of water per day.[4] Spring discharges, primarily from the Floridian Aquifer, are used to determine ground water quality and the degree of human impact on the spring's watershed. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

The Florida Springs Task Force was created in 1999 to recommend strategies for protecting and restoring Florida's springs. The multi-agency task force produced a report in November of 2000 entitled "*Florida's Springs, Strategies for Protection and Restoration*" which was the basis of the Florida Springs Initiative within the Department of Environmental Protection. The report identified management strategies such as coordinated land use planning and ordinances that protect spring recharge basins, funding and implementing best management practices, and the acquisition of spring recharge basins to protect springs from land use practices that reduce water quality and quantity. The report also identified regulation strategies to protect spring flow, and a funding mechanism for implementing the strategies contained in the report. The report suggested the creation of a Springs Protection and Restoration Trust Fund funded by a 25-cent increase in automobile tags.

Under the Florida Springs Initiative, the Legislature has provided at least $2.5 million each year since 2001 to support projects for springs restoration, research and protection.

The Department of Health does not currently have a statewide septic system inspection program but has produced the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program."[5] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic system inspections at a cost of between $83.93 to $215 per inspection. Florida has 2.3 million septic systems with the estimated failure rate during the initial round of inspections to be 9.5 percent.

Currently there is no requirement for local governments to adopt a model ordinance for urban fertilizer use based on the Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions. As part of its ongoing Florida-Friendly Landscape Best

[4] See Bulletin No. 66, *Springs of Florida*, Florida Geological Survey, Retrieved 6 Mar. 2009 <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm>

[5] The Department of Health. Retrieved 18 Mar. 2009 <http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf>

Management Practice Educational Program, the Florida Department of Environmental Protection and the University of Florida Institute of Food and Agricultural Sciences have developed this manual to assist local governments, commercial entities and others in smarter fertilizer use.

Xeriscape or Florida-Friendly Landscape

Landscape irrigation accounts for one of the largest uses of water in Florida. Finding that water conservation is increasingly critical to the continuance of an adequate water supply for the citizens of the state, the Legislature has found that "xeriscape" can contribute significantly to the conservation of water.[6] Moreover, the Legislature finds that state government has the responsibility to promote xeriscape as a water conservation measure by using xeriscape on public property associated with publicly owned buildings or facilities.[7] "Xeriscape" or "Florida-friendly landscape" means quality landscapes that conserve water and protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of xeriscape include planning and design, appropriate choice of plants, soil analysis that may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance.[8]

Currently, s. 373.185, F.S., provides that each water management district must design and implement an incentive program to encourage all local governments within its district to adopt new ordinances or amend existing ordinances to require xeriscape landscaping for development permitted after the effective date of the new ordinance or amendment. Each district must adopt rules governing the implementation of its incentive program and governing the review and approval of local government xeriscape ordinances or amendments that are intended to qualify a local government for the incentive program. In addition, each district must assist the local governments within its jurisdiction by providing a model xeriscape code and other technical assistance. A local government xeriscape ordinance or amendment, in order to qualify the local government for a district's incentive program, must include certain minimum requirements.[9] The districts also must work with local governments to promote, through educational programs and publications, the use of xeriscape practices, including the use of solid waste compost, in existing residential and commercial development. The xeriscape provisions do not limit the authority of the districts to require xeriscape ordinances or practices as a condition of any consumptive use permit.[10] A deed restriction or covenant entered after October 1, 2001, or local government ordinance may not prohibit any property owner from implementing xeriscape or Florida-friendly landscape on his or her land. [11]

The water management districts are required to work with statutorily specified organizations and governmental entities to develop landscape irrigation and xeriscape design standards for new construction that incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping.[12]

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[6] Section 255.259(1), F.S.
[7] *id*.
[8] Section 373.185(1)(b), F.S.
[9] Section 373.185(2), F.S.
[10] *id*.
[11] Section 373.185(3), F.S.
[12] Section 373.228(4), F.S.

The Florida Yards and Neighborhoods (FYN), which is established in the University of Florida's Cooperative Extension Service, is a public outreach educational program that encourages homeowners, landscape maintenance personnel, and others to practice environmentally sensitive landscape techniques to conserve water and protect water quality. FYN is the source of the term "Florida-Friendly Landscaping." FYN incorporates the principles of xeriscape but goes one step further by focusing on all aspects of water quality and quantity that relate to urban landscape systems and the natural systems they impact. The FYN publishes a handbook explaining the concepts of Florida-friendly landscaping approach.[13]

Sections 125.568 and 166.048, F.S., provides that if a county's board of county commissioners or a municipality's governing body respectively determines that xeriscape would be a significant benefit as a water conservation measure relative to the cost to implement xeriscape landscaping, the board or governing body must enact a xeriscape ordinance.

Section 373.228, F.S., provides that the water management districts must work with the Florida Nurserymen and Growers Association, the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Department of Agriculture and Consumer Services, the Institute of Food and Agricultural Sciences, the Department of Environmental Protection (department), the Department of Transportation, the Florida League of Cities, the Florida Association of Counties, and the Florida Association of Community Developers to develop landscape irrigation and xeriscape design standards for new construction which incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping. The standards and guidelines must be reviewed by January 1, 2011 to determine whether new research findings require a change or modification of the standards and guidelines.

Water Well Contractors
Section 373.323(3), F.S., provides that an applicant for a water well contractor's license is entitled to take the licensure examination if the applicant, among other things, has at least two years of experience in constructing, repairing, or abandoning wells. Section 373.333, F.S., provides that a water management district may impose a fine, not to exceed $5,000, against a person that has engaged in the unlicensed practice of water well contracting.

III. Effect of Proposed Changes:

Section 1. Creates an undesignated section of law to provide a retroactive 2-year extension and renewal from the date of expiration for any permit issued by the DEP, any permit issued by a WMD under part IV of ch. 373, F.S., any development order issued by the DCA pursuant to s. 380.06, F.S., and any development order, building permit, or other land use approval issued by a local government which expired or will expire on or after September 1, 2008 to September 1, 2011. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreements, the extension applies to phase, commencement, and

[13] FLORIDA YARDS AND NEIGHBORS, A GUIDE TO FLORIDA-FRIENDLY LANDSCAPING. 12 Apr. 2009 *Available at* <http://fyn.ifas.ufl.edu/materials/handbook.pdf>

buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is not prohibited. The completion date for any mitigation associated with a phased construction project is extended and renewed so that the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must notify the authorizing agency in writing by September 30, 2010, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal.

Section 2. Amends s. 120.569, F.S., to provide that notwithstanding any other provision of law, notice of the procedure to obtain an administrative hearing or a judicial review, including items required under the uniform rules adopted pursuant to s. 120.54(5), F.S., may be provided via a link to a public Internet site.

Section 3. Amends s. 120.60, F.S., to provide that when an applicant believes an agency's request for additional information is not authorized by law or by agency rule, the agency, at the applicant's request, must process the permit application within required timeframes.

Section 4. Amends s. 125.022, F.S., to prohibit counties from requiring, as a condition of development permit approval, that a permit applicant obtain a permit or approval from a state agency or the federal government. No right to obtain a state or federal permit is created on the part of the applicant when a county does issue a development permit. In the event that a permit applicant fails to obtain other required permits, the issuance of a development permit by a county does not create a liability.

Section 5. Creates s. 161.032, F.S., to provide that when an applicant applies for a coastal construction permit, the DEP has 30 days to review the application and request additional information. If the applicant believes that the agency does not have the authority in law or rule to request additional information, the applicant may request a hearing under s. 120.57, F.S.

Once additional information is received, the DEP has 30 days to review it and request additional information, if necessary. No new issue may be raised unless it is directly related to the first request for additional information. If the applicant believes that the agency does not have the authority in law or rule to request additional information, the applicant may request the DEP to process the application and the DEP must comply.

An applicant has 90 days from receipt of a request for additional information to provide that information to the agency, and additional extensions may be grated when the applicant shows

good cause for failure to meet to the deadline. Failure of an applicant to timely file requested information by a deadline will result in denial of the application without prejudice.

Section 6. Amends s. 166.033, F.S., to prohibit municipalities from requiring, as a condition of development permit approval, that a permit applicant obtain a permit or approval from a state agency or the federal government. No right to obtain a state or federal permit is created on the part of the applicant when a municipality does issue a development permit. In the event that a permit applicant fails to obtain other required permits, the issuance of a development permit by a municipality does not create a liability.

Section 7. Amends s. 253.034, F.S., to provide that the deposition of dredged material on state-owned submerged lands for restoration purposes must be conducted so as to reap the maximum environmental benefit. Fill requirements are provided.

Section 8. Amends s. 373.026, F.S., to require the DEP to expand the use of Internet based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. The DEP and the WMDs must identify and develop general permits for activities which currently require individual review and which could be expedited through the use of professional certifications.

Section 9. Amends s. 373.441, F.S., to provide that activities subject to a permit issued under authority delegated to a local government or a local pollution control program by the DEP or a WMD, may not be regulated by the DEP or the WMD unless that delegation agreement provides for such regulation.

Section 10. Amends s. 373.4141, F.S., to provide that a permit applicant has 90 days from receipt of a request for additional information to submit such information. An additional 90-day extension may be granted if an applicant notifies the DEP or the WMD that additional time is necessary. Additional extensions may be granted if the applicant shows good cause. Failure to timely submit requested additional information will result in the denial of the application without prejudice.

Section 11. Amends s. 373.079, F.S., to provide that each WMD governing board must delegate all of its authority to take final action on consumptive use permits, and permits for the management and storage of surface waters, or petitions for variances and waivers relating to requirements for such permits under certain conditions. The delegation of authority is not subject to the rulemaking requirements of ch. 120, F.S.

Section 12. Amends s. 373.083, F.S., to conform to the changes proposed in s. 373.079, F.S.

Section 13. Amends s. 373.118, F.S., to provide that each WMD governing board must delegate general permitting powers and duties to the district's executive director, and the delegation is not subject to the rulemaking requirements of ch. 120, F.S.

Section 14. Amends s. 373.236, F.S., to provide for 50-year consumptive use permits for alternative water supply projects where a landowner has made an extraordinary contribution of land or construction funding to enable the expeditious implementation of an alternative water

supply project. The permits may be granted to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly owned or privately owned utilities created for or by the private landowners on or before April 1, 2009, if an agreement has been entered into for the efficient pursuit of alternative water supply projects identified in a district's regional water supply plan and meeting the water needs of the project applicant and the landowner.

Provides that any permits issued pursuant to this provision shall be granted only for that period of time for which sufficient data is available to assure compliance. The permittee will be required to file a compliance report every 5 years during the duration of the permit.

The authority of a WMD or the DEP to modify or revoke a consumptive use permit is not limited by the conditions authorizing a 50-year consumptive use permit.

A new provision is added that provides, at a minimum, a 25-year consumptive use permit for any renewable energy facility that is cultivating agricultural products on lands of 1,000 acres or more for use as an energy source. The permit duration can be longer or shorter based on the actual life of the facility and the ability of the applicant to assure that the permit conditions can be met.

Section 15. Amends s. 373.243 to provide the WMD governing boards with the authority to revoke the consumptive use permit for a renewable energy facility if the permittee has not used the water supply allowed by the permit for a period of 4 years or more.

Section 16. Amends s. 373.406, F.S., to provide an exemption for ERP or other permit requirements for the construction of public use facilities projects on county-owned natural lands. Building and fill restrictions are provided.

Section 17. Creates s. 373.4061, F.S., to provide for a Noticed General Permit for environmental restoration activities conducted by counties. A general permit is granted to counties for the construction, operation, alteration, maintenance or removal of systems for purposes of environmental restoration or water quality improvements, subject to provided limitations and conditions. Specific restoration activities are authorized, and qualification requirements are created.

If conditions, limitations, authorized purposes, and qualifications are met, the general permit constitutes a letter of consent by the Board of Trustees of the Internal Improvement Trust Fund under chapters 253 and 258, F.S., and board rules, where applicable, for the county to enter onto state-owned submerged lands to the extent necessary to complete the permitted activities. No authorized activity divests the state of its ownership right in sovereign submerged lands.

Section 18. Amends s. 403.061, F.S., to provide that the DEP has the power and authority to:

- Adopt rules that include special criteria for approval of docking facilities with 10 or fewer slips where construction and operation of such facilities will not result in the closure of shellfish waters.
- Maintain a list of projects or activities, including mitigation banks, that applicants may consider when developing proposals to meet mitigation or public interest requirements. The contents of the list are not a rule under ch. 120, F.S., and listing a project or activity

does not imply departmental approval. Counties are encouraged to develop an inventory of projects for inclusion on the list with input from stakeholders.

- Develop a project management plan to implement an e-permitting program, including an implementation timeline, estimated costs, and transaction fees. The plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.
- Expand the use of Internet based self-certification services for exemptions and general permits issued by the department.

Section 19. Amends s. 403.813, F.S., to provide that the fill requirements for the replacement or repair of existing docks and piers that are exempt from permitting requirements do not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

Section 20. Amends s. 403.814, F.S., to require the DEP to expand the use of Internet based self-certification services for exemptions and general permits required under chapters 253 and 403, F.S., for projects which have a cumulative minimal adverse environmental impact. The DEP must identify and develop general permits for activities which require an individual review to expedite the permit through the use of professional certifications. The DEP must submit a report on its progress to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.

Section 21. Amends s. 403.973, F.S., to transfer the responsibility for certifying as eligible for expedited permitting those economic development projects that create high-wage jobs from the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Secretary of DEP, and to provide that businesses creating 50 jobs, or businesses creating 25 jobs if the project is located in specified areas are eligible to submit permit applications and local comprehensive plan amendments for expedited review.

Projects that result in the cultivation of biofuel feedstock on lands 1,000 acres or larger, or the construction of a biofuel or biodiesel processing facility or certain renewable energy generating facilities are eligible for expedited permitting.

Recommended orders issued by an administrative law judge for challenges to state agency action in the expedited permit process must inform the parties of the right to file exceptions to the recommended order and to file responses in accordance with the Uniform Rules. In cases where the action of more than one agency of the state are challenged, the Governor shall issue the final order, except for the issuance of department licenses required under any federally delegated or approved permit program for which the department must enter the final order within 45 days of receipt from the administrative law judge. The recommended order must inform the parties of the right to file exceptions to the recommended order and to file responses in accordance with the Uniform Rules.

Provides that projects which derive electrical power from certain renewable fuel sources are not eligible for expedited review.

Section 22. Amends s. 258.42, F.S., to provide that slips located at private residential single-family docks in aquatic preserves, which docks contain boat lifts or davits that do not float in the water when loaded, may be roofed but may not be enclosed. The roof may not overhang the lift by more than 1-foot, and may not be considered to be part of the square footage calculation of the terminal platform when determining if the dock can be placed in an aquatic preserve without having to go through the permitting process.

Section 23. Creates Part IV of Chapter 369, F.S., as follows:
Section 369.401, F.S., provides a short title.
Section 369.402, F.S., establishes the following legislative findings and intent:

- Florida's springs are valuable resources that provide recreational and tourism opportunities, and provide great financial benefit to local economies.
- Florida's springs provide critical habitat for endangered or threatened species of plants and animals.
- The flow and water quality of Florida's springs are direct reflections of the state's aquifer system.
- Many springs are showing signs of ecological imbalance, increased nutrient loading, and lowered water flow.
- Ground water is directly affected by land use practices through seepage from the land surface and conduits such as sinkholes.
- Polluted runoff from urban and agricultural lands and discharges from poor wastewater practices can adversely affect the state's ground water resources for spring recharge.
- Groundwater and springs can be restored through good stewardship, effective planning strategies, best-management programs, and appropriate regulatory programs.

Section 369.403, F.S., defines the following terms, "cooperating entities," "department," "estimated sewage flow," "first magnitude spring," "karst," "onsite sewage treatment and disposal system," or "septic system," "second magnitude spring," "spring," "springshed," and "usable property."

Section 369.404, F.S.:

- Designates all counties and municipalities that contain a first or second magnitude spring as spring protection zones
- Directs the department to adopt rules to administer this section and create a springs priority criterion based on measurements of nitrate concentrations at the point in which the spring discharges onto the earth's surface. These measurements will determine whether the department lists the spring as high, medium or low priority.
- Creates deadlines for implementation of the requirements in s. 369.405, F.S., based on the priority list developed by the department:
  - High priority by July 1, 2016;
  - Medium priority by July 1, 2019; and
  - Low priority by July 1, 2024.
- Allows counties or municipalities to submit an application to exempt certain geological areas from inclusion in a spring protection zone if they can prove that the exempted areas will not lead to new or continued degradation of a spring.

- Directs the department to develop standards and rules that provide the minimum scientific methodologies, data or tools for use by counties and municipalities for their applications for exemptions.
- Allows the department to deny or modify an exemption application by a county or municipality.
- Directs the department to conduct a study of nitrate concentrations within spring protection zones.

Section 369.405, F.S., requires implementation of the following requirements by the deadlines in s. 369.404, F.S., based on whether the spring is a high, medium, or low priority:

- For domestic wastewater discharges:
  - Facilities having permitted capacities greater than or equal to 100,000 gallon per day must reduce nitrogen to less than or equal to 3mg/L.
  - Facilities having permitted capacity between 10,000 and 100,000 gallons per day must reduce nitrogen to less than or equal to 10mg/L.
  - For onsite sewage treatment and disposal systems, areas having or permitted to have densities greater than or equal to 640 systems per square mile must connect to a central system or other centralized collection and treatment system.
- Agricultural operations must:
  - Implement best-management practices, including nutrient management, adopted by the Department of Agriculture and Consumer Services.
  - Adopt best-management practices developed by the Department of Agriculture and Consumer Services for equine, cow and calf, and forage grass operations.
  - Animal feeding operations must implement rules adopted by the department, which at a minimum must address:
    - Lined wastewater lagoons;
    - Nutrient management plans; and
    - The land spreading of animal waste not treated and packaged as fertilizer.
- Stormwater systems requirements are as follows:
  - All drainage wells must be evaluated and a remediation plan developed to reduce nitrogen loading to groundwater; and
  - All management systems constructed prior to 1982 must be evaluated and a remediation plan developed to reduce nitrogen loading to groundwater.
- Allows the department to implement more stringent requirements if necessary to meet surface and groundwater quality standards.

Section 369.406, F.S., provides for additional requirements that apply to all spring protection zones with dates certain that are independent from the deadlines in s. 369.405, F.S.

- All newly constructed or expanded wastewater facilities that become operational after July 1, 1012 must meet the advanced water treatment standards of s. 403.086(4), F.S.
- All development not permitted as of July 1, 2009 with densities of 300 septic tanks per square mile must be connected to a central wastewater facility or other centralized collection and treatment system.
- New septic systems installed after July 1, 2009 must operate to achieve no more than 3mg/L total nitrogen at the owner's property line.
  - The Department of Health must develop and adopt design standards for systems to meet this concentration. At a minimum, this standard must take into account

    - the treatment level achieved by the septic system and the area of usable property available for rainwater dilution.
  - Groundwater monitoring is not required
- Compliance with the above septic system and concentration requirements is presumed if:
  - The lot associated with the septic system meets the baseline standards set by the Department of Health and the ratio of estimated sewage flow to usable property is 100 to 1 or less, or
  - The lot associated with the septic system meets at least the secondary treatment standards set by the Department of Health and is combined with a drip irrigation system.
- The requirements and presumptions above do not supersede the jurisdictional flow limits established in s. 381.0065(3)(b), F.S.
- Land application of septage is prohibited and subject to new fines.
- Septic systems that require repair, modification or reapproval must:
  - Meet a 24-inch separation from the wet season water table and surface water setback requirements of 381.0065(4), F.S.;
  - Have treatment receptacles within one size of the Department of Health requirements; and
  - Be tested for watertightness by a licensed septic tank contractor or plumber.
- Owners of a publicly-owned or investor-owned sewerage system are required to notify all owners of onsite systems of the availability of central sewer facilities, for the purpose of connection to such facilities pursuant to s. 381.00655 (1), F.S., within 60 days following clearance from the department that the central sewer facilities are ready for use.
  - Exemptions from mandatory hookup to central sewer facilities may be approved by the Department of Health provided that the onsite system meets or exceeds standards for septic systems, and that such a connection is not required in the public interest due to water quality or public health considerations.
- The Department of Health may grant variances for hardship cases.
- After July 1, 2010, all land application of Classes A, B and AA wastewater residuals is prohibited. An exception is provided for Class AA residuals marketed and distributed as fertilizer products in accordance with department rule.
- Local governments must, at a minimum, adopt the department's model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions by December 31, 2010.
- The department is allowed to implement more stringent requirements if necessary to meet surface and groundwater quality standards.

Section 369.407, F.S., creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program. The program is established in the Department of Health and must:

- Provide grants to low-income property owners with septic systems in spring protection zones to help them comply with the requirements and rules for these systems developed by the department, the Department of Health and the water management districts.

- The grant program may be used to apply to costs incurred after rules are developed for its administration.
- Apply to any property owner in a spring protection zone with an income less than or equal to 200 percent of the federal poverty level who is required to alter, repair, or modify a system to meet the standards of a nitrate-reducing system.
- Limit the grant to the cost differential between the replacement of a comparable existing system and an upgraded nitrate-reducing system, but may not exceed $5,000 per property.
- Be in the form of a rebate to costs incurred in complying with the requirements of spring protection zones. The property owner must furnish documentation of those costs in the grant application.
- Be subject to rules adopted by the Department of Health that provide for:
  - Forms, procedures, and application requirements; and
  - Requirements for dispersing grants, including bid requirements, and documentation of costs incurred with compliance.
- Give the Department of Health, the department, and the water management districts the authority to evaluate, by any means necessary, the amount of nitrate deposited in springs by septic systems.

Section 369.408, F.S., establishes rules:

- The department, the Department of Health, and the Department of Agriculture and Consumer Services are provided rule making authority to administer the provisions established in this part.
- The Department of Agriculture and Consumer Services shall:
  - Be the lead agency in coordinating the reduction of agriculture nonpoint sources of pollution for springs protection;
  - Study and if necessary , initiate rule making with cooperating entities and stakeholders to implement new or revised best-management practices; and
  - As needed, revise its best-management practices rules to require implementation of the modified practice with a reasonable time.
  -

Section 24. Amends s. 163.3177, F.S., requiring that local governments affected by the provisions in Part IV of Chapter 369, F.S., adopt a spring's protection measure within their appropriate comprehensive plan element during the first comprehensive plan evaluation and appraisal report conducted after July 1, 2009. The spring protection measure shall:

- Ensure the protection of, and where necessary, restoration of water quality in springs;
- Address minimizing human impacts on springs from development by protecting karst features during and after the development process;
- Ensure that future development follows low-impact design principles;
- Ensure that landscaping and fertilizer use are consistent with the Florida Friendly Landscaping Program;
- Ensure adequate open space; and
- Provide for proper management of stormwater and wastewater to minimize impacts on the water quality of springs.

The department and the state land planning agency shall make all information concerning best-management and use practices and principles available on their respective websites. Landscape design and irrigation systems must meet the standards established pursuant to s. 373.228 (4), F.S.

Failure of a local government to adopt a spring protection measure at the first evaluation and appraisal report will result in a prohibition of any plan amendments until the measure is adopted.

Section 25. Amends s. 403.1835, F.S., to include the implementation of basin management action plans and spring protection zones as eligible projects for priority pollution control financial assistance. In development of its priority system, the department should also consider projects that eliminate environmental damage caused by failing onsite sewage treatment and disposal systems with priority given to those systems located within an area of critical state concern under s. 380.05, F.S., or located in a spring protection zone adopted pursuant to s. 369.404, F.S. Provides for technical changes.

Section 26. Creates an unnumbered section directing the department, the Department of Agriculture and Consumer Services, and the water management districts to assess nitrogen loading from lands owned or managed by each respective agency, located within a spring's protection zone established in the pilot program, and develop and implement management plans designed to reduce the adverse impacts to the springs no later than December 31, 2011.

Section 27. Creates paragraph (d) of subsection (3) of s. 381.0065, F.S., and requires the Department of Health to develop and implement a mandatory onsite sewage treatment and disposal system inspection program. An additional fee of up to $20 must be collected for each septic system inspected by the Department of Health, local government, or a licensed septic tank contractor or plumber. At least half of the revenues generated from the additional inspection fee will go into the appropriate trust fund to administer the grant program created pursuant to s. 369.407, F.S. The entity conducting the inspection must submit an application for approval to the Department of Health and provide a copy to the property owner. The Department of Health must approve of the system for continued use or notify the owner that a repair or modification permit is required. The mandatory inspection program also must:

- Be phased in over 10 years;
- Provide that every septic system is inspected on a recurring 5-year basis;
- Initially target systems inspected under other departmental criteria;
- Provide for exemptions for those systems where the density of dwellings is less than one per every three acres unless the property abuts a water body or water segment that is listed as impaired pursuant to s. 369.403, F.S. or s. 403.067, F.S.

Provides for technical changes.

Section 28. Creates paragraph (m) to subsection (9) of s. 259.105, F.S., and directs the Acquisition and Restoration Council to give priority to projects that fall within a spring protection zone created pursuant to s. 369.404, F.S. Provides for technical changes.

Section 29. Creates s. 403.9335, F.S., for the protection of urban and residential environments and water.

- Provides for findings by the Legislature that implementation of a model ordinance for urban fertilizer use will protect surface and groundwater. Further, the Legislature finds that Florida's unique and varying geology, soil and development density necessitate additional or more stringent fertilizer-management practices be implemented at the local level.

- Directs the department to develop and adopt a model ordinance using the 2008 Model ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.
- Encourages all local governments to adopt the model ordinance.
- Requires all local governments that are within the watershed of a nutrient impaired water body or water segment to adopt the model ordinance.
- Allows local governments to adopt additional or more stringent provisions to the model ordinance.
-

Section 30. Creates s. 403.9337, F.S., to require statewide use of no-phosphorous fertilizer for urban turf.

- Provides for definitions for "no-phosphate fertilizer" or "no-phosphorous fertilizer," "urban turf," "soil test," and "tissue test."
- Bans the use of phosphorous containing fertilizer for urban turf application after July 1, 2011, unless soil or tissue tests indicate a phosphorous containing fertilizer is needed to initially establish urban turf or maintain healthy urban turf.
- Establishes the amount of phosphorous per 1,000 square feet that may be applied to urban turf if an exemption is granted.

Section 31. Provides for a type II transfer, on July 1, 2010, of the Bureau of Onsite Sewage from the Department of Health to the Department of Environmental Protection.

Section 32. Amends s. 369.317, F.S., to clarify the mitigation boundaries that apply to projects untaken within the Wekiva Study Area.

Section 33. Amends s. 373.185, F.S., providing the legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida's water resources serve a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and protection efforts.

The bill removes the term "xeriscape" from Florida Statutes, and replaces the term with "Florida-friendly landscaping."[14] It also amends a number of statutory sections to incorporate additional principles into the definition of Florida-friendly landscaping. These principles include:

- Planting the right plants in the right place;
- Efficient watering;
- Appropriate fertilization;
- Mulching;
- Attraction of wildlife;
- Responsible management of yard pests;
- Recycling yard waste;
- Reduction of stormwater runoff; and
- Waterfront protection.

[14] Sections 125.568, 166.048, 255.259, 335.167, 373.228, 373.185, 380.061, 388.291, 481.303, and 720.3075 of the Florida Statutes.

The bill requires each water management district to assist local governments by developing or providing a Florida-friendly landscape model ordinance. The districts may use a model contained in the "Florida-friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions" manual. To qualify for a district's incentive program, a local government must adhere to certain criteria, including water quality protection or restoration and identification of prohibited exotic species.

The bill requires water management districts to work with the department, county extension agents or offices, nursery and landscape industry groups, and other interested stakeholders to promote the use of Florida-friendly landscaping practices through educational programs and publications. The districts shall use materials developed by the University of Florida's Institute of Food and Agricultural Sciences, the Center for Landscape Conservation and Ecology Florida-Friendly Landscaping Program, including the Florida Yards and Neighborhoods extension program, the Green Industries Best Management Practices Program, and other programs with suitable materials. In addition, the CS provides that a deed restriction, covenant, or local government ordinance may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping. It also prohibits all deed restrictions, covenants, or local government ordinances from restricting the use of Florida-friendly landscaping. It clarifies that s. 373.185, F.S., does not limit the authority of the department or the water management districts to require Florida-friendly landscaping as a condition for receiving a permit. Lastly, it provides for technical and conforming changes.

Section 34. Creates s. 373.187, F.S., directing each water management district to use Florida-friendly landscaping on all public property associated with a building or facility constructed after June 30, 2009. It also directs that each water management district create a 5-year phased plan for those buildings or facilities constructed before June 30, 2009.

Section 35. Amends s. 373.228, F.S., replacing "xeriscape" with "Florida-friendly landscaping." It adds the Florida Native Plant Society as an organization the water management districts must cooperate with to develop design standards for Florida-friendly landscaping. It also provides for technical changes.

Section 36. Amends s. 373.323(3), F.S., requiring applicants for a water well contractor's license to demonstrate proof of the required two years experience by providing:

- Evidence of the length of time the applicant has been engaged in the construction, repair, or abandonment of water wells. Such experience shall be considered satisfactory if attested to by in writing by any three the following:
  - A water well contractor;
  - A water well driller;
  - A water well parts and equipment vendor; or
  - A water well inspector employed by a government entity.
- A list of at least ten 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. The list must also include:
  - The name and address of the owner of each well;
  - The location, primary use, and depth and diameter of each well; and

- o The approximate date the construction, repair, or abandonment of each well was completed.

It also provides for technical changes.

Section 37. Amends s. 373.333(8), F.S., providing that a water management district may impose a fine, not to exceed $5,000 *per occurrence*, against a person that has engaged in the unlicensed practice of water well contracting. It also provides for technical changes.

Section 38. Amends s. 125.568, F.S., replacing “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It directs boards of county commissioners to consider Florida-friendly landscaping as water conservation or water quality protection or restoration ordinances. It specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. It provides the legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida’s water resources serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. It also provides for technical and conforming changes.

Section 39. Amends s. 166.048, F.S., replacing “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It provides the legislative finding that Florida-friendly landscaping contributes to water conservation, protection and restoration, and that it should be used as a planning measure. It directs the governing bodies of each municipality to consider Florida-friendly landscaping as water conservation or water quality protection or restoration ordinances. It provides for the additional legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida’s water resources serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. In addition, it specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 40. Amends s. 255.259, F.S., replacing “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It provides the legislative finding that water conservation, protection and restoration are critical to healthy surface water and groundwater, and Florida-friendly landscaping can contribute to protecting and restoring those waters. It directs the Department of Management Services in cooperation with other agencies to adopt rules for using Florida-friendly landscaping on public property associated with building or facilities constructed on or after June 30, 2009, and to create a 5-year phased plan for those buildings or facilities constructed before June 30, 2009. It provides for the additional legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida’s water resources serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state

water conservation and protection efforts. In addition, it specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 41. Amends s. 335.167, F.S., replacing "xeriscape" with "Florida-friendly landscaping," and including, by reference, the meaning in s. 373.185, F.S. It provides that the Department of Transportation use Florida-friendly landscaping on its lands for construction or acquisition of projects occurring on or after June 30, 2009, and to create a -5-year phased plan for those projects constructed or acquired before June 30, 2009. It provides the legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida's water resources serve a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and protection efforts. It also specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 42. Amends s. 380.061(3)(a), F.S., replacing "xeriscape" with "Florida-friendly landscaping," and including, by reference, the meaning in s. 373.185, F.S. It also provides for technical changes.

Section 43. Amends s. 388.291(3), F.S., replacing "xeriscape" with "Florida-friendly landscaping," and providing for technical changes.

Section 44. Amends s. 481.303(6)(a), F.S., replacing "xeriscape" with "Florida-friendly landscaping," and including, by reference, the meaning in s. 373.185, F.S.

Section 45. Amends s. 720.3075, F.S., replacing "xeriscape" with "Florida-friendly landscaping." It provides the legislative finding that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida's water resources serve a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and protection efforts. It specifies that covenants, articles of incorporation, or bylaws may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 46. Creates an unnumbered section of Florida law providing for the creation of a task force to develop legislative recommendations relating to stormwater management design in the state. The task force, to be comprised of industry and governmental representatives shall provide findings and recommendations, by November 1, 2009. Specific issues to be addressed include: how licensed professionals can demonstrate competency for stormwater management system design; development of continuing education requirements; and how to grandfather current professionals designing these systems.

Section 47. Provides that the act shall take effect upon becoming law unless otherwise expressly provided.

Other Potential Implications:

Taking a more comprehensive approach to landscaping would likely contribute significantly to the conservation of water, help reduce runoff, minimize groundwater and surface water pollution, and enhance the aesthetics of the State of Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the State Constitution, provides that "except upon approval of each house of the legislature by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

This bill does limit the authority of municipalities or counties to raise revenue. No exemptions or exceptions apply. Therefore, this bill will require approval by a two-thirds vote of the membership of each house of the legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The statute prohibits the enforcement of deed restrictions and covenants that prohibit any property owner from implementing Florida-friendly landscape. This may impair existing contracts, which would require that the law serve an important public purpose.[15]

Article I, Section 10 of the *United States Constitution* prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community. *Stone v. Mississippi,* 101 U.S. 814 (1880). The severity of the impairment is a key issue when evaluating whether a state law impairs a contract. *General Motors Corp. v. Romein,* 503 U.S. 181 (1992). In *Exxon Corp. v Eagerton,* 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct

[15] *Yellow Cab Co. v. Dade County,* 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because "the statute did not create rights, but merely recognized them, it does not impair existing contract rights." *Gerber v. Longboat Harbour North Condominium, Inc.,* 724 F.Supp. 884 (M.D.FL., 1989).

Article I, Section 10 of the *Florida Constitution* also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers. *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980). This exception extends to laws that are reasonable and necessary to serve and important public purpose *Yellow Cab Company of Dade County. v. Dade County,* 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla.1982), to include protecting the public's health, safety or welfare. [*Khoury v Carvel Homes South, Inc*., 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 467 (Fla. 1981)].

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts. *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill provides that an additional fee of up to $20 be added to the cost of a septic tank inspection. Fifty percent of the revenues derived from the fee are to be used for the implementation of the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program created in the bill. The remaining fees would be retained by the Department of Health.

There are some 2.3 million septic tanks in the state. The bill provides that all systems except those in areas where the density is less than 1 dwelling per 3 acres will be required to have an inspection. The number of systems that will qualify for the exemption is unknown.

The bill allows for a 10 year phase in of the program so annual revenues are expected to be minimal in the first years but once fully implemented it is anticipated that at least 400,000 inspections will be performed annually and generate $8 million in revenues.

B. Private Sector Impact:

The development community should see a substantial benefit from the provisions of this bill as permits, development orders, and other land use approvals which expired as of September 1, 2008 or will expire through September 1, 2011, are automatically extended.

There will be an impact to individual landowners having to meet the onsite wastewater standards required in the bill. Depending on the specific priority designation of the springs in their area, they will be required to connect to some type of centralized collection system between July 1, 2016 and July 1, 2024. The bill does provide that onsite systems in areas with a density of less than 640 septic tanks per square mile will be exempt from this requirement. The number of individual homeowners that will be impacted by the requirement or exempt is indeterminate. Estimates, from the Department of Health, range from $2,500 to $20,000 as the cost of connecting to centralized systems for a standard family residence.

Individual homeowners that would be required to have their septic tank systems inspected would now be required to pay up to an additional $20 once every five years. Data from a Department of Health report indicates that the current rate for inspection, evaluation, and pump out averages $500.

Agriculture operations will face some additional cost to implement the necessary best-management practices that would be developed under the legislation. The specific cost is unknown because the practices have not yet been developed. However, it should be noted that even without the legislation many of these agriculture operations may still be required to implement best-management practices as a result of the state's implementation of the Total Maximum Daily Load program.

The bill has a series of "going-forward" requirements designed to address future activities in spring protection zones. These requirements will have an impact on the private sector. Specific requirements and impacts include:

That any development not permitted as of July 2009, with a planned density exceeding 640 septic systems per square mile, will be required to provide some form of centralized collection and treatment. As indicated previously the cost hooking up to a centralized system is estimated to range from $2,500 to $20,000 per residence.

Any new septic tank system installed after July 2009 will be required to meet certain performance based criteria. Costs for performance based systems can vary depending on the level of performance and certain site characteristics. Data from the Department of Health indicates these systems range in price from $10,000 to $15,000, whereas conventional systems range in price from $3,000 to $6,000. The legislation does not prescribe a specific system but outlines the minimum criteria the system shall achieve.

A requirement that during the repair or modification of a septic system, it be determined if the system as installed meets setback requirements that ensure the protection of surface

or groundwater. If the system does not meet these requirements, additional costs may be incurred to add fill dirt or modify a drainage field.

Individuals who violate the provision of the bill prohibiting the land application of septage will be subject to a $250 fine for the first offense and a $500 fine for a second or subsequent offense.

For individuals who may be required to replace their septic tank systems with new performance based systems, the bill creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program. The purpose of which is to provide grants to those low-income property owners (up to 200% of the federal poverty level) to assist in complying with the new requirements of the legislation. Grants of up to $5,000 will be made available to cover the difference between the cost of a traditional septic tank and that of a nitrate-reducing system or to assist in hooking up to central systems. Based on the Department of Health data the cost differences can be expected to range between $7,000 and $9,000.

The impact to homeowners and business owners is indeterminate. In addition, the costs of nullifying deed restrictions and covenants are unknown. This provision may generate significant litigation.

C. Government Sector Impact:

This bill is expected to have a substantial impact on state and local government and will be heard by the Revenue Estimating Conference.

The bill directs the Department of Environmental Protection and the Department of Health to adopt rules to implement various provisions. It is anticipated that the agencies can accomplish the rule making within current budgets. Staff has requested fiscal impacts from the agencies.

Pursuant to a requirement in the 2008 – 2009 General Appropriations Act, the Department of Health was required to report on the cost of implementing a similar mandatory septic tank inspection program. Findings of the report estimate that program costs of $21.8 million would be fully funded from current application and permitting fees. The cost figure represents the one position that the Department of Health would require as well as the costs for the county health departments to implement the program.

The bill allows local governments an option to modify the boundaries of the spring protection zones by petitioning the Department of Environmental Protection. The cost of this process is indeterminate and will be directly related to the complexity of the specific spring zone.

Local governments are also required to evaluate and implement plans to reduce nitrogen loading from drainage wells and stormwater management systems constructed before

1982. The cost is unknown and will be dependent on the specific characteristics of each system and the extent of capital investment needed to bring the systems into compliance.

The bill provides that the Department of Environmental Protection develop a model ordinance for the use of fertilizers on urban landscapes. The department is to modify an existing model ordinance. Once completed by the Department of Environmental Protection, local governments are encouraged to adopt the model ordinance. However, local governments, located in a spring protection zone or that have impaired waters as listed by the Department of Environmental Protection are required to adopt the ordinance. There will be some cost to local governments to adopt the ordinances. The specific number of local governments that will be located in a spring protection zone is unknown, at a minimum there are 34 counties that will be impacted.

The bill also requires local governments to adopt a Department of Environmental Protection developed model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions.

The bill directs local governments during their next evaluation and appraisal cycle to update the appropriate comprehensive plan elements to address springs protection.

Wastewater discharge facilities, either publically or investor owned, will face costs for the implementation of treatment methods to achieve standards provided in the legislation. The cost to these facilities is highly dependent on individual facility characteristics. Factors such as size, level of treatment, and how fast to get to higher treatment levels will have significant bearing on the cost of this requirement. For those publically owned facilities that will be impacted by the requirements of the legislation, there exists the state's Clean Water Fund SRF loan program to provide assistance.

There will be some costs associated with educational materials and campaigns targeted at the public. These costs are unknown. The impact to each water management district that is required to adopt rules is unknown, but will likely be met with existing staff and resources.

VI. Technical Deficiencies:

Section 36 amends subsection (3) of s. 373.323, F.S., requiring water well contractors to provide satisfactory proof of experience but provides no mechanism to challenge a finding that the proof provided was not satisfactory.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on March 31, 2009:
The "strike amendment" is the subject of this analysis.

CS by Environmental Preservation and Conservation on April 14, 2009:
The CS was modified by adding the substance of CS/SB 274 relating to springs protection; CS/SB 2530 relating to Florida-Friendly model ordinances and practices for lawn care; and SB 2606 creating a task force to study stormwater design issues.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.