HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7143 PCB ANR 09-02 Regulatory Reform
SPONSOR(S): Agriculture & Natural Resources Policy Committee, Williams, T.
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner	Reese
1)	General Government Policy Council		Kliner	Hamby
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill amends Florida Statutes to implement permit streamlining measures proposed by various governmental agencies, associations, and the regulated communities.

The bill provides for a three year extension for permits issued by the Department of Community affairs (DCA), as well as local government-issued development orders, building permits, and Department of Environmental Protection (DEP) or water management district (WMD) issued environmental resource permits (ERP) that are due to expire or did expire September 1, 2008, through September 1, 2011, and provides exceptions for a permit extension. The bill prohibits a local government from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency, and prohibits the local government from specifying the method or form of documentation that a project meets the provisions for authorization under Florida Statutes. The bill provides for a general permit and for certain exemptions for local governments to conduct environmental restoration.

The bill provides for a chapter 120, F.S., notice of rights via the internet and authorizes a license applicant to require an agency to process a pending application. The bill directs applicants for a beach permit and or an environmental resource permit to timely respond to requests for additional information.

The bill directs governing boards of water management districts to delegate certain duties to the executive director.

The bill provides permits as incentives for landowners to pursue alternative water supply projects and removes the need for a permit variance for docks in certain shellfish waters. In addition, the bill revises exemption language for the repair or replacement of docks. The bill permits dock boat slips in aquatic preserves to have a roof with an overhang not more that 1-foot beyond the footprint of the boat lift. Such roofs shall not be considered to be part of the square footage calculations of the terminal platform.

The bill directs the DEP to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements and to develop a project management plan to implement an e-permitting program. The bill requires agency rulemaking to provide for no-notice general permits, and for calculating square footage for sovereignty submerged land leases.

Finally, the bill revises the expedited permitting statute for targeted enterprises.

The fiscal impact on state and local governments is uncertain.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prior to the start of the 2009 Regular Session, the Chair of the House Agriculture and Natural Resources Committee invited groups to propose ideas to streamline the state's current environmental permitting programs. Ideas gleaned by staff from prior legislative sessions were included in a list that grew as groups submitted ideas. The groups included:

- The Department of Environmental Protection (DEP).
- The Fish and Wildlife Conservation Commission
- The Florida Association of Counties and the Florida League of Cities.
- Business leaders, including the Florida Council of 100, the Florida Chamber of Commerce, and Enterprise Florida.
- The regulated community, including Associated Industries of Florida, the Florida Chamber, Florida Land Council, Association of Florida Community Developers, Florida Home Builders, Florida Electric Power Coordinating Group, Marine Industries, Marine Manufacturers Association, Florida Farm Bureau, and the Florida Fruit and Vegetable Association.

Staff organized the spreadsheet first by group (e.g., DEP, Regulated Community, Florida business leaders), and a column was added to describe a general subject matter area that categorized programs or activities (e.g., Environmental Resource Permitting (ERP), mitigation, the Administrative Procedures Act, and agricultural operations). Next, a column was added to describe a process or activity the idea impacted (e.g., increase water management district delegation to staff, limit agency requests for additional information, exempt activities from building code regulations). Finally, the spreadsheet provided a short summary of the proposal.

Within the chart are proposals to:

- Facilitate coordination with federal permitting agencies.
- Establish comprehensive electronic permitting, and electronic noticing.
- Expand training opportunities for the regulated community.
- Expand the number and type of exemptions from permitting.
- Combine permit types into one authorization.
- Coordinate state and local government responses to statutory exemptions.

- Limit or eliminate duplicative environmental permitting between state and local governments.
- Provide incentives for environmental permitting delegation.
- Provide state-wide environmental standards where appropriate.
- Streamline elements of the Florida Administrative Procedures Act.
- Restructure existing procedures for expedited permitting.
- Extend the deadlines of timed permits and increase the duration of some permits.

The spreadsheet was delivered to members of the Agriculture and Natural Resources Policy Committee with an invitation by the Chair to review the list, identify the ideas they appreciated the most, or the least, and to return the marked spreadsheet to staff. In addition, staff added a blank column to the spreadsheet and delivered it to the participating groups with instructions to comment on each of the proposals. After compiling the member comments and the group comments, staff presented the results to the Chair, who decided the direction of the proposed committee bill.

Section 1 extends the duration of certain permits that have expired or may expire between the dates of September 1, 2008, through September 1, 2011, for 3 years from the date of expiration.

Current Situation

Generally, government is responsible for the enforcement of health, safety, and environmental regulations, whether the government is municipal, county, regional, state, or federal. Environmental permitting, for example, is a multi-tiered regulatory process that begins with federal regulations that address water and air quality as well as impacts to wildlife and habitat. The federal and state regulators often work together to avoid duplicating efforts and, when appropriate, the federal government delegates authority to the state to ensure that federal standards are met. In turn, the state may delegate its authority to local governments to ensure that state and federal standards are met.

Measures to protect wetlands, for instance, may find their origin at the local level through county and city governments' compliance with chapter 163, Part II, F.S. (The Local Government Comprehensive Planning and Land Development Regulation Act (or the Growth Management Act). However, the environment is but one aspect of regulation of development in the state.

Growth Management

Adopted by the 1985 Legislature, the Growth Management Act requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools. Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008 deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008, deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

Transportation Concurrency

The Growth Management Act of 1985 also requires local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring that

transportation facilities and services are available “concurrent” with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. In 1992, Transportation Concurrency Management Areas were authorized, allowing an area-wide level-of-service (LOS) standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to “reduce the adverse impact transportation concurrency may have on urban infill and redevelopment” by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

In 2008, Transportation Backlog Authorities were created to adopt and implement a plan to eliminate all identified transportation concurrency backlogs within the authority's jurisdiction. To fund the plan’s implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25 percent of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes that would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency, and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed.

Proportionate Fair-Share Mitigation
Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer’s fair-share of costs to meet concurrency. The developer’s fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government’s plan or program, the developer may still enter into a binding agreement at the local government’s option provided the improvement satisfies part II of chapter 163, F.S., and the proposed improvement satisfies the significant benefit test; or the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation
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] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be “pipelined” or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Strategic Intermodal System
The Florida Department of Transportation (FDOT) is responsible for establishing LOS standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

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

Comprehensive Plan Amendments

A local government may amend its comprehensive plan provided certain conditions are met, including two advertised public hearings on a proposed amendment before its adoption and mandatory review by the DCA.[2] By rule, the DCA reviews a submitted comprehensive plan amendment to insure that it has a complete application package within 5 days of receiving the comprehensive plan amendment.[3] A local government may amend its comprehensive plan only twice per year with certain exceptions. At present, the statutorily prescribed timeline for a comprehensive plan amendment to be processed is 136 days. Small-scale plan amendments are treated differently. These amendments may not change goals, policies, or objectives of the local government's comprehensive plan. Instead, these amendments propose changes to the future land use map for site-specific small scale development activity. The DCA does not issue a notice of intent stating whether a small scale development amendment is in compliance with the comprehensive plan.

Alternative State Review Process

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with limited state agency review. Pilot communities transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to chapter 163, part II, F.S., Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment. Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government transmits the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the DCA to focus its challenges on issues of regional or statewide importance. DCA does not issue a report detailing its objections, recommendations, and comments. The alternative state review process shortens the statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

The DRI Process

Section 380.06, F.S., 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. Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

Impact Fees

Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge

[2] Section 163.3189, F. S.
[3] F.A.C. 9J-11.008

the full cost of the fee's earmarked purposes. Section 163.31801(3)(d), F.S., requires local governments to provide notice of a new or amended impact fee at least 90 days before the effective date.

Effect of Proposed Change

The bill extends the duration of certain permits that have expired or may expire between the dates of September 1, 2008, through September 1, 2011, for 3 years from the date of expiration. Affected permits include those issued by the Department of Community Affairs, ERP permits issued by the DEP and WMDs, and local government-issued development orders and building permits. The holder of a permit that is eligible for an extension must notify the permitting agency no later than September 30, 2010 of the intention to seek the extension. The extension excludes programmatic or regional general permits issued by the U.S. Army Corps of Engineers (COE) and excludes permits that are not in compliance with applicable statute or rule. Administrative rules that are in effect at the time the permit is issued will govern the permit through the extension period.

Section 2 amends s. 120.569(1), F.S., providing for a chapter 120, F.S., notice of rights via the Internet.

Current Situation

Chapter 120, F.S., is the Administrative Procedure Act (APA), which sets forth the procedures by which executive branch agencies must adopt their respective agency administrative rules that are used to implement and carry out statutory duties and responsibilities. Whenever a state agency takes any action that can be interpreted as affecting someone's rights, an agency erring on the side of caution usually provides a notice of rights. For instance, s. 120.56(4), F.S., allows any person substantially affected by an agency statement (rule) to challenge the statement and seek an administrative determination of whether the statement violates the rulemaking requirements of s. 120.54(1)(a), F.S. Notices of rights may differ in length, depending on the specific circumstance. The DEP reports that one such notice the agency provides approximately 30,000 times annually is eight pages long.

Effect of Proposed Change

The bill authorizes an executive agency to provide a notice of rights of the procedure to obtain an administrative hearing or judicial review, including any items required by the uniform rules adopted pursuant to s. 120.54(5), via a link to a publicly available Internet site.

Section 3 amends s. 120.60(1), F.S. providing authority for a license applicant to require an agency to process the pending application.

Current Situation

Under current law (s.120.60, F.S.), upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information (referred to as "RAIs"). The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Change

The bill provides that if the applicant believes a request for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the permit application.

Section 4 amends s. 125.022, F.S., prohibiting a county from requiring as a condition of approval for a development permit, that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation

According to the development community, there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a state or federal agency, whether or not the development proposal requires state or federal approval.

Effect of Proposed Change
The bill prohibits a local government from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency. The section provides that it is the applicant's responsibility to seek any additional state or federal authority, and that the issuance of a development permit does not create liability on the part of the local government for the applicant's failure to secure proper state or federal approval. Counties may attach this disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits must be obtained prior to development. This shall not be construed to prohibit a county from providing information to an applicant regarding what other state or federal permits may be applicable.

Section 5 amends s. 161.032, F.S., requiring beach permit applicants to timely respond to requests for additional information (RAI).

Current Situation
Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Change
The bill provides that if the applicant believes a request for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the permit application. In addition, this section requires the applicant to respond to the RAI within 90 days of receipt. If the applicant needs more than 90 days, he or she is required to inform the DEP and the applicant will receive another 90 day period. Additional time may be granted with a showing of good cause.

Section 6 amends s. 166.033, F.S., prohibiting a municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation
According to the development community, there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a state or federal agency, whether or not the development proposal requires state or federal approval.

Effect of Proposed Change
The bill prohibits a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency. The section provides that it is the applicant's responsibility to seek any additional state or federal authority, and that the issuance of a development permit does not create liability on the part of the local government for the applicant's failure to secure proper state or federal approval. The municipality may attach this disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits must be obtained prior to development. This shall not be construed to prohibit a municipality from providing information to an applicant regarding what other state or federal permits may be applicable.

Section 7 amends s. 253.034, F.S. authorizing the deposit of dredged material on state-owned lands.

Current Situation

Chapter 253, F.S., regulates the use of lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund (the board of trustees), which are held in trust for the use and benefit of the people of the state pursuant to s. 7, Art. II, and s. 11, Art. X of the State Constitution. The board of trustees is comprised of the Governor and Cabinet. The DEP's Division of State Lands (the division) is Florida's lead agency for environmental management and stewardship of state lands and serves as staff to the board of trustees. Section 253.03, F.S., lists which lands that are vested in the board of trustees and holds the board of trustees responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use. This section provides rulemaking authority for the disposition of sovereignty submerged lands and directs the board of trustees to annually account for all publically–owned lands.

This section provides direction for assessment of fees for the severance of spoil materials dredged from sovereignty submerged lands. The board of trustees is authorized to administer, manage, control, conserve, protect, and sell all real property forfeited to the state. This section directs the DEP to review all applications for the use of state-owned submerged lands, including a purchase, lease, easement, disclaimer, or other consent to use such lands, and authorizes the use of appropriate appraiser selection and contracting procedures to establish a price for the sale or disposition of state lands. The board of trustees is directed to encourage the use of sovereign submerged lands for water-dependent uses and public access. The administrative rules that implement the administrative and management responsibilities of the board of trustees and DEP regarding sovereign submerged lands are found in chapter 18-21, F.A.C.

Effect of Proposed Change

The bill allows restoration of previously dredged holes to natural conditions to maximize environmental benefits. The bill requires the dredged material to be placed in the dredge hole at an elevation consistent with the surrounding area to allow light penetration so as to maximize propagation of native vegetation. When available dredged material is of insufficient quantity to raise the entire dredge hole to prior natural elevations, then placement is required to be limited to a portion of the dredge hole where elevations can be restored to natural elevations

Section 8 amends subsection (3) of s. 258.42, F.S., allowing boat slips in aquatic preserves to have a roof with an overhang not more that 1-foot beyond the footprint of the boat lift. Such roofs shall not be considered to be part of the square footage calculations of the terminal platform.

Current Situation

Authorization is required for any construction or use on, over or under submerged lands owned by the state. Typical construction projects on sovereign submerged lands include docks, piers, seawalls and dredging of access channels. Activities and uses may be authorized by letter of consent, easement or lease, while some may qualify for consent by rule or an exception. The DEP serves as the regulator of activities over state-owned lands while the Board of Trustees of the Internal Improvement Trust Fund serves as the proprietor of these state-owned lands and determines how the public's interests may best be served. The largest projects or ones of heightened public concern require review and authorization by the Board, while staff of the DEP and the WMDs have been delegated the authority to take action on others.

Sections of Florida's coastal landscapes have been set aside for protection as aquatic preserves to ensure that the environment may be protected for bird rookeries, fish nurseries, freshwater springs, salt marshes, seagrass meadows, and mangrove forests. In 1975, Florida enacted the Aquatic Preserve Act to conserve the natural condition of these resources. Today, Florida has 41 aquatic preserves, encompassing almost two million acres. Part II of ch. 258, F.S., authorizes the Board's maintenance of these preserves. Rule 18-20, F.A.C., authorized by ch. 258, F.S., provides very specific directions and limitations on the type, size, and location of structures within aquatic preserves. For instance, Rule 18-20.004(5)(b)6., F.A.C., limits the terminal platform (the "T" at the end of the dock walkway) size to no more than 160 square feet. These strict guidelines are primarily for the maintenance of the natural conditions of the preserves, the

propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the Board, and the managing agency.[4]

Effect of Proposed Change

The bill permits boat slips in aquatic preserves to have a roof with an overhang not more that 1-foot beyond the footprint of the boat lift. Such roofs shall not be considered to be part of the square footage calculations of the terminal platform. If a dock structure is currently exempt pursuant to s. 403.813, F.S., the exemption may be lost if the addition of a roof structure results in the structure exceeding the allowed square footage.

Section 9 creates subsection (10) of s. 373.026, F.S., requiring the DEP and WMDs to expand the use of internet-based certification services for appropriate exemptions and general permits issued by the DEP and WMDs.

Current Situation

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled Improving Consistency and Predictability in Dock and Marina Permitting.[5] This concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Recommendation Nos. 3, 4, and 5, of the LCIR report suggested that DEP expand the use of the Internet for permitting and certification purposes.

E-permitting: The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the COE State Programmatic General Permit (SPGP IV). In addition, Florida's five WMDs have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits).[6]

Self certification: According to the LCIR report, in interviews with stakeholder groups, some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

The bill authorizes the DEP and WMDs to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. In addition to expanding the use of internet based self certification services for appropriate exemptions and general permits, the DEP and WMDs shall identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

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[4] Administrative case law holds that dock structures having roofs "not completely closed in and/or climatized for human habitation are deemed to be water dependent activities" and are included in the calculation of square footage for pre-empted areas. Sutton v. Hubbard, 17 FALR 3492, 3497 (Fla. DEP 1995).

[5] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf

[6] See: http://www.flwaterpermits.com/

Section 10 amends 373.079(4)(a), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Current Situation
Pursuant to paragraph (a) of s. 373.079(4), F.S., the governing board of a water management district is authorized to employ an executive director, ombudsman, and such engineers, other professional persons, and other personnel and assistants as it deems necessary and under such terms and conditions as it may determine and to terminate such employment. The governing board may delegate all or part of its authority under this paragraph to the executive director.

Effect of Proposed Change
The section directs that the governing board shall delegate all of its authority to take final action on permit applications under part II or part IV, or petitions for variances or waivers of permitting requirements under part II or part IV, except as provided for under ss. 373.083(5) and 373.118(4). This delegation shall not be subject to the rulemaking requirements of chapter 120.

Section 11 amends s. 373.083(5), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Current Situation
Pursuant to s. 373.083, F.S., regarding the general powers and duties of the governing board of a water management district, the board is authorized to execute any of the powers, duties, and functions vested in the governing board through a member or members thereof, the executive director, or other district staff as designated by the governing board. Section 373.083(5), F.S., provides that if the governing board delegates the authority to take final action on permit applications under part II or part IV, or petitions for variances or waivers of permitting requirements under part II or part IV, the governing board shall provide a process for referring any denial of such application or petition to the governing board to take final action.

Effect of Proposed Change
The section directs the governing board to delegate to the executive director the authority to take final action on permit applications under part II or part IV, or petitions for variances or waivers of permitting requirements under part II or part IV, of chapter 373, F.S., and provides that the delegation may be accomplished without rulemaking.

Section 12 amends s. 373.118(4), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Current Situation
Section 373.118(4), F.S., authorizes the governing board of a water management district to delegate by rule its powers and duties pertaining to general permits to the executive director. The executive director is, in turn, authorized to execute such delegated authority through designated staff. However, when delegating the authority to take final action on permit applications under part II or part IV or petitions for variances or waivers of permitting requirements under part II or part IV, the governing board shall provide a process for referring any denial of such application or petition to the governing board to take such final action.

Effect of Proposed Change
The section directs the governing board to delegate to the executive director the authority to take final action on permit applications under part II or part IV, or petitions for variances or waivers of permitting requirements under part II or part IV, of chapter 373, F.S., and provides that the delegation may be accomplished without rulemaking.

Section 13 creates subsection (6) to s. 373.236, F.S., authorizing the DEP and the governing boards of water management districts to grant permits as incentives for landowners to pursue alternative water supply projects and providing requirements for such permits.

Current Situation

Section 373.196, F.S., provides legislative findings regarding Florida alternative water supply policy. Subsection (1) defines the purposes of this section, and includes findings that:

- Demand for natural supplies of fresh water will continue to increase.
- There is a need for development of alternative supplies to sustain the state's economic growth and lessen the impact on the environment through the use of traditional groundwater sources.
- Cooperation among all interest groups is needed to meet the needs of rapidly urbanizing areas to supply adequate supplies of water without resulting in adverse effects upon the areas where it is withdrawn.
- Priority funding must be given to the development of alternative supplies.
- Cooperation among all interest groups is needed to develop county-wide and multi-county projects to achieve economies of scale.
- Alternative water supply development must receive priority funding attention to increase available supplies of water to meet existing and future needs.
- All groups should work together in the development of alternative supplies to avoid the adverse impacts of competition for limited supplies.

Subsection (2) provides additional directives relating to alternative water supply development. Included is a finding that funding for water supply development, including alternative supplies, be a shared responsibility of the state, water management districts, and local entities.

Subsections (3) and (4) define the roles of the water management districts and local governments and others regarding alternative water supply development. The roles of the water management districts are:

- Formulation and implementation of strategies and programs;
- Collection and evaluation of data;
- Construction, operation and maintenance of facilities for flood control, storage, and recharge;
- Planning for development in conjunction with local governments and others; and
- Providing technical and financial assistance.

The roles of local governments, regional water supply authorities, special districts, and water utilities are:

- Planning, design, construction, operation, and maintenance of alternative water supply development projects;
- Formulation and development of alternative water supply development strategies and programs;
- Planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water; and
- Coordination of activities with appropriate water management districts.

Subsection (5) provides that nothing in this section shall be construed to preclude the various special districts, municipalities, and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other special districts, municipalities, and counties for the purpose of meeting their respective needs for dependable and adequate supplies of water. Obtaining water through such operations, however, shall not be done in a manner that results in adverse effects upon the areas from which such water is withdrawn.

Subsection (6) requires the water management districts to include in their annual budget submissions specific funding allocations that provide, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. The Suwannee River and the Northwest Florida Water Management Districts are not required to meet this requirement but are encouraged to try to the greatest extent practicable. State funds from the Water Protection and

Sustainability Program are available for project construction costs for alternative water supply development projects selected by a water management district for inclusion in the program.

Effect of Proposed Change

The bill adds a new subsection (6) to s. 373.236, F.S., to provide a mechanism for a private landowner who has modest water needs presently, to dedicate large tracts of land or to fund construction for alternative water supply projects and have some assurance that as his or her water needs increase in the future, he or she will have access to that water. A landowner that makes extraordinary contributions to an alternative water supply development project may enter into an agreement with a local government, regional water supply authority, or water utility to provide for future water needs.

That governmental entity then applies for a consumptive use permit of duration of up to 50 years. The consumptive use permit is subject to all of the regulatory safeguards and water management district scrutiny imposed on all consumptive use permits. For instance, the agreement between the landowner and the public utility is part of the package examined by the WMD in its consideration for the duration of the permit. A private landowner shall not be permitted to directly or indirectly hold the permit.

In addition, current law requires a permit holder to provide compliance reports every 5 years to demonstrate that the initial conditions for the permit issuance are still viable. The bill provides a continual duty to maintain a reasonable assurance that the conditions for the permit issuance are met each review period.

Section 14 amends s. 373.406, F.S., exempting the construction of certain public use facilities in accordance with Florida Communities Trust grant-approved projects on county-owned natural areas.

Current Situation

Part IV of chapter 373, F.S., regulates the management and storage of surface waters in the state. Section 373.406, F.S., provides exemptions from regulation of Part IV. For instance, subsection (6) authorizes the DEP and a water management district to determine, on a case-by-case basis, whether a specific activity has only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district, and exempt that activity from permitting. Pursuant to that subsection, a request to qualify for the exemption must be submitted in writing to the WMD or the DEP, and such activities shall not be commenced without a written determination from the agency confirming that the activity qualifies for the exemption. Other examples in s. 373.406, F.S., include mining activities for which an operator receives a life-of-the-mine permit under s. 378.901, F.S., certified aquaculture activities that apply appropriate best management practices adopted pursuant to s. 597.004, F.S., the implementation of certain measures having the primary purpose of environmental restoration or water quality improvement on agricultural lands, and the implementation of interim measures or best management practices adopted pursuant to s. 403.067, F.S., that are by rule designated as having minimal individual or cumulative adverse impacts to the water resources of the state.

The Florida Communities Trust's Parks and Open Space Florida Forever grant program is a state land acquisition grant program that provides funding to local governments and eligible non-profit environmental organizations for acquisition of community-based parks, open space, and greenways that further outdoor recreation and natural resource protection needs identified in local government comprehensive plans.[7] Local governments and environmental non-profit organizations may apply for grants from the Trust. Applications are reviewed and ranked once a year. Counties with populations greater than 75,000 and municipalities with populations greater than 10,000 are required to provide a minimum match of 25 percent of the total project cost. Small counties and cities that are under the above thresholds, and eligible nonprofit environmental organizations, may apply for a 100 percent grant award.

[7] Section 259.105, F.S., and Rule 9K-7, F.A.C.

Effect of Proposed Change

The bill adds to the list of exemptions provided in s. 373.406, F.S., the construction of public use facilities in accordance with Florida Communities Trust grant-approved projects on county-owned natural areas. The exempted activities include, but are not limited to, up to 10-car parking facilities, boardwalks, observation platforms, canoe or kayak launches when such facilities do exceed a total size of 0.7 acres that is located entirely in uplands. Other limitations include pile supported boardwalks having a maximum width of six feet (with exceptions for ADA compliance); and pile-supported observation platforms each of which shall not to exceed 120 square feet in size. No fill shall be placed in, on, or over wetlands or other surface waters except pilings for boardwalks and observation platforms all of which structures located in, on, or over wetlands and other surface waters shall be sited, constructed, and elevated to minimize adverse impacts to native vegetation and shall be limited to an over water surface area not to exceed 0.5 acres. All stormwater flow from roads, parking areas, and trails shall sheet flow into uplands, and the use of pervious pavement is encouraged.

Section 15 creates s. 373.4061, F.S., and provides a noticed general permit for restoration activities to exempt certain public use facilities located on county-owned natural areas.

Current Situation

Regulation of Florida's wetlands starts with the federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899. This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of some activities that occur in or near the nation's wetlands. The regulatory plan is intended to control discharge from dredge or fill materials into wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

The third permit is a State Programmatic General Permit (SPGP). This permit is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of projects are limited as well. Wetland impacts allowed in general permits usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include: construction of shoreline stabilization activities (such as riprap and seawalls; groins, jetties, breakwaters, and beach nourishment/re-nourishment are excluded); boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas, and associated facilities; maintenance dredging of canals and channels; selected regulatory exemptions; and selected ERP noticed general permits.[8]

[8] Source: DEP website page explaining the ERP process. http://tinyurl.com/cddyyu

Under current law, the DEP works with the COE to streamline the issuance of both the state and federal permits for work in wetlands and other surface waters in Florida. The SPGP process allows the DEP or WMD to grant both the ERP and the federal permit, instead of requiring both agencies to process the application.

The general permit process is supposed to eliminate individual review by the COE and allow certain activities to proceed with little or no delay. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization; however, this is not always the case. Since the general permit authorizes the issuance of federal permits, federal resource agency coordination requirements remain. If a permit impacts a listed species, the permit must be forwarded to the COE for coordination with federal resource agencies.

Effect of Proposed Change

The bill creates a noticed general permit to counties to construct, operate, alter, maintain or remove systems for the purposes of environmental restoration activities. In order to qualify for this general permit, the project must comply with the following procedures:

- The project must be included in a management plan that has been the subject of at least one public workshop;
- The County Commission must conduct at least one public hearing. If the project is located in a tidal waterbody, this general permit is limited to those waterbodies given priority restoration status pursuant to s. 373.453(1)(c), F.S.; and,
- No activity under this part may be considered as mitigation for any other project, presently or in the future.[9]

The following restoration projects are authorized under this general permit:

- Backfilling of existing agricultural or drainage ditches for the sole purpose of restoring a more natural hydroperiod to publicly owned lands provided that adjacent properties are not adversely affected;
- Placement of riprap within 10 feet waterward of the low tide line for the purpose of preventing or abating erosion of a predominantly natural shoreline and provided that seagrass, coral and sponge communities are not adversely affected;
- Placement of riprap within 10 feet waterward of an existing seawall and the backfill of the area between the riprap and seawall with clean fill for the sole purpose of planting mangroves and Spartina, provided that seagrass, coral and sponge communities are not adversely affected;
- Scrape down of spoil islands to an intertidal elevation or a lower elevation at which light penetration is expected to allow for seagrass recruitment;
- Backfilling of existing dredge holes that are at least 5 feet deeper than surrounding natural grades to an intertidal elevation or, at a minimum, an elevation at which light penetration is expected to allow for seagrass recruitment; and
- Placement of rock riprap or clean concrete in existing dredge holes that are at least 5 feet deeper than surrounding natural grades provided that placed rock or concrete does not protrude above surrounding natural grades.

The bill imposes the following conditions on the general permit:

- A project shall not significantly impede navigation or unreasonably infringe upon the riparian rights of others and all erodible surfaces, including intertidal slopes, shall be revegetated with appropriate native plantings within 72 hours of completion of construction;

[9] Section 373.453(1)(c), F.S., directs each water management district, in cooperation with the DEP, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Fish and Wildlife Conservation Commission, local governments, and others, to maintain a list that prioritizes water bodies of regional or statewide significance within the water management district. The list shall be reviewed and updated every 5 years.

- Riprap material shall be clean limestone, granite or other native rock that is 1 foot to 3 feet in diameter;
- Fill material used to backfill dredge holes or seawall planter areas shall be local, native material legally removed from nearby submerged lands or shall be material brought to the site with not more than 10 percent of the material passing through a #200 standard sieve and containing no more than 10 percent organic content;
- Turbidity shall be monitored and controlled at all times such that turbidity immediately outside the project area complies with Rule 62-302.300, F.A.C.; and,
- Equipment, barges and staging areas shall not be stored over seagrass, coral or sponge communities.

The WMD or the DEP is directed to provide written notification as to whether the proposed activity qualifies for the general permit within 30 days of receipt of written notice of a county's intent to use the general permit. If the WMD or the DEP notifies the County that the system does not qualify for a noticed general permit due to an error or omission in the original notice, the county shall have 30 days from the agency notification to correct or cure.

Section 16 amends s. 373.4141, F.S., requiring ERP applicants to timely respond to RAIs.

Current Situation

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Change

The bill provides that if the applicant believes a request for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the permit application. In addition, this section requires the applicant to respond to the RAI within 90 days of receipt. If the applicant needs more than 90 days, he or she is required to inform the DEP and the applicant will receive another 90 day period. Additional time may be granted with a showing of good cause.

Section 17 amends s. 373.441, F.S., limiting the DEP or WMDs from regulating activities subject to a delegation of authority to a local government, except where such regulation is required pursuant to the terms of a delegation agreement.

Current Situation

Florida Statutes and Administrative Code sections authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments.[10] Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs the rules shall "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

[10] In an effort to place the planning and regulatory program into the hands of the local governments, section 373.441, F.S., and its implementing rule chapter 62-344, F.A.C., provides delegation authority.

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.[11]

According to the statute, delegation includes the applicability of Chapter 120, F. S., to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs.[12] Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

Effect of Proposed Change

The bill provides that upon delegation to a qualified local government the department and water management district shall not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

Section 18 creates s. 379.1051, F.S., providing that no state agency or other unit of government may adopt or implement regulations or ordinances regulating the take, as defined by the FWC, of wild animal life, fresh water aquatic life or marine fish unless specifically authorized by the FWC.

Current Situation

The Florida Fish & Wildlife Conservation Commission (FWC) is responsible for managing Florida's freshwater aquatic life, marine life and wild animal life.[13] The FWC is involved when a project or activity impacts wildlife, especially species listed as threatened or endangered by either the federal government or the FWC.

The FWC's regulatory authority is derived both from the Florida Constitution and the Florida Legislature. The Constitution gives the FWC regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life that is not endangered. The Legislature establishes fees for licenses and provides penalties for violating FWC regulations.[14]

In its administrative rules listed online the FWC cites the Florida Constitution as its authority for regulatory powers over endangered, threatened, and species of special concern, including its authority to actually list species.[15] It is the Florida Statutes, not the Florida Constitution, however, which gives the FWC regulatory authority over endangered and threatened marine life. Section 379.2431, F.S., provides the FWC with

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[11] Chapter 62-344 of the Florida Administrative Code, provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

[12] The applicability of the Administrative Procedures Act in environmental resource permitting may be a deterrent to local governments seeking delegation from the DEP. No local government expressed the opinion directly to staff, however, such information was received anecdotally from other sources.

[13] The FWC came into existence on July 1, 1999 - the result of a constitutional amendment approved in the 1998 General Election as part of the package proposed by the Constitution Revision Commission. In the implementation of the Constitutional Amendment, the Florida Legislature combined all of the staff and Commissioners of the former Marine Fisheries Commission, elements of the Divisions of Marine Resources and Law Enforcement of the Florida Department of Environmental Protection, and all of the employees and Commissioners of the former Game and Fresh Water Fish Commission.

s. 9, Art. IV, State Constitution – Fish and Wildlife Conservation Commission; s. 23, Art. XII, State Constitution – Fish and Wildlife Conservation Commission; Section 20.331, F.S. – Fish and Wildlife Conservation Commission (administrative structure); Chapter 370, F.S., Saltwater Fisheries; Chapter 372, F.S., Wildlife.

68A-27.001 through 68A-27.006, FAC.

[14] s. 9, Art. IV, State Constitution – Fish and Wildlife Conservation Commission; s. 23, Art. XII, State Constitution – Fish and Wildlife Conservation Commission; Section 20.331, F.S. – Fish and Wildlife Conservation Commission (administrative structure); Chapter 370, F.S., Saltwater Fisheries; Chapter 372, F.S., Wildlife.

68A-27.001 through 68A-27.006, FAC.

15 68A-27.001 through 68A-27.006, FAC.

authority to implement its responsibility for recovery plans for five species of sea turtles, manatees, and porpoises. That section also gives the DEP authority to condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting marine turtles and hatchlings and their habitat. See also, Caribbean Conservation Corporation, Inc., v. Florida Fish and Wildlife Conservation Commission, 838 So.2d 492 (Fla. 2003).

The distinction between statutory vs. constitutional authority is important because administrative rules promulgated under the FWC's constitutional authority have the effect of statute and must be challenged through the circuit court system, rather than the administrative law court system. Persons substantially affected by existing or proposed rules may directly petition the court for an injunction prohibiting the FWC from going forward until the issues are settled. The issue is usually settled in favor of the FWC as the standard of review for these cases is whether the FWC can provide a "rational basis" for the rule. One example of a rule that falls under the FWC's constitutional duties is the determination of fishing limits and gear.

Administrative rules proposing to implement statutory responsibilities are subject to the requirements of the Administrative Procedures Act (APA) authorized in s. 120.56, F.S., and challenges are brought before the Division of Administrative Hearings under a "preponderance of the evidence" standard. An example of statutory responsibilities assigned by the Legislature is the enforcement of boating safety laws.

According to the regulated development community local governments and at least one WMD have rules or regulations that have the effect of regulating wildlife, notwithstanding the statutory requirement for local governments to provide protections for habitat in their comprehensive plans.

Effect of Proposed Changes

The bill provides that no state agency or other unit of government may adopt or implement regulations or ordinances regulating the take, as defined by the commission, of wild animal life, fresh water aquatic life or marine fish unless specifically authorized by the commission. Nor shall any state agency or other unit of local government impose any requirement that has the effect of creating additional restrictions or limitations upon activities conforming with commission rules, management plans, guidelines, permits or other authorizations. Nothing in this section shall affect any voluntary agreement between a landowner and a state agency or other unit of government, or limit the authority of local government as otherwise provided by law.

Section 19 amends s. 403.061(29), F.S., removing the need for a variance for docks in certain shellfish waters; creates subsection (40) of s. 403.061, F.S., requiring the DEP to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements; prohibiting local governments from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.; creates subsection (41) of s. 403.061, F.S., requiring the DEP to develop a project management plan to implement an e-permitting program and requires a report; and, creates subsection (42) of s. 403.061, F.S., prohibiting a local government from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S..

Current Situation

Docks in shellfish waters

Currently, certain activities that cause impacts to wetlands or other surface waters are exempt by statute and rule from the need for regulatory permits. To be exempt by rule, the activities must have been previously determined by the DEP to be capable of causing no more than minimal individual and cumulative adverse impacts to wetlands and other surface waters. Currently, s. 403.061(29), F.S., provides authorization to DEP to adopt by rule special criteria to protect Class II shellfish harvesting waters. People seeking to build a residential dock in shellfish waters, however, are required to apply for a variance for a permit from the DEP. However, according to the DEP, the Florida Department of Agriculture and Consumer Services, the agency that regulates the harvesting of shellfish, does not comment on such

variances unless the proposed dock contains more than 10 slips. This routinely causes a delay in the project that might be avoided if the variance procedure was superseded by administrative rule.

Mitigation: The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled Improving Consistency and Predictability in Dock and Marina Permitting. This concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. According to the LCIR report, a proposed marine construction project, for instance, is subject to regulatory mitigation requirements, and, if the project involves state submerged lands, it is subject to proprietary or public interest mitigation requirements as well. Regulatory mitigation is essentially an action or series of actions to offset the adverse impacts to the environment from the proposed project. In contrast, public interest mitigation may be viewed as compensation to the state and the citizens of Florida for use of sovereignty submerged lands in addition to actions to offset adverse impacts to sovereign lands and associated resources from the proposed project. A common concern of DEP staff, as well as local governments and marine contractors and consultants, is that identifying appropriate projects or activities to serve as mitigation continues to be based on guesswork and time consuming negotiations with permit applicants. According to the LCIR report, the marine construction industry contends that permitting staff require the applicant to suggest a project or set of activities to meet the public interest and/or mitigation requirements only to be told that the proposed activities are insufficient. While the expense of public interest and regulatory mitigation activities are sometimes identified by marine contractors as excessive relative to the type, size, and location of the proposed project, the most frequently cited problem in interviews and surveys is the uncertainty and unpredictability of what will be acceptable.

E-permitting: The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the COE State Programmatic General Permit (SPGP IV). In addition, Florida's five WMDs have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits).[16]

Self certification: According to the LCIR report, in interviews with stakeholder groups, some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

Docks in shellfish waters

The section authorizes the DEP to amend its rules to 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. The language deletes the reference to Class II waters because there are Class III approved shellfish waters to which the same rules apply. Deletion of the reference to the Environmental Regulation Commission (ERC) is a technical correction that recognizes that elsewhere in statute the ERP rules are exempted from ERC review.[17]

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[16] See: http://www.flwaterpermits.com/

[17] According to the DEP, this reference to the ERC is outdated and has been superseded by statute.

Mitigation: The bill directs the DEP to identify projects and activities that serve as regulatory and public interest mitigation for all environmental permitting. The bill declares the contents of such a list are not a rule as defined in chapter 120, F.S., and listing a specific project or activity does not imply approval by the department for such project or activity. In addition, each county government is encouraged to develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholder groups in the public, private, and nonprofit sectors, including local governments, port authorities, marine contractors, other representatives of the marine construction industry, environmental or conservation organizations, and other interested parties. Counties may establish dedicated funds for depositing public interest donations into a reserve for future public interest projects, including improvements to on-water law enforcement.

E-permitting: The bill directs the DEP to develop a project management plan to implement an e-permitting program that allows for timely submittal and exchange of permit application and compliance information that yields positive benefits in support of the DEP's mission, permit applicants, permit holders, and the public. The plan shall include an implementation timetable, estimated costs, and transaction fees. The DEP is directed to submit the plan to the President of the Senate, Speaker of the House of Representatives and the Legislative Committee on Intergovernmental Relations by January 15, 2010.

Self-certification: The bill prohibits a local government from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S., including Internet based programs of the DEP or WMDs that provide for self certification. The bill encourages the DEP and the water management districts to expand the use of Internet based self certification services for appropriate exemptions and general permits.

Section 20 amends s. 403.813, F.S., clarifying the language exempting from permit the repair or replacement of docks.

Current Situation

Although not part of the LCIR findings in the March, 2007, report, marine industry representatives contend there are occasions when it is counterintuitive to rebuild a damaged or destroyed dock or pier to its prior configuration if the prior configuration was of poor design or placement. If there are minor deviations that are proposed in writing to the DEP or a WMD prior to construction, however, either the DEP or the WMD may exempt the construction or repair if the agency determines it will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. According to the DEP, reasonable flexibility is routinely provided. For instance, the DEP will not preclude anyone from building a smaller dock, or reconstructing a dock so it is higher over the water, or using the latest structural standards for reconstruction or replacement.

Section 403.813(2)(d), F.S., provides the criteria required for a permitting exemption for the replacement or repair of an existing dock or pier provided no fill is used, and the dock or pier is in the same location, configuration and dimension of the dock or pier being replaced or repaired. As this exemption applies to a single family dock as well as a marina, the DEP reports that it is important not to increase or change the "footprint" over sovereignty submerged lands, as this would necessarily require a review by the DEP to discern the potential environmental impacts.

Effect of Proposed Change

The section authorizes the use of different construction materials or minor deviations to allow upgrades to current structural and design standards in the repair or replacement of dock structures.

Section 21 amends s. 403.814(12) directing the DEP to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the DEP and WMDs. In addition, the DEP shall identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications. This section also requires the DEP to submit a report on progress of these efforts to the President of the Senate and the speaker of the House of Representatives by January 15, 2010.

Current Situation
The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the COE State Programmatic General Permit (SPGP IV). In addition, Florida's five WMDs have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits).

In addition, the regulated community and the DEP acknowledge there are certain activities currently requiring individual agency review that could be expedited through the use of professional certifications due to the de minimus impact such activities have on the environment and natural resources.

Effect of Proposed Change
The bill directs the DEP to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the department and water management districts. In addition, the department shall identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications. The DEP shall submit a report on progress of these efforts to the President of the Senate and the speaker of the House of Representatives by January 15, 2010.

Section 22 amends s. 403.973, F.S., revising Part IX of chapter 403, F.S., Expedited Permitting.

Current Situation
Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the Governor's Office of Tourism, Trade and Economic Development (OTTED) or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 100 jobs; or
- Create 50 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.[18]

Regional Permit Action Teams are established by a Memoranda of Agreement (MOA) with OTTED or a QBC (with delegation) directing the creation of these teams. The MOA is between OTTED and the heads of the Departments of Environmental Protection, Community Affairs, Transportation, Agriculture & Consumer Services, Labor & Employment Security; the Florida Fish & Wildlife Conservation Commission; the Regional Planning Councils; and the Water Management Districts. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be

[18] On a case-by-case basis and at the request and recommendation of the governing body of a county or municipality in which the project is to be located, OTTED may allow a business creating a minimum of 10 jobs to use the process.

developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Statement of a project's permit readiness within 30 days from pre-application meeting;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments;
- Exemption for certain new projects from Development of Regional Impact (DRI) review when at or below 100 percent of numerical thresholds;
- Doubling of substantial deviation thresholds without triggering additional lengthy and costly review for existing DRIs;
- Waiver of interstate highway concurrency with approved mitigation;
- Funneling of any challenges to agency final approvals into a single consolidated hearing; and
- Authorization for consolidation of state and local permits, licenses and approvals obtained through the expedited permitting review process.

Expedited permitting provides a special assistance process for Rural Economic Development Initiative (REDI) counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction;
- A project, the primary purpose of which is to:
    - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
    - Produce electrical power (unless the production of electricity is incidental and not the project's primary function),
    - Extract natural resources, produce oil, or construct, maintain, or
    - Operate an oil, petroleum, natural gas, or sewage pipeline.[19]

According to OTTED staff and the regulated community, the process has only been successfully utilized a handful of times in the past decade.

Effect of Proposed Change

The bill revises the structure and process for expedited permitting of targeted industries. The bill substitutes the Secretary of DEP, or his or her designee, for OTTED; reduces the job number threshold; adds a biofuel project to the list of targeted industries; provides that the MOU shall be between the applicant and the

[19] Enterprise Florida Incentive Information Sheet can be found at http://tinyurl.com/cpsawr

Secretary, with assistance from the other agencies, water management districts, municipalities and counties; requires a summary proceeding for challenges; and provides an exception for ineligible projects to include electric power derived from a renewable fuel source.

Section 23 amends paragraph (f) of subsection 92) of s. 14.2015, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 24 amends paragraph (e) of subsection (2) of s. 288.0655, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 25 amends paragraph (d) of subsection (2) and paragraph (b) of subsection 919) of s. 380.06, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 26 provides an effective date of July 1, 2009, except as noted elsewhere where retroactive effect is expressly provided.

B. SECTION DIRECTORY:

Section 1 provides for a three year extension for permits.

Section 2 amends s. 120.569(1), F.S., providing for a notice of rights via internet.

Section 3 amends s. 120.60(1), F.S., providing authority for license applicant to require an agency to process the pending application.

Section 4 amends s. 125.022, F.S., prohibiting a county from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Section 5 amends s. 161.032, F.S., providing for applicants to timely respond to RAIs for beach applications.

Section 6 amends s. 166.033, F.S., prohibiting a municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Section 7 amends s. 253.034, F.S., limiting the use of spoil material placed on sovereign submerged lands.

Section 8 amends s. 258.42, F.S., providing for roof structures over certain dock facilities.

Section 9 amends s. 373.026, F.S., directing the DEP and WMDs to expand the use of Internet-based self certifications.

Section 10 amends 373.079(4)(a), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Section 11 amends s. 373.083(5), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Section 12 amends s. 373.118(4), F.S., requiring governing boards of water management districts to delegate certain duties to the executive director.

Section 13 amends s. 373.236 (6), F.S., authorizing the DEP and the governing boards of WMDs to grant permits as incentives for landowners to pursue alternative water supply projects; providing requirements for such permits.

Section 14 amends s. 373.406, F.S., providing for the construction of public use facilities on county-owned natural lands.

Section 15 amends s. 373.4061, F.S., creates a noticed general permit for certain restoration activities to exempt certain public use facilities located on county-owned natural areas.

Section 16 amends s. 373.4141, F.S., providing for applicants to timely respond to RAIs for ERP applications.

Section 17 amends s. 373.441, F.S., directing the DEP and WMD to regulate activities pursuant to delegation agreements.

Section 18 creates s. 379.1051, F.S., prohibiting state agencies and local governments from enacting or implementing ordinances that create additional restrictions or limitations upon activities conforming to FWC rules.

Section 19:

- Amends s. 403.061(29), F.S., removing the need for a variance for docks in certain shellfish waters.
- Creates s. 403.061(40), F.S., requiring the DEP to develop a list of activities for applicants to consider for meeting mitigation or public interest requirements; prohibiting local governments from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S.;
- Creates 403.061(41), F.S., addressing self certification - Notwithstanding any other provision of law a local government is prohibited from specifying the method or form of documentation that a project meets the provisions for authorization under chapters 161, 253, 373, or 403, F.S., and
- Creates s. 403.061(42), F.S., requiring the DEP to develop a project management plan to implement an e-permitting program and requires a report.

Section 20 amends s. 403.813, F.S., regarding the repair or replacement of docks.

Section 21 creates subsection (12) to s. 403.814, F.S., directing the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits. In addition the DEP will develop general permits for activities currently requiring individual review that could be expedited through the use of professional certification.

Section 22 amends s. 403.973 regarding expedited permitting: substitutes the Sec of DEP or designee for OTTED.

Section 23 amends paragraph (f) of subsection 92) of s. 14.2015, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 24 amends paragraph (e) of subsection (2) of s. 288.0655, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 25 amends paragraph (d) of subsection (2) and paragraph (b) of subsection 919) of s. 380.06, F.S., to conform a statutory cross reference due to the amendment of s. 403.973, F.S., regarding expedited permitting.

Section 26 provides an effective date of July 1, 2009, except as noted elsewhere where retroactive effect is expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See, D. FISCAL COMMENTS

2. Expenditures: See, D. FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See, D. FISCAL COMMENTS

2. Expenditures: See, D. FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may experience a streamlined process in certain permitting situations, for instance:

- An applicant, who does not wish to engage in responding to agency requests for additional information, may direct the agency to approve or deny the application.
- Certain permits or authorizations that would have had to wait for review during the monthly water management district governing board meeting, may now be disposed of by the executive director.
- Projects of a certain size, and which do not impact wetlands or surface waters may be eligible for a no-notice general permit.
- Those who need to comply with mitigation requirements may be able to consult a list of activities for applicants to consider for meeting mitigation or public interest requirements that is developed by the DEP.

Those in the development community that have construction and operating permits, development orders, building permits or other land use approvals that are due to expire or did expire October 1, 2008, will find those extended through October 1, 2011. In addition, from the effective date of this act through October 1, 2011, there is a moratorium on the adoption of more stringent or additional permitting standards, regulations or criteria related to construction, development, building or other land use activity.

D. FISCAL COMMENTS:

This bill's fiscal impact to the state and local governments is unknown at this time. Staff is working with the affected agencies and will provide a fiscal analysis as soon as practicable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.

2. Other: None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to amend its rules for provide criteria for approval of docking facilities in shellfish waters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES