HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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	12 Y, 2 N	Kliner	Reese
1)	General Government Policy Council	12 Y, 2 N, As CS	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 two year extension for certain permits issued by the Department of Community Affairs (DCA), local governments, the Department of Environmental Protection (DEP) or water management districts (WMD). The bill directs governing boards of water management districts to delegate certain duties to the executive director. 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 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 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 and permits certain dock boat slips in aquatic preserves to have roofing with certain conditions. The bill requires agency rulemaking to provide for no-notice general permits, and for calculating square footage for sovereignty submerged land leases.

The bill removes the term Xeriscape from Florida Statutes, replacing it with “Florida-friendly landscapes,” and specifies additional principles that illustrate this particular landscaping approach. The bill provides legislative findings that the use of Florida-friendly landscaping and other measures that conserve Florida’s water resources serve a compelling public interest and that the participation of homeowners’ associations and local governments is essential to state water conservation efforts, and deed restrictions, covenants, and local ordinances may not be enforced to prohibit a landowner from applying Florida-friendly landscaping to their property or create any requirement or limitation in conflict with any provision of Part II of chapter 373, F.S.

The bill amends Florida Statutes relating to Building Code building construction to: revise elevator requirements; revise provisions for home inspection services and My Safe Florida Home Program; repeal shutter requirements for existing, specified homes in the “wind-borne debris region”; expand the list of energy efficient options under the Florida Building Code; revise requirements relating to product evaluation and approval; revise the list of entities approved to conduct product evaluations. The bill amends and clarifies the Florida Fire Prevention Code and creates a Fire Code Interpretation Committee.

The fiscal impact to state and local governments is expected to be minimal. See the “Fiscal Analysis & Economic Impact Statement” section of the analysis.

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:

Environmental Regulatory Reform

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 2 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 the Florida Department of Transportation (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

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

The 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.

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

---

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

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 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 2 years from the date of expiration. Affected permits include those issued by the DCA, 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 December 31, 2009, 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), permits that are not in compliance with applicable statute or rule and a permit that, if granted, would contravene due process other rights of those with a direct interest in the project or that would prevent compliance with a court order. Administrative rules that are in effect at the time the permit is issued will govern the permit through the extension period, except where compliance with outdated rules would create an immediate threat to public safety or health. Nothing in the section impairs the authority of a local government to require the owner of property to maintain and secure the property in a safe and sanitary condition.

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, providing such expansion is economically feasible. 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

---

[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/

permits for activities currently requiring individual review that could be expedited through the use of professional 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.

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. The executive director of the WMD is authorized to further delegate duties where appropriate.

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. The executive director of the WMD is authorized to further delegate duties where appropriate.

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. The executive director of the WMD is authorized to further delegate duties where appropriate.

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 federal or state 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 federal or state 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. 373.1181, 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:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and

[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 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 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

[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.

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).[13]

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.[14]

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.

[13]See: http://www.flwaterpermits.com/
[14] According to the DEP, this reference to the ERC is outdated and has been superseded by statute.

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 19 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 20 amends s. 403.814(12), F.S., 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, providing such expansion is economically feasible. 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 21 amends s. 403.973, F.S., revising Part IX of chapter 403, F.S., to address 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.[15]

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 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;

[15] 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.

- 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.[16]

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 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 22 amends paragraph (f) of subsection (2) 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.

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

Section 23 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 24 amends paragraph (d) of subsection (2) and paragraph (b) of subsection (19) 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 25 creates subsection (20) of s. 373.414, F.S., permitting a holder of a conceptual permit for the long-term build out or expansion of an existing airport to put off mitigation expenses until such time as the actual permit is issued.

Current Situation

A "conceptual environmental resource permit" is a permit issued by the WMD which approves the concepts of a phased development master plan for a surface water management system or for a mitigation bank which is binding upon the WMD and the permittee based upon the rules in effect at the time of filing of the conceptual application and constitutes final WMD action so that construction and operation permits for each phase will be reviewed under the permitting criteria in effect when the application for the conceptual permit was filed.

Chapter 373.414(18) F.S., states in pertinent part, “Once the department adopts the uniform mitigation assessment method by rule, the uniform mitigation assessment method shall be binding on the department, the water management districts, local governments, and any other governmental agencies and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits.” UMAM was adopted by the Department on February 2, 2004 and amended on September 12, 2007.

Subsection (8), of chapter 62-345.100, F.A.C., provides that applications to modify a conceptual, conceptual approval, standard, standard general or individual permit that was either issued prior to the effective date of this chapter or reviewed under the applicable rules, ordinances and special acts in effect prior to the adoption of this rule pursuant to subsection 62-345.100(7), F.A.C., shall be evaluated under the mitigation assessment criteria used in the review of the permit, unless the applicant elects to have the application reviewed under this chapter or unless the proposed modification is reasonably expected to lead to substantially different or substantially increased water resource impacts. For the purposes of this subsection, applications to construct part or all of a project that are consistent with a valid conceptual approval permit or a valid conceptual permit shall be considered a modification of the conceptual approval permit or conceptual permit.

A conceptual permit granted by the WMD usually requires up-front mitigation or mitigation is arranged either through a payment plan with a mitigation bank or actual on-site mitigation settled and in place by the time the actual permit is issued. The conceptual permit is like an actual permit in that if the permittee maintains consistency with the conceptual permit, they do not need to come back to the WMD board before every phase of the construction.

Effect of Proposed Change

The bill would allow the permittee of a conceptual permit for the long-term build out or expansion of an existing airport located within the Upper Kissimmee Planning Unit established under s. 403.067, F.S., to put off mitigation expenses until such time as the actual permit is issued. The bill provides discretionary authority to the water management district to issue a conceptual permit pursuant to this subsection for a period of up to five years.

Sections 26-38 relate to water resources, Florida-friendly landscaping, and water well contractors.

Water Resources and Florida-friendly Landscaping

Current Situation

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

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

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

The Florida Yards and Neighborhoods (FYN), which is established in the University of Florida’s Cooperative Extension Service, is a public outreach educational program that encourages homeowners, landscape maintenance personnel, and others to practice environmentally sensitive landscape techniques to conserve water and protect water quality. FYN is the source of the term “Florida-Friendly Landscaping.” FYN incorporates the principles of Xeriscape but goes one step further by focusing on all aspects of water quality and quantity that relate to urban landscape systems and the natural systems they impact. The FYN publishes a handbook15 explaining the concepts of Florida-friendly landscaping approach.

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

Section 373.228, F.S., provides that the WMDS must work with the Florida Nurserymen and Growers Association, the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Department of Agriculture and Consumer Services, the Institute of Food and Agricultural Sciences, the DEP, the Florida League of Cities, the Florida Association of Counties, and the Florida Association of Community Developers to develop landscape irrigation and xeriscape design standards for new construction which incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping.

Effect of Proposed Change

This bill amends s. 373.185, F.S., to remove the term Xeriscape from Florida Statutes, and replace the term with "Florida-friendly landscapes." This bill also provides additional principles that illustrate this particular landscaping approach, taking such principles from the FYN handbook. These principles include:

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

This bill also amends s. 373.185, F.S., to require water management districts to work with the DEP, county extension agents or offices, nursery and landscape industry groups, and other interested stakeholders to promote the use of Florida-friendly landscaping practices in both existing and proposed developments in Florida. In promoting the use of Florida-friendly landscaping practices, each water management district must use the materials previously developed by the DEP and the University of Florida Institute of Food and Agricultural Sciences Extension and the Center for Landscape Conservation and Ecology. This bill further amends s. 373.185, F.S., to provide that a deed restriction, covenant, or local government ordinance may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping or create any requirement or limitation in conflict with any water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, F.S. This bill also provides legislative findings that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida's water resources serves a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and water protection efforts.

This bill creates s. 373.167, F.S., to provide that each water management district must use Florida-friendly landscaping on public property associated with buildings and facilities owned by the water management district and constructed after June 30, 2009. This bill also requires the water management districts to develop a 5-year program for phasing in the use of Florida-friendly landscaping on public property associated with buildings or facilities owned by the water management districts and constructed before July 1, 2009.

This bill establishes that Florida-friendly landscaping is a water quality protection and restoration measure in addition to a water conservation measure, and amends ss. 125.568 and 166.048, F.S., to provide that if a county's board of county commissioners or a municipality's governing body determines that Florida-friendly landscaping would be a significant benefit as a water conservation measure or a water quality protection or restoration measure, especially for impaired waters designated pursuant to s. 403.067, F.S., relative to the cost to implement Florida-friendly landscaping, the board must enact a Florida-friendly landscaping ordinance.

This bill amends s. 373.228, F.S., to reflect the change in name of the Florida Nurserymen and Growers Association to the Florida Nursery Growers and Landscape Association, and adds the Florida Native Plant Society to the list of organizations and government entities that the water management districts must work with in developing landscape irrigation and Florida-friendly landscaping design standards for new construction. The bill also amends s. 373.228, F.S., to require water management districts to consider, in evaluating applications for water use from public water suppliers, whether the applicable local government has adopted ordinances for landscaping or irrigation systems consistent with Florida-friendly landscaping.

The bill also provides several identical conforming statutory revisions to reflect the replacement of the term Xeriscape with Florida-friendly landscaping, and the requirement that deed restrictions, covenants, or local

ordinances not be enforced to prohibit property owners from implementing Florida-friendly landscaping on their land or create any requirement or limitation in conflict with any water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, F.S.

Water Well Contractors

Current Situation

Section 373.323(3), F.S., provides that an applicant for a water well contractor's license is entitled to take the licensure examination if the applicant, among other things, has at least two years of experience in constructing, repairing, or abandoning wells.

Section 373.333, F.S., provides that a water management district may impose a fine, not to exceed $5,000, against a person that has engaged in the unlicensed practice of water well contracting.

Effect of Proposed Change

This bill amends s. 373.323(3), F.S., to require applicants for a water well contractor's license to demonstrate proof of the required 2 years experience by providing:

- Evidence of the length of time the applicant has been engaged in the construction, repair, or abandonment of water wells. Such evidence shall be attested to by at least three letters from any of the following:
    - Water well contractors.
    - Water well drillers.
    - Water well parts and equipment vendors.
    - Water well inspectors.

- A list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant. The list must also include:
    - The name and address of the owner of each well.
    - The location, primary use, and depth and diameter of each well the applicant has constructed, repaired, or abandoned.
    - The approximate date the construction, repair, or abandonment of each well was completed.

This bill amends s. 373.333, F.S., to provide that a water management district may impose a fine, not to exceed $5,000 per occurrence, against a person that has engaged in the unlicensed practice of water well contracting.

Section 39 amends subsection (6) of s. 369.317, F.S., to provide that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and wetlands requirements in s. 373.414(8)(a), F.S.

Wekiva Parkway and Protection Act

Current Situation

The Wekiva Basin, consisting of the Wekiva River, the St. Johns River and their tributaries along with associated lands in Central Florida, is part of a vast wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve.

The Wekiva Parkway is limited access highway or expressway constructed between SR 429 and Interstate 4, specifically incorporating the corridor alignment recommended by the Wekiva River Basin Area Task Force and the SR 429 Working Group. The Wekiva Parkway and related transportation facilities must follow the design criteria contained in the recommendations of the Wekiva River Area Task Force adopted by reference by the Wekiva River Basin Coordinating Committee, subject to reasonable environmental,

economic and engineering considerations. In 2004, the Legislature enacted the Wekiva Parkway and Protection Act, part III, ch 369, F.S. The act implemented the recommendations of the Wekiva River Basin Coordinating Committee's Final Report of March 16, 2004, and provides legislative intent and a legal description of the Wekiva Study Area. The majority of the land within the Study Area contributes groundwater recharge to the Wekiva River and springs. The act required each local government within the Study Area to adopt a master stormwater management plan and a wastewater facility plan for joint planning areas and utility service areas where central wastewater systems are not readily available.

Effect of proposed Change
To provide that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and wetlands requirements in s. 373.414(8)(a), F.S.

Section 40 establishes a task force of industry and government representatives to determine how certain licensed professionals can demonstrate competency in stormwater management system design and to develop appropriate grandfathering provisions for those already designing these systems.

Stormwater System Design
Current Situation
Florida's stormwater regulatory program requires the use of best management practices during and after construction to minimize erosion and sedimentation and to properly manage runoff for both stormwater quantity and quality. Best management practices are control practices that are used for a given set of conditions to achieve satisfactory water quality and quantity enhancement at a minimal cost. Each best management practice has specific application, installation, and maintenance requirements that should be followed to control erosion and sedimentation effectively. Accepted engineering methods must be used in the design of these control measures, such as those established by the DEP, DOT, U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS), International Erosion Control Association (IECA), American Society of Civil Engineers (ASCE), U.S. Army Corps of Engineers (USACOE), or other recognized organizations.[17]

Part IV of ch. 373, F.S., governs the management and storage of surface waters. Section 373.403(10), F.S., defines "Stormwater management system" to mean:

> a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

Section 373.413, F.S., provides in part:

- Except for the exemptions set forth herein, the governing board or the DEP may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district.
- The DEP or the governing board may delineate areas within the district wherein permits may be required. A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:
    - Name and address of the applicant;

[17] See, Florida Stormwater Erosion and Sedimentation Control Inspector's Manual, July 2008, <http://tinyurl.com/d5yony> (Last visited on April 21, 2009)

- Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
- Location of the work;
- Sketches of construction pending tentative approval;
- Name and address of the person who prepared the plans and specifications of construction;
- Name and address of the person who will construct the proposed work; General purpose of the proposed work; and
- Such other information as the governing board or department may require.

Section 373.117, F.S., addresses certification by professional engineers, and provides:

- If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by ch. 471, F.S., the DEP or governing board of a water management district may require, as a condition of granting a permit or license, that a professional engineer licensed under ch. 471, F.S., certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board;
- The cost of such certification by a professional engineer shall be borne by the permittee;
- No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

For purposes of part I of ch. 403, F.S., relating to pollution control, s. 403.0877, F.S., addresses certification by professionals regulated by the Department of Business and Professional Regulation. The section provides:

- Nothing in this section shall be construed as specific authority for a water management district or the DEP to require certification by a professional engineer licensed under ch. 471, F.S., a professional landscape architect licensed under part II of ch. 481, F.S., a professional geologist licensed under ch. 492, F.S., or a professional surveyor and mapper licensed under ch. 472, F.S., for an activity that is not within the definition or scope of practice of the regulated profession;
- If an application for a permit or license to conduct an activity regulated under this chapter, ch. 373, F.S., ch. 376, F.S., or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the DEP or a water management district, requires the services of a professional as enumerated in subsection (1), the DEP or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the DEP or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the DEP or district. The DEP or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action, that such activity or corrective action has, to the best of his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the DEP or board.
- The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.
- A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the DEP or board.

Finally, s. 403.0896, F.S., addresses training and assistance for stormwater management system personnel. The section provides that the Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments,

shall develop training and assistance programs for persons responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.[18]

Landscape Architecture
Part II of ch. 481, F.S., provides for the regulation of the landscape architecture profession. The section provides the following stated purpose:

> The Legislature finds that the regulation of landscape architecture is necessary to assure competent landscape planning and design of public and private environments, prevention of contamination of water supplies, barrier-free public and private spaces, conservation of natural resources through proper land and water management practices, prevention of erosion, energy conservation, functional and aesthetically-pleasing environmental contributions to humanity's psychological and sociological well-being, and an enhancement of the quality of life in a safe and healthy environment and to assure the highest possible quality of the practice of landscape architecture in this state.

Section 481.303(6), F.S., defines "landscape architecture" as a professional service, including, but not limited to:

- Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of xeriscape as defined in s. 373.185, F.S., where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;
- The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;
- The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary.[19]

In response to a petition for a declaratory statement, the Florida Board of Landscape Architecture issued a final order in 1986 concluding that s. 481.303(6), F.S., read in pari materia with s. 481.301, F.S., clearly provides that the planning, design, and provision for stormwater and surface water drainage systems, in order to further the stated purposes, are within the definition of the practice of landscape architecture.

In 1988, the Joint Professional Engineers/Landscape Architecture Committee was established by the Legislature by ch. 88-347, L.O.F. The committee was directed to submit to the Legislature a letter of agreement delineating the conditions or circumstances under which landscape architects may submit permit applications for the design of stormwater management drainage systems. At the time, in most areas of the state, only professional engineers were allowed to file permit applications. As a result, there was confusion and inconsistency regarding the role of landscape architects in the stormwater permitting process. The committee concluded that landscape architects may prepare and seal applications for permits for the design of stormwater or surface water management systems when they have met the licensure requirements of ch. 481, F.S., and by completed of an accredited degree program in landscape architecture and achieved of a passing grade on the Uniform National Exam. In addition, they must have completed 12 classroom hours (1.5 Continuing Education Units) of coursework in stormwater management approved by the Board of Landscape Architecture and the Department of Environmental Regulation (DER), and have also acquired three additional years of post-licensure experience under the charge of an appropriate professional and demonstrate stormwater management design work of a grade and character

---

[18] The Consortium was created by s. 33, ch. 89-279, L.O.F.

[19] Section 481.303, F.S.

satisfactory to the Board of Landscape Architecture. Landscape architects having met those requirements would be allowed to submit stormwater and surface water applications provided that:

- Failure of the water management system would not result in significant off-site harm;
- The project is a single drainage basin, or if more than one drainage basin, each basin has direct outfall with no cascading basins;
- The entity constructing the facilities will also operate and maintain them, or if the project is to be subdivided for sale, the operating entity representing the future owners (e.g., homeowners' and property owners' associations not controlled by the constructing entity) agrees to accept responsibility for operation and maintenance of the system before permit issuance;
- The system design or special site conditions does not involve specialized design and formulation of unique or complex operation and maintenance procedures;
- The system design is limited to simple hydraulic, hydrologic and structural analysis; and
- Landscape architecture is the predominant professional discipline associated with designing, certifying and submitting the permit application.

The above would not preclude landscape architects from submitting conceptual stormwater design plans to water management districts. Landscape architects who want to engage in regulated stormwater management design and permitting activities which exceed the above parameters must meet the following additional requirements:

- Experience: three additional years of professional experience demonstrating stormwater management practice of a grade and character satisfactory to the Board of Landscape Architecture and consultation with the DER;
- Continuing Education: completion of 12 classroom hours (1.5 C.E.U.) in advanced stormwater management; coursework must be approved by the Board of Landscape Architecture and consultation with the DER; and
- Specialized examination: Achievement of a passing grade on a special examination in advanced stormwater management which is developed by the Board of Landscape Architecture in conjunction with the Board of Professional Engineers and the DER and administered by the Department of Professional Regulation to any landscape architect meeting the above requirements.

Landscape architects are included in the definition of "Appropriate Registered Professional" or "Registered Professional" in the St. Johns River Water Management District's stormwater rule, Rule 40C-42.021(1), F.A.C.:

> "Appropriate Registered Professional" or "Registered Professional" means, for purposes of this rule, a professional registered in Florida with the necessary expertise in the fields of hydrology, drainage, flood control, erosion and sediment control, and stormwater pollution control to design and certify stormwater management systems. Examples of registered professionals may include professional engineers licensed under chapter 471, F.S., professional landscape architects licensed under chapter 481, F.S., and professional geologists licensed under chapter 492, F.S., who have the referenced skills.

The phrase "appropriate registered professional" or "registered professional" is used many times throughout ch. 40C-42, F.A.C. For example:

- The construction plans and supporting calculations must be signed, sealed, and dated by an appropriate registered professional as required by the relevant statutory provisions when the design of the stormwater management system requires the services of an appropriate registered professional.[20]
- Erosion and sediment control best management practices shall be used as necessary during construction to retain sediment on-site. These management practices shall be designed and

[20] Rule 40C-42.025(10), F.A.C.

certified by an appropriate registered professional experienced in the fields of soil conservation or sediment control according to specific site conditions and shall be shown or noted on the plans of the stormwater management system. The registered professional shall furnish the contractor with information pertaining to the construction, operation and maintenance of the erosion and sediment control practice. Sediment accumulations in the system from construction activities shall be removed to prevent loss of storage volume.[21]

The DOT recently amended its rules to define a "licensed professional" as an individual licensed by a Florida professional licensing board, authorized by law to design and certify the stormwater management system under review. This change in rule allows a landscape architect to design and certify stormwater management systems pursuant to the findings of the 1988 Joint Professional Engineers/Landscape Architecture Committee.

Effect of Proposed Change

The bill creates an undesignated section of law to establish a task force to:

- Review the Joint Professional Engineers and Landscape Architecture Committee Report conducted pursuant to s. 17, chapter 88-347, Laws of Florida, and determine the current validity of the report and the need to revise any of the conclusions or recommendations;
- Determine how a licensed and registered professional might demonstrate competency for stormwater management system design;
- Determine how the Board of Professional Engineers and the Board of Landscape Architecture might administer certification tests or continuing education requirements for stormwater management system design; and
- Provide recommendations for grandfathering the rights of licensed professionals who currently practice stormwater management design so that they can continue to practice without meeting any new requirements the task force recommends to be placed on licensed professionals in the future.

The Board of Landscape Architecture, the Board of Professional Engineers, the Florida Engineering Society, the Florida Chapter of the American Society of Landscape Architects, the Secretary of the DOT, and the Secretary of the DEP shall each appoint one person to serve on the task force. Members will not be reimbursed for travel, per diem, or any other cost associated with serving on the task force. The task force will meet a minimum of four times either in person or via teleconference; however, a minimum of two meetings must be public hearings with testimony. The study task force will expire on November 1, 2009. The task force must provide its findings and legislative recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2009.

Section 41 amends s. 378.901, F.S., authorizing the DEP to issue a life of the mine permit to operators of limerock mines.

Rock Mining

Current Situation

Chapter 378, F.S., provides regulation for the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines throughout Florida. The mandatory phosphate program is responsible for administering the rules related to the reclamation of lands mined for phosphate after June 1975 and the rules related to Environmental and Wetland Resource Permits for phosphate mined lands. The mandatory nonphosphate program administers the laws and regulations related to the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines extracting heavy minerals, fuller's earth, limestone, dolomite & shell, gravel, sand,

[21] Rule 40C-42.025(1), F.A.C.

dirt, clay, peat, and other solid resources (except phosphate). Currently, a life-of-the-mine permit may be issued for operators of sand mines, and those extracting heavy minerals or fuller's earth clay.

Effect of Proposed Change
The bill authorizes the DEP to issue a life-of-the-mine permit to limerock mine operators.

Sections 42 – 43 amend provisions relating to the regulation of elevators.

Elevator Safety
Current Situation
Elevator Safety
The "Elevator Safety Act" in ch. 399, F.S., provides the minimum standards for elevator personnel and provides that elevator personnel performing work covered by the Florida Building Code must possess documented training and experience or both, and be familiar with the operation and safety functions of the components and equipment. The Department of Business and Professional Regulation is empowered to carry out all of the provisions of the chapter relating to the inspection and regulation of elevators and to enforce the provisions of the Florida Building Code. These departmental responsibilities fall to the Division of Hotels and Restaurants.

Each elevator must comply with the edition of the Florida Building Code in effect at the time of receipt of application for the construction permit of the elevator. Each alteration to or relocation of an elevator must comply with the edition of the Florida Building Code in effect at the time of receipt of the application for the construction permit to alter or relocate the elevator. Each time an elevator is reclassified, the elevator must be in compliance with the provisions of the code in effect at the time of receipt of the application for the construction permit for the change in classification.

Regional Emergency Elevator Access
In 2004, the Legislature enacted ch. 2004-12, L.O.F., to provide for regional emergency elevator access in response to recommendations from the Florida Building Commission which was directed to identify and research issues related to the universal key concept for primary elevators. Section 339.15, F.S., provides that for each building in the state which is six or more stories in height on which construction was to begin after June 30, 2004, all of the keys for elevators that allow public access, including service and freight elevators, must be keyed so as to allow all elevators within each of the seven state emergency response regions to operate in a fire-emergency with one master elevator key. Each existing building in the state was required to comply by July 1, 2007. Master elevator keys could only be provided to the elevator owners, the owner's agents, elevator contractors, state-certified inspectors, state agency representatives, and the fire department. The Division of State Fire Marshal enforces these requirements.

Alternate Power Generators for Elevators
During the 2006 Regular Session, s. 553.509(2)(a), F.S., was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997. Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

Effect of Proposed Changes

The bill provides that the Division of Hotels and Restaurants may not impose update of the Florida Building Code requiring modifications of heat sensors and electronic controls on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ANSI/ASME A17.1 and A17.3, until such time as the elevator is replaced. Provides that the exception does not apply to any building for which a building permit was issued after July 1, 2008.

The bill creates a new subsection (7) in s. 339.15, F.S., to create an alternative method of providing regional emergency elevator access by allowing the installation of a uniform lock box to hold all elevator keys. The uniform lock box master key may be issued only to the fire department.

Sections 44 – 49 amend ss. 468.8311, 488.8312, 468.8319, 468.832, and 468.8324, F.S., relating to home inspectors.

Home Inspectors

Current Situation

In 2007, the Legislature enacted ch. 2007-235, L.O.F., to provide, in part, for the licensure and regulation of private home inspectors effective July 1, 2010. The Department of Business and Professional Regulation was authorized to adopt rules to establish fees to be paid for applications, examination, reexamination, licensing and renewals, and administrative services. The initial application and examination fee may not exceed $125 plus the actual per applicant cost to the department to purchase an examination. The application fee is non-refundable. The initial license fee and the biennial renewal fee may not exceed $200. Licensing and continuing education requirements are provided, as are certificates of authorizations for corporations offering home inspection services to the public. After July 1, 2010, a person who performs home inspection services must be licensed by the department.

Effect of Proposed Changes

The bill revised the definition of “home inspection services” to include the inspection of windows, doors, walls, floors, and ceilings. Effective July 1, 2020, the bill provides the following fee increases pertaining to home inspectors:

- The maximum fee for an initial application and examination is raised from $125 to $250.
- The maximum fee for an initial home inspector license is raised from $200 to $400.
- The maximum biennial fee for renewal of a license is raised from $200 to $400.
- The maximum fee for licensure by endorsement is raised from $200 to $400.
- The maximum fee for application for inactive status is raised from $200 to $400.
- The maximum fee for provisions of continuing education remains unchanged at a maximum of $500

Effective July 1, 2010, the bill provides that no person may perform home inspections without meeting the requirements of part XV of ch. 468, F.S.,relating to home inspections, and provides additional requirements which must be met by persons perform home inspection services in order to qualify for a license prior to the new licensing requirements taking effect July 1, 2020.

The bill amends s. 215.5586, F.S., effective July 1, 2010, to provide that a licensed home inspector is an entity qualified for selection as a wind certification entity by the Department of Financial Services to provide hurricane mitigation inspections under the My Safe Florida Home Program.

Section 50 amends s. 627, 351, F.S., relating to Citizens Property Insurance Corporation.

Citizens Shutter Requirement for Residential Property in the Wind Borne Debris Region

Current Situation

Section 657.351(6)(a), F.S., requires that all residential structures located in the wind borne debris region (WBDR) and with coverage amounts of $750,000 or greater, meet the opening protection requirements of the Florida building Code to be eligible for a Citizens policy. The wind borne debris protection region is any area where the basic design wind speed is 120 mph or greater and any area within one mile of the coast where the wind speed is less than 120mph but greater than 110 mph.

Effect of Proposed Changes

The bill repeals requirements that homes located in the "wind-borne debris region," and having an insured value of $750,000 or more, have opening protections as required under the Florida Building Code in order to be eligible for coverage by Citizens Property Corporation.

Section 51 and 52 amend s. 627.711, F.S., relating to hurricane loss mitigation.

Insurance Hurricane Loss mitigation

Current Situation

Current law (s.627.711, F.S.) provides a list of professionals who may sign a valid uniform mitigation verification form for purposes of premium discounts for hurricane loss mitigation.

Effects of Proposed Changes

The bill deletes a requirement that an engineer licensed under s. 471.015, F.S., must also pass a Building Code equivalency test in order to certify a uniform mitigation form. Effective July 1, 2010, the section is amended to remove outdated language and to allow the Financial Services Commission, for the purposes of factoring discounts for insurance, to accept as valid uniform mitigation verification forms signed by a home inspector licensed under s. 468.83, F.S.

Section 53 repeals subsection (6) of s. 718.113, F.S., relating to inspections of condominiums.

Inspections of Condominiums.

Current Situation

Section 718.113(6), F.S., requires that any condominium building greater than three stories in height must be inspected at least every five years (and within five years if not available or inspection on October 1, 2008) to provide a report under seal of an architect or engineer authorized to practice in this state attesting to required maintenance, useful life, and replacement costs of the common elements. If approved by a majority of the voting interest present at an association meeting, this requirement may be waived. The meeting and approval must occur prior to the end of the five-year period and is effective only for that five-year period.

Effects of Proposed Changes

The bill repeals subsection (6) if s, 718.113, F.S., relating to 5-yeart inspections of the common elements in condominiums.

Section 54-74 amends ss. 553.37, 553.375, 553.73, 553.76, 553.775, 553.79, 553.791, 553.841, 553.842, 553,844, 553.885, 553.9061, 468.609, 471.0195, 481.215, 481.313, 489.115, 489.1455, 489.517, and 553, F.S., relating to building construction.

Regulating of Building Construction

Current Situation

Florida Building Commission

The commission is established in ch. 553, F.S., and charged with adopting and maintaining the Florida Building Code as a single, unified state building code, and with enforcing requirements that provide effective and reasonable protection for the public safety, health and welfare. The commission consists of 24 members appointed by the governor to represent the various disciplines governed by the requirements

of the building code, as well as local governments and code enforcement officials, the insurance industry, and the Department of Financial Services, and one member appointed by the governor to serve as chair of the commission.

Powers of the Florida Building Commission
Pursuant to subsection (1)(f) of s. 553.77, F.S., the commission is provided with the authority to determine the types of products which may be approved for statewide use. The commission must provide for the evaluation and approval of such products, materials, devices, and method of construction for such statewide use, and may prescribe by rule a schedule of reasonable fees to provide for the evaluation and approval of products, materials, devices, and methods of construction. Evaluation and approval must be done by action of the commission or delegated under the provisions of s. 553.842, F.S.

Product Evaluation and Approval
Section 553.842, F.S., provides the commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code. Rules relating to product approval are contained in ch. 9B-72, F.A.C.

The commission is authorized to enter into contracts to provide for administration of the product evaluation and approval system, and the system must rely on national and international consensus standards, whenever such standards are adopted into the Florida Building Code, to demonstrate compliance with code standards. Other standards which meet or exceed state requirements must also be considered. The methodology for statewide approval of products, methods, or systems of construction are provided. The commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities. In addition, the commission is authorized to adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the Florida Building Code, thereby allowing the use in this state of the products that comply with the equivalent standard.

In 2008, the Legislature enacted ch. 2008-191, L.O.F., relating to building code standards. The commission was directed to review the list of product evaluation entities and recommend additions to the list, or report on the evaluation criteria used to approve the evaluation entities. Any rulemaking to adopt such criteria into rule is to be completed by July 1, 2009.

The legislation further provided that the International Association of Plumbing and Mechanical Officials Evaluation Services was approved as an evaluation entity until October 1, 2009. If the association was not permanently approved by the commission as an evaluation entity by that date, products approved on the basis of an association evaluation had to be substituted by an alternative, approved entity by December 31, 2009. Effective January 1, 2010, any product approval issued by the commission based on an association evaluation is void.

Carbon Monoxide Alarms
Section 553.885, F.S., required that certain building for which a building permit is issued for a new construction on or after July 1, 2008 and having a fossil-fuel-burning heater or appliance, a fireplace or an attached garage must have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes.

Effects of Proposed Changes
The bill amends s. 553.37, F.S., to authorize the Department of Community Affairs to provide by rule for manufactures to pay fees to the administrator directly, including charges incurred for plans review and inspection services, via the Building Code Information System, and for the administration to disburse funds as necessary. The department is authorized to enter into contracts for the performance of administrative duties relating to the inspection and certification of manufactured buildings. The bill reinstates local jurisdiction for custom or one-of-a-kind prototype manufactured buildings which was inadvertently deleted in 2008.

The bill provides that manufactured buildings certified by the Department of Community Affairs restrict recertification due to relocation to those circumstances where the building is being relocated to a site with a higher design wind speed. The bill allows the Florida Building Commission to approve amendments to the code during the "glitch cycle" to address equivalence of standards and amendments necessary to accommodate the specific needs of state agencies when agency rules must be updated to reflect federal requirements relating to design criteria for public educational facilities and state licensed facilities. Additionally, the bill provides an exemption to Florida Building Code requirements for temporary housing provided by the Department of Corrections to any prisoner in the state correctional system. An exemption is also provided for prefabricated family mausoleums which are assembled on site or which are pre-assembled and delivered on site; which have the walls, roof, and floor constructed of granite, marble, or reinforced concrete; and which are not more than 250 square feet in area. The bill provides that the code may not require that an existing air conditioning system installed on a roof be raised 18 inches up from the surface on which they are installed until such time as the system is replaced. Another agency or local government with the authority to enforce the Florida Building Code may not require otherwise.

The Florida Building Commission is authorized to adopt rules related to its consensus-based decision making process to provide for super majority voting requirements. Additionally, the Commission is authorized to adopt by rule and impose a fee for nonbinding interpretations of the code. The fee may not exceed $250. Inspection services performed by a state agency must be delegated to a local government or an alternative service provider unless such inspections are conducted under a federal delegation of responsibility or are required to be conducted by the agency under the Florida Building Code. A local enforcement agency, local building official, or local government is prohibited from imposing a fee or a higher permit fee, for private provider plan reviews or required building inspections.

The bill amends statutes to eliminate outdated requirements for the core curriculum course that is a prerequisite to the advanced module coursework for each profession as developed by the department to administer the Florida Building Code Compliance and Mitigation Program.

The bill provides that the rules of the Florida Building Commission relating to product evaluation and approval may provide for the payment of fees directly to the commission's contract administrator, and the contract administrator shall remit the appropriate portion of the fee to the Department of Community Affairs. Provides that an application for state approval of a product must be approved by the Department of Community Affairs after commission staff or a designee verifies within 10 days after receipt of the application, that the application and related documentation are complete. Once the product is approved, it must be immediately added to the list of state-approved products. Departmental approvals must be reviewed and ratified by the commission's program oversight committee except for a showing of good cause. Adds the International Association of Plumbing and Mechanical Officials Evaluation Services to the list of product evaluation entities, and removes the International Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, and the Southern Building Code Congress International Evaluation Services as evaluation entities. Outdated review and reporting requirements relating to the list of approved entities are deleted.

The bill amends s. 553.844, FS., relating to windstorm loss mitigation; requirements for roofs and opening protections; to provide that notwithstanding the requirements of s. 553.844, F.S., exposed mechanical equipment or appliances fastened to rated stands, platforms, curbs, or slabs are deemed to comply with the wind resistance codes of the Florida Building Code 2007, as amended, and no further support or enclosure may be required by a state or local official with authority to enforce the Florida Building Code.

The bill clarifies requirements for carbon monoxide alarms. With the exception of hospitals, inpatient hospice facilities, and nursing home facilities licensed by the Agency for Health Care Administration, every separate building or addition to an existing building constructed on or after July 1, 2008, must have an approved operational carbon monoxide alarm if the building or addition has:

- A fossil-fuel burning heater or appliance;
- A fireplace;
- An attached garage; or

- Another feature, fixture, or element that emits carbon monoxide as a byproduct of combustion.

The alarm must be installed within 10 feet of each room used for sleeping purposes in the new building or addition, or installed at any other location required by the Florida Building Code. Requirements for the alarm may be satisfied with the installation of a battery-powered combination carbon monoxide alarm or battery-powered combination carbon monoxide or smoke alarm. An exception is provided for existing buildings undergoing alterations or repairs unless that alteration is an addition that extends or increases the floor area, the number of stories, or the height of a building or structure.

The bill expands the list of energy efficiency options and elements for increasing thermal efficiency standards to include:

- Other energy efficient water heating systems, as well as solar water heating.
- Energy saving devices and features installed within duct systems.
- Energy saving quality installation procedures for replacement air conditioning systems, including but not limited to, equipment sizing analysis and duct testing.
- Shading devices, sunscreening materials, and overhangs.
- Weatherstripping, caulking, and sealing of exterior openings and penetrations.

Sections 75-82 amend ss. 633.0215, 633.026, 633.081, 633.521, 633.524, 633.72, F.S., relating to the State Fire Marshall and the Florida Fire Prevention Code.

Current Situation

State Fire Marshall

Pursuant to ch. 633, F.S., the Chief Financial Officer is designated as the State Fire Marshal and, as such, carries out the duties of fire prevention, protection and control through the Division of State Fire Marshal. Under ch. 633, F.S., the Division is authorized to regulate, train and certify fire service personnel; investigate the causes of fires; enforce the arson laws; regulate the installation of fire equipment; conduct fire safety inspections of state property; develop fire safety standards; provide facilities for the analysis of fire debris; and operate the Florida State Fire College.

Effect of Proposed Change

The bill requires that the State Fire Marshal issue an expedited declaratory statement relating to interpretations of the provisions of the Florida Fire Prevention Code, to establish the guidelines under which the expedited statement may be requested by petition and rendered by the State Fire Marshal, and to provide that a petition for an expedited declaratory statement that does not meet all of the established guidelines must be denied without prejudice.

The bill clarifies the process for informal interpretation of the Florida Fire Prevention Code. Requires the creation of a Fire Code Interpretation Committee and establishes requirements which must be met by members of the committee. Nonbinding interpretations of code provisions must be issued within 10 business days after receipt of a request for interpretation. The Division of State Fire Marshal is directed to charge a fee for nonbinding interpretations which may not exceed $150 per request. Nonbinding interpretations are advisory only. The process for requesting and issuing a nonbinding interpretation is established.

The State Fire Marshal and the Florida Building Code Administrators and Inspectors Board are required to enter into a reciprocity agreement to implement joint recognition of continuing education recertification hours for building code inspectors, plan examiners, or administrators certified under s. 468.609, F.S., and firesafety inspectors certified under s. 633.081, F.S.

The bill provides that regardless of employment status, state-certified firefighters who are certified and employed as full-time fire safety inspectors or fire safety instructors, are exempt from requirements that firefighters who have been inactive as a firefighter for a 3-year period retake the practical portion of the minimum standards state examination.

An applicant for certification as a contractor who passes the exam but who does not meet additional requirements within 1 year after first applying must reapply, successfully complete the prescribed training, and retake and pass the written examination. Clarifies the minimum requirements for qualifying to take an examination for certification as a fire protection system Contractor I, Contractor II, Contractor III, Contractor IV, or Contractor V. Provides that the Division of State Fire Marshal may develop equivalent training programs to the required National Institute for Certification in Engineering Technologies (NICET) subfield of Inspection and Testing of Fire Protection Systems Level II.

The Division of State Fire Marshal is granted authority to enter into a contract with qualified public entities or private companies to provide examination services for examinations administered under the jurisdiction of the State Fire Marshal. Authorizes the State Fire Marshal to direct payment from the applicant to the contracted entity or company. Fire protection contractors must meet the continuing education requirements necessary to maintain NICET subfield Level II certification or equivalent training and education as required by the Division of State Fire Marshal, or a higher certification plus 9 contract hours of continuing education as approved by the State Fire Marshal. Members of the Florida Fire Code Advisory Council may serve two consecutive terms, rather than one term only.

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. 373.1181, 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:

- 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 19 amends s. 403.813, F.S., regarding the repair or replacement of docks.

Section 20 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 21 amends s. 403.973 regarding expedited permitting: substitutes the Sec of DEP or designee for OTTED.

Section 22 amends paragraph (f) of subsection (2) 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 23 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 24 amends paragraph (d) of subsection (2) and paragraph (b) of subsection (19) 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 25 creates subsection (20) of s. 373.414, F.S., permitting a holder of a conceptual permit for the long-term build out or expansion of an existing airport to put off mitigation expenses until such time as the actual permit is issued. Provides the water management district with the discretion to issue a conceptual permit pursuant to this subsection for a period of up to five years.

Section 26 amends s. 373.185, F.S., relating to local Florida-friendly landscape ordinances.

Section 27 creates s. 373.187, F.S., relating to water management district implementation of Florida-friendly landscaping.

Section 28 amends s. 373.228, F.S., correcting a statutory cross reference.

Section 29 amends s. 373.323, F.S., relating to the licensure of water well contractors.

Section 30 amends s. 373.333, F.S., relating to disciplinary guidelines for practicing water well contracting without a required license.

Sections 31 through 38 provide conforming amendments to ss. 125.568, 166.048, 255.259, 335.167, 373.228, 380.061, 388.291, 481.303, and 720.3075, F.S.

Section 39 amends subsection (6) of s. 369.317, F.S., to clarify the mitigation boundaries that apply to projects untaken within the Wekiva Study Area.

Section 40 establishes a task force of industry and government representatives to determine how certain licensed professionals can demonstrate competency in stormwater management system design and to develop appropriate grandfathering provisions for those already designing these systems.

Section 41 amends s.378.901, F.S., authorizing a life-of-the-mine to operators of limerock mines.

Section 42 amends subsection (6) of s. 339.02, F.S., to provide that the Division of Hotels and Restaurants may not impose updates to the Florida Building Code requiring modifications of heat sensors and electronic controls on existing elevators, as amended into the Safety Code for Existing Elevators and Escalators, ANSI/ASME A17.1 and A17.3, until such time as the elevator is replaced. Provides that the exception does not apply to any building for which a building permit was issued after July 1, 2008.

Section 43 creates a new subsection (7) in s. 339.15, F.S., to create an alternative method of providing regional emergency elevator access by allowing the installation of a uniform lock box to hold all elevator keys. The uniform lock box master key may be issued only to the fire department.

Section 44 amends s. 468.8311, F.S., effective July 1, 2010, to revise the definition of “home inspection services” to include the inspection of windows, doors, walls, floors, and ceilings.

Section 45 amends s. 468.8312, F.S, effective July 1, 2010, to provide the following fee increases pertaining to home inspectors:

- The maximum fee for an initial application and examination is raised from $125 to $250.
- The maximum fee for an initial home inspector license is raised from $200 to $400.
- The maximum biennial fee for renewal of a license is raised from $200 to $400.
- The maximum fee for licensure by endorsement is raised from $200 to $400.
- The maximum fee for application for inactive status is raised from $200 to $400.
- The maximum fee for providers of continuing education remains unchanged at a maximum of $500.

Section 46 amends s. 468.8319, F.S., effective July 1, 2010, to provide that no person may perform home inspections without meeting the requirements of part XV of ch. 468, F.S., relating to home inspections.

Section 47 amends s. 468.832, F.S., effective July 1, 2010, to correct a cross-reference.

Section 48 amends s. 468.8324, F.S., to provide additional requirements which must be met by persons performing home inspection services in order to qualify for a license prior to the new licensing requirements taking effect July 1, 2010.

Section 49 amends s. 215.5586, F.S, effective July 1, 2010, to provide that a licensed home inspector is an entity qualified for selection as a wind certification entity by the Department of Financial Services to provide hurricane mitigation inspections under the My Safe Florida Home Program.

Section 50 amends s. 627.351, F.S., to repeal requirements that homes located in the "wind-borne debris region," and having an insured value of $750,000 or more, have opening protections as required under the Florida Building Code in order to be eligible for coverage by Citizens Property Insurance Corporation.

Section 51 amends subsection (2) of s. 627.711, F.S., deleting a requirement that an engineer licensed under s. 471.015, F.S., must also pass a Building Code equivalency test in order to certify a uniform mitigation form.

Section 52 amends s. 627.711, F.S., effective July 1, 2010, to remove outdated language and to allow the Financial Services Commission, for the purposes of factoring discounts for insurance, to accept as valid uniform mitigation verification forms signed by a home inspector licensed under s. 468.83, F.S.

Section 53 repeals subsection (6) of s. 718.113, F.S., relating to 5-year inspections of the common elements in condominiums.

Section 54 amends s. 553.37, F.S., to authorize the Department of Community Affairs to provide by rule for manufacturers to pay fees to the administrator directly, including charges incurred for plans review and inspection services, via the Building Code Information System, and for the administration to disburse funds as necessary. The department is authorized to enter into contracts for the performance of administrative duties relating to the inspection and certification of manufactured buildings. Reinstates local jurisdiction for custom or one-of-a-kind prototype manufactured buildings which was inadvertently deleted in 2008.

Section 55 amends s. 553.375, F.S., to provide that manufactured buildings certified by the Department of Community Affairs restrict recertification due to relocation to those circumstances where the building is being relocated to a site with a higher design wind speed.

Section 56 amends s. 553.73, F.S., to allow the Florida Building Commission to approve amendments to the code during the "glitch cycle" to address equivalence of standards and amendments necessary to accommodate the specific needs of state agencies when agency rules must be updated to reflect federal requirements relating to design criteria for public educational facilities and state licensed facilities. Provides an exemption to Florida Building Code requirements for temporary housing provided by the Department of Corrections to any prisoner in the state correctional system. An exemption is also provided for prefabricated family mausoleums which are assembled on site or which are pre-assembled and delivered on site; which have the walls, roof, and floor constructed of granite, marble, or reinforced concrete; and which are not more than 250 square feet in area. Provides that the code may not require that an existing air conditioning system installed on a roof be raised 18 inches up from the surface on which they are installed until such time as the system is replaced. Provides that another agency or local government with the authority to enforce the Florida Building Code may not require otherwise.

Section 57 amends s. 553.76, F.S., to authorize the Florida Building Commission to adopt rules related to its consensus-based decision making process to provide for super majority voting requirements.

Section 58 amends s. 553.775, F.S., to authorize the Florida Building Commission to adopt by rule and impose a fee for nonbinding interpretations of the code. The fee may not exceed $250.

Section 59 amends s. 553.79, F.S., to provide that inspection services performed by a state agency must be delegated to a local government or an alternative service provider unless such inspections are conducted under a federal delegation of responsibility or are required to be conducted by the agency under the Florida Building Code.

Section 60 amends paragraph (c) of subsection (15) of s. 553.791, F.S., prohibiting a local enforcement agency, local building official, or local government from imposing a fee or a higher permit fee, for private provider plan reviews or required building inspections.

Section 61 amends s. 553.841, F.S., to eliminate outdated requirements for the core curriculum course that is a prerequisite to the advanced module coursework for each profession as developed by the department to administer the Florida Building Code Compliance and Mitigation Program.

Section 62 amends s. 553.842, F.S., to provide that the rules of the Florida Building Commission relating to product evaluation and approval may provide for the payment of fees directly to the commission's contract administrator, and the contract administrator shall remit the appropriate portion of the fee to the Department of Community Affairs. Provides that an application for state approval of a product must be approved by the Department of Community Affairs after commission staff or a designee verifies within 10 days after receipt of the application, that the application and related documentation are complete. Once the product is approved, it must be immediately added to the list of state-approved products. Departmental approvals must be reviewed and ratified by the commission's program oversight committee except for a showing of good cause. Adds the International Association of Plumbing and Mechanical Officials Evaluation Services to the list of product evaluation entities, and removes the International Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, and the Southern Building Code Congress International Evaluation Services as evaluation entities. Outdated review and reporting requirements relating to the list of approved entities are deleted.

Section 63 creates subsection (4) in s. 553.844, FS., relating to windstorm loss mitigation; requirements for roofs and opening protections; to provide that notwithstanding the requirements of s. 553.844, F.S., exposed mechanical equipment or appliances fastened to rated stands, platforms, curbs, or slabs are deemed to comply with the wind resistance codes of the Florida Building Code 2007, as amended, and no further support or enclosure may be required by a state or local official with authority to enforce the Florida Building Code.

Section 64 amends s. 553.885, F.S., to clarify requirements for carbon monoxide alarms. With the exception of hospitals, inpatient hospice facilities, and nursing home facilities licensed by the Agency for Health Care Administration, every separate building or addition to an existing building constructed on or after July 1, 2008, must have an approved operational carbon monoxide alarm if the building or addition has:

- A fossil-fuel burning heater or appliance;
- A fireplace;
- An attached garage; or
- Another feature, fixture, or element that emits carbon monoxide as a byproduct of combustion.

The alarm must be installed within 10 feet of each room used for sleeping purposes in the new building or addition, or installed at any other location required by the Florida Building Code. Requirements for the alarm may be satisfied with the installation of a battery-powered combination carbon monoxide alarm or battery-powered combination carbon monoxide or smoke alarm.

An exception is provided for existing buildings undergoing alterations or repairs unless that alteration is an addition that extends or increases the floor area, the number of stories, or the height of a building or structure.

Section 65 amends s. 553.9061, F.S., to expand the list of energy efficiency options and elements for increasing thermal efficiency standards to include:

- Other energy efficient water heating systems, as well as solar water heating.
- Energy saving devices and features installed within duct systems.
- Energy saving quality installation procedures for replacement air conditioning systems, including but not limited to, equipment sizing analysis and duct testing.
- Shading devices, sunscreening materials, and overhangs.
- Weatherstripping, caulking, and sealing of exterior openings and penetrations.

Sections 66 thru 73 amends or repeals various sections of statute relating to the repeal of the core curriculum course requirements in the bill.

Section 74 reenacts subsection (1) of s. 553.80, F.S., to incorporate amendments made to s. 553.79, F.S.

Section 75 creates subsection (13) in s. 633.0215, F.S., to require that the State Fire Marshal issue an expedited declaratory statement relating to interpretations of the provisions of the Florida Fire Prevention Code, to establish the guidelines under which the expedited statement may be requested by petition and rendered by the State Fire Marshal, and to provide that a petition for an expedited declaratory statement that does not meet all of the established guidelines must be denied without prejudice.

Section 76 amends s. 633.026, F.S., to clarify the process for informal interpretation of the Florida Fire Prevention Code. Requires the creation of a Fire Code Interpretation Committee and establishes requirements which must be met by members of the committee. Nonbinding interpretations of code provisions must be issued within 10 business days after receipt of a request for interpretation. The Division of State Fire Marshal is directed to charge a fee for nonbinding interpretations which may not exceed $150 per request. Nonbinding interpretations are advisory only. The process for requesting and issuing a nonbinding interpretation is established.

Section 77 amends s. 633.081, F.S., to provide that the State Fire Marshal and the Florida Building Code Administrators and Inspectors Board must enter into a reciprocity agreement to implement joint recognition of continuing education recertification hours for building code inspectors, plan examiners, or administrators certified under s. 468.609, F.S., and firesafety inspectors certified under s. 633.081, F.S.

Section 78 amends s. 633.352, F.S., to provide that regardless of employment status, state-certified firefighters who are certified and employed as full-time fire safety inspectors or fire safety instructors, are exempt from requirements that firefighters who have been inactive as a firefighter for a 3-year period retake the practical portion of the minimum standards state examination.

Section 79 amends s. 633.521, F.S., to provide that an applicant for certification as a contractor who passes the exam but who does not meet additional requirements within 1 year after first applying must reapply, successfully complete the prescribed training, and retake and pass the written examination. Clarifies the minimum requirements for qualifying to take an examination for certification as a fire protection system Contractor I, Contractor II, Contractor III, Contractor IV, or Contractor V. Provides that the Division of State Fire Marshal may develop equivalent training programs to the required National Institute for Certification in Engineering Technologies (NICET) subfield of Inspection and Testing of Fire Protection Systems Level II.

Section 80 creates subsection (3) in s. 633.524, F.S., to provide the Division of State Fire Marshal with the authority to enter into a contract with qualified public entities or private companies to provide examination services for examinations administered under the jurisdiction of the State Fire Marshal. Authorizes the State Fire Marshal to direct payment from the applicant to the contracted entity or company.

Section 81 amends s. 633.537, F.S., to provide that fire protection contractors must meet the continuing education requirements necessary to maintain NICET subfield Level II certification or equivalent training and education as required by the Division of State Fire Marshal, or a higher certification plus 9 contract hours of continuing education as approved by the State Fire Marshal.

Section 82 amends s. 633.72, F.S., to provide that members of the Florida Fire Code Advisory Council may serve two consecutive terms, rather than one term only.

Section 83 repeals s. 553.509, F.S., relating to elevator alternate power sources for emergency purposes.

Section 84 directs the Florida Building Commission to adjust the Florida Building Code for consistency with the revisions to s. 339.02, F.S.

Section 85 provides an effective date of July 1, 2009.

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.

Members of the building industry may benefit from the product approval revisions because the bill provides that product approvals must take place within 10 days and that approved products must be immediately added to the list of state-approved products. This may result in more products being approved, making it easier for builders during the building and construction inspection process.

D. FISCAL COMMENTS:

According to affected state agencies, the bill sections addressing permit streamlining and Florida-friendly landscape are revenue-neutral. Regarding amendments to the Florida Building Code, the Florida Building Commission expects the fiscal impact to state and local governments to be minimal.

Effective July 1, 2020, the bill provides the following fee increases pertaining to home inspectors:

- The maximum fee for an initial application and examination is raised from $125 to $250.
- The maximum fee for an initial home inspector license is raised from $200 to $400.
- The maximum biennial fee for renewal of a license is raised from $200 to $400.
- The maximum fee for licensure by endorsement is raised from $200 to $400.
- The maximum fee for application for inactive status is raised from $200 to $400.
- The maximum fee for provisions of continuing education remains unchanged at a maximum of $500.

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.

The bill authorizes the Florida Building Commission to amend its rules relating to product evaluation and approval, to adopt rules related to its consensus-based decision making process to provide for super majority voting requirements, to adopt by rule and impose a fee for nonbinding interpretations of the code.

The bill authorize the Department of Community Affairs to provide by rule for manufacturers to pay fees to the administrator directly, including charges incurred for plans review and inspection services, via the Building Code Information System, and for the administration to disburse funds as necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES