

ImHOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 373 Environmental Permits

SPONSOR(S): Glorioso

TIED BILLS: None **IDEN./SIM. BILLS:** SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Deslatte	Blalock
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill amends current law to require that the Department of Environmental Protection (DEP) and water management districts (WMDs) reduce or waive permit processing fees for an applicant created by special act, local ordinance, or interlocal agreement of counties or municipalities meeting specified population limits.

The bill amends current law directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The general permit applies statewide and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business.

The bill authorizes counties and municipalities that have created a community redevelopment area (CRA) or an urban infill and redevelopment area to adopt a stormwater adaptive management plan addressing the quantity and quality of stormwater discharges for the area and obtain a conceptual permit from the WMD or the DEP. The bill defines a "stormwater management plan" as a master drainage plan that, to the extent feasible:

- Improves the quality of stormwater runoff discharged from the project area.
- Controls the rate and volume of stormwater discharges to the extent that offsite flooding or other adverse water quantity impacts are not exacerbated by the proposed redevelopment project.
- Is designed based on a feasibility assessment of stormwater best management practices, including low impact development techniques and regional stormwater treatment systems, that consider the size and physical site characteristics of the project area.

The bill also directs the DEP and WMDs to establish conceptual permits for urban redevelopment projects or an urban infill and redevelopment area. The conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects located within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the stormwater management plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Cannot prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in section 373.413, F.S.
- Must be issued for a duration of at least 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

The bill provides that urban redevelopment projects that meet the requirements of the conceptual permit qualify for general permits authorizing construction and operation of the permitted system.

Lastly, the bill provides that conceptual permits may not conflict with the requirements of a federally approved state National Pollution Discharge Elimination System program or with the implementation of total maximum daily loads and basin management plans.

The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues and a cost savings for affected local governments. There may be an insignificant fiscal impact on those local governments that have already established either a community redevelopment area or an urban infill and redevelopment area. Those local governments would have to amend those plans if they wanted to obtain a conceptual permit. However, there may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

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

STORAGE NAME: h0373a.ANRS

DATE: 1/13/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Waiver or Reduction of Permit Fees

Section 218.075, F.S., provides that DEP and the WMDs must reduce or waive permit processing fees for certain specified small counties and municipalities with a population of 25,000 or less, or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

- Per capita taxable value is less than the statewide average for the current fiscal year;
- Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
- Any condition specified in s. 218.503(1), F.S., which results in the county or municipality being in a state of financial emergency;
- Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or
- A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality or a third party under contract with a county or municipality and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee shall not exceed \$100.

Airside Stormwater Management

The Federal Aviation Authority (FAA) provides grants to the Florida Department of Transportation (DOT) Aviation Office for airport airside improvements. The grants have 18 month time frames, making it difficult to permit and complete a stormwater project within the required time to take advantage of the grant.

In 1998, the DOT, the Department of Environmental Protection (DEP) and three water management districts (WMDs) outlined a study to evaluate airport runway, taxiway and apron stormwater quality. In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular¹. The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. A joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff and how best management practices can help airports meet federal and state water quality standards.

Another phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.

¹ U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdbf1c5aa1083986256c690074ebab/\\$FILE/150-5200-33.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdbf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf)

Statement of Estimated Regulatory Costs

Section 120.541, F.S., provides that if a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after implementation of the rule, the agency shall prepare a statement of estimated regulatory costs. The statement of estimated regulatory costs must include:

- An economic analysis showing whether the rule directly or indirectly:
 1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
 3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.
- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a description of the types of individuals likely to be affected by the rule.
- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.
- A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.
- An analysis of the impact on small businesses as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in s. 120.52, F.S. The impact analysis for small businesses must include the basis for the agency’s decision not to implement alternatives that would reduce adverse impacts on small businesses.
- Any additional information that the agency determines may be useful.
- In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

If the adverse impact or regulatory costs of the rule exceed any of the criteria described above, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule cannot take effect until it is ratified by the Legislature.

Growth Policy Act

In 1999, the Florida Legislature enacted the Growth Policy Act² (Act) in order to provide incentives to promote urban infill and redevelopment. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage infill and redevelopment within urban centers. The Act defines an urban infill and redevelopment area as an area where:

² Sections 163.2511-163.2523, F.S.

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided in the 5-year schedule of capital improvements;
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress;³
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government;
- More than 50 percent of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation; and
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community program or similar program.⁴

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries. Section 163.2520, F.S., provides that a local government with an adopted urban infill and redevelopment plan or plan employed in lieu thereof can issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of the plan.

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969 (Act), was enacted in order to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The Act authorizes a county or municipality to create community redevelopment areas (CRAs) by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.⁵ CRAs are not permitted to levy or collect taxes; however, the local government is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated CRA to finance redevelopment projects within that area. To obtain this revenue, in addition to establishing a trust fund, a local government must create a community redevelopment agency,⁶ designate an area or areas to be a Community Redevelopment Area (CRA), and approve a community redevelopment plan.⁷ Once this is accomplished, the CRA can direct the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation, or redevelopment of the CRA.

Stormwater

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to the compaction of soil; the addition of impervious surfaces such as roads and parking lots; alteration of natural landscape features such as natural depressional areas which hold water, floodplains and wetlands; construction of highly efficient drainage systems; and the addition of pollutants from everyday human activities. These alterations within a watershed decrease the amount of rainwater that can seep into the soil to recharge aquifers, maintain water levels in lakes and wetlands, and maintain spring and stream flows. Consequently, the increased volume, speed, and pollutant loading in stormwater that runs off developed areas lead to flooding, water quality problems, and the loss of habitat.⁸

³ Section 290.0058, F.S., provides the definition for "general distress."

⁴ Section 163.2514(2), F.S.

⁵ Section 163.340(7), F.S., provides the definition for "slum area" and s. 163.340(8), F.S., provides the definition for "blighted area."

⁶ Section 163.356, F.S.

⁷ See ch. 163, part III, F.S.

⁸ National Resources Defense Council. *Stormwater Strategies*, May 1999 report, available at: <http://www.nrdc.org/water/pollution/storm/stoinx.asp> (last visited March 24, 2011).

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment, design criteria for best management practices (BMPs) that will achieve the performance standard, and a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will meet water quality standards. The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids (TSS)⁹ by 80 percent or by 95 percent for Outstanding Florida Waters.¹⁰

In 1990, in response to legislation, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).¹¹ The rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of DEP, the water management districts, and local governments. The rule provides that one of the primary goals of the program is to maintain, to the degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80 percent of the post-development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards." This performance standard is significantly different than the one used in the DEP and WMD stormwater treatment rules of the 1980s.

In 1999, the Florida Watershed Restoration Act was enacted leading to the implementation of Florida's water body restoration program and the establishment of Total Maximum Daily Loads (TMDLs). A TMDL is the maximum allowable pollutant a water body can absorb and still maintain its intended purpose, e.g., fishable/swimmable. Under the Clean Water Act, TMDLs must be developed for all water bodies that are not meeting their classification standards and are deemed to be impaired. There can be multiple TMDLs for one water body if there are multiple pollutants contributing to water quality standards violations. Since the program began, over 2000 impairments have been verified in Florida's surface waters, and nutrients have been identified as the major cause of such impairments. In order to restore impaired waters by reducing pollutant loadings to meet the allowable loadings established in a TMDL, the DEP creates a Basin Management Action Plan (BMAP). The BMAP represents a comprehensive set of strategies--permit limits on wastewater facilities, urban and agricultural best management practices, conservation programs, financial assistance and revenue generating activities, etc.--designed to implement the pollutant reductions established by the TMDL. These broad-based plans are developed with local stakeholders--they rely on local input and local commitment--and they are adopted by Secretarial Order to be enforceable.

Effect of Proposed Changes

The bill amends s. 218.075, F.S. to provide that the DEP and WMDs must reduce or waive permit processing fees for an entity created by special act, local ordinance, or interlocal agreement of counties or municipalities meeting specified population limits. The permit applicant must be an entity created by special act, local ordinance, or interlocal agreement.

The bill amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The general permit applies statewide and must be administered by any WMD or any delegated local government pursuant to the operating agreements applicable to part IV of chapter 373, F.S., with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. It appears that this provision would allow the DEP to be exempt from the provisions in s. 120.541, F.S., requiring a statement of estimated regulatory costs to be prepared if the proposed rule

⁹ Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

¹⁰ Rule 62-302.700 F.A.C., provides that an Outstanding Florida Water (OFW), is a water designated worthy of special protection because of its natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality.

¹¹ Chapter 62-40 F.A.C.

will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule.

The bill creates s. 373.4131, F.S., relating to conceptual permits for urban redevelopment projects. The bill provides that a municipality or county that has created a community redevelopment area or an urban infill and redevelopment area is authorized to adopt a stormwater adaptive management plan that addresses the quantity and quality of stormwater discharges for the redevelopment or infill area and obtain a conceptual permit¹² from the WMD or the DEP.

The bill defines a “stormwater management plan” as a master drainage plan that, to the extent feasible:

- Improves the quality of stormwater runoff discharged from the project area.
- Controls the rate and volume of stormwater discharges to the extent that offsite flooding or other adverse water quantity impacts are not exacerbated by the proposed redevelopment project.
- Is designed based on a feasibility assessment of stormwater best management practices, including low impact development techniques and regional stormwater treatment systems, that consider the size and physical site characteristics of the project area.

The bill also directs the DEP and WMDs to establish a conceptual permit for urban redevelopment projects or an urban infill and redevelopment area. The conceptual permits:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects located within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the stormwater management plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Cannot prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in section 373.413, F.S.
- Must be issued for a duration of at least 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

Urban redevelopment projects that meet the criteria established in the conceptual permit qualify for a general permit that authorizes construction and operation of the permitted system.

Lastly, the bill provides that conceptual permits may not conflict with the requirements of a federally approved state National Pollution Discharge Elimination System program or with the implementation of total maximum daily loads and basin management plans.

B. SECTION DIRECTORY:

Section 1. Amends s. 218.075, F.S., providing for an entity created by special act, local ordinance, or interlocal agreement of a county or municipality meeting specified population limits to receive certain reduced or waived permit processing fees; requiring that the project for which such fee reduction or waiver is sought serves a public purpose.

¹² In general, conceptual permits are individual permits for projects to be developed in phases that approve the design concepts of a phased master plan. Issuance of a conceptual permit is a determination that the conceptual plans are, within the extent of detail provided in the conceptual permit application, consistent with applicable rules at the time of issuance. Design concepts approved in a conceptual permit are not to be affected by subsequent rule changes so long as the permit is valid.

Section 2. Amends s. 373.118, F.S., requiring that the DEP initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; providing for statewide application of the general permit; providing for any WMD or delegated local government to administer the general permit; providing that the rules are not subject to any special rulemaking requirements relating to small businesses.

Section 3. Creates s. 373.4131, F.S., authorizing municipalities and counties that have created a community redevelopment area or an urban infill and redevelopment area to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; provides requirements for establishment of such permits by water management districts and the Department of Environmental Protection; provides that urban redevelopment projects that meet the criteria for a conceptual permit qualify for a noticed general permit.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues.

2. Expenditures:

According to the DEP analysis, there will be a small impact to the DEP, and possibly the water management districts, to conduct rule making for general permits for airside activities and potentially to create the conceptual permit for urban redevelopment projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact on WMDs. Entities created by special acts, local ordinances, or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

2. Expenditures:

According to the DEP analysis, there will possibly be a small impact to the water management districts, to conduct rule making for general permits for airside activities and potentially to create the conceptual permit for urban redevelopment projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The permit applies statewide and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. It appears that this provision would allow the DEP to be exempt from the provisions in s. 120.541, F.S., requiring a statement of estimated regulatory costs to be prepared if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DEP provided the following comments:

The conceptual permits for urban redevelopment projects may create conflict with Federal Clean Water Act and with the Florida Watershed Restoration Act, s. 403.067, F.S., with respect to total maximum daily load (TMDL) implementation for water bodies with an adopted TMDL. The bill is silent as to how the stormwater requirements for urban redevelopment projects will have to address stormwater in a watershed with a TMDL or basin management action plan (BMAP) adopted pursuant to s. 403.067, F.S. If a TMDL or BMAP require additional stormwater treatment, it is unclear how the requirements of the proposed subsection will relate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 373 as a committee substitute (CS). The CS provides that conceptual permits may not conflict with the requirements of a federally approved state National Pollution Discharge Elimination System program or with the implementation of total maximum daily loads and basin management plans.