Tab 1	**SB 512** by **Negron**; (Similar to CS/H 0293) Vessels					
306272	D	S	RCS	EP, Oelrich	Delete everything after	03/30 05:40 PM

Tab 2	**SB 850** by **Hays (CO-INTRODUCERS) Altman, Gaetz**; (Compare to CS/1ST ENG/H 0663) State Forests

Tab 3	**CS/SB 1174** by **AG, Siplin (CO-INTRODUCERS) Lynn**; (Similar to H 0421) Exemptions to Water Management Requirements					
820452	A	S	RCS	EP, Rich	Delete L.40 - 42:	03/30 05:40 PM
612756	A	S	RCS	EP, Latvala	Delete L.86 - 87:	03/30 05:40 PM

Tab 4	**SB 1404** by **Evers**; (Compare to CS/CS/CS/1ST ENG/H 0991) Environmental Permitting					
975266	PCS	S		EP		04/11 05:41 PM
305080	PCS:A	S		EP, Dean	Delete L.645 - 650:	04/13 10:59 AM
714966	PCS:A	S	L	EP, Latvala	btw L.1212 - 1213:	04/14 08:19 AM
123930	PCS:A	S	L	EP, Latvala	Delete L.184 - 209.	04/14 08:19 AM
721256	PCS:A	S	L	EP, Latvala	Delete L.945 - 976.	04/14 08:19 AM
754684	PCS:A	S	L	EP, Sobel	Delete L.188 - 209:	04/14 08:49 AM
951764	PCS:A	S	L	EP, Dean	Delete L.470 - 473:	04/14 08:51 AM
887788	PCS:A	S	L	EP, Dean	Delete L.570 - 571:	04/14 08:52 AM
891122	PCS:A	S	L	EP, Dean	Delete L.582:	04/14 08:52 AM
588044	PCS:A	S	L	EP, Dean	Delete L.586 - 589:	04/14 08:52 AM
528796	PCS:A	S	L	EP, Dean	Delete L.552:	04/14 08:52 AM
~~464514~~	D	S	WD	EP, Latvala	Delete everything after	04/11 05:40 PM
~~320138~~	AA	S	WD	EP, Latvala	Delete L.362 - 388:	04/11 05:40 PM
~~813598~~	AA	S	WD	EP, Latvala	Delete L.542 - 551:	04/11 05:41 PM
~~436922~~	AA	S	WD	EP, Latvala	Delete L.626 - 687:	04/11 05:41 PM

Tab 5	**SB 1514** by **Latvala**; (Identical to H 1001) Permitting of Consumptive Uses of Water					
684730	A	S	RCS	EP, Latvala	Delete L.184 - 185:	03/30 05:40 PM
363968	A	S	RCS	EP, Latvala	btw L.266 - 267:	03/30 05:40 PM
287570	A	S	RCS	EP, Latvala	Delete L.148 - 173:	03/30 05:40 PM
~~116348~~	A	S	WD	EP, Dean	Delete L.38 - 142.	03/30 05:40 PM
~~380672~~	A	S	WD	EP, Dean	Delete L.174 - 266.	03/30 05:40 PM
713016	A	S		EP, Latvala	Delete L.173:	03/30 10:08 AM
461200	A	S		EP, Latvala	Delete L.149:	03/30 10:08 AM

Tab 6	**CS/SB 1698** by **HR, Dean**; (Compare to H 0013) Onsite Sewage Treatment and Disposal Systems					
370128	A	S	RCS	EP, Latvala	Delete L.338 - 355.	03/30 05:40 PM
602374	A	S	RCS	EP, Detert	Delete L.425 - 427:	03/30 05:40 PM
191566	A	S	RCS	EP, Dean	Delete L.428:	03/30 05:40 PM
893952	A	S	RCS	EP, Jones	btw L.528 - 529:	03/30 05:40 PM
394106	AA	S	RCS	EP, Latvala	Delete L.6 - 7:	03/30 05:40 PM
963910	A	S	RCS	EP, Dean	Delete L.544 - 545:	03/30 05:40 PM
767714	A	S	RCS	EP, Dean	Delete L.551 - 554:	03/30 05:40 PM

Tab 7	**CS/SB 1290** by **AG, Dean**; (Similar to CS/CS/H 0949) Pest Control					
649592	A	S	RCS	EP, Dean	Delete L.138 - 142:	03/30 05:40 PM
346744	A	S	RCS	EP, Dean	Delete L.142:	03/30 05:40 PM
710404	A	S	RCS	EP, Dean	btw L.176 - 177:	03/30 05:40 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

ENVIRONMENTAL PRESERVATION AND CONSERVATION
Senator Dean, Chair
Senator Oelrich, Vice Chair

MEETING DATE: Wednesday, March 30, 2011
TIME: 1:30 —3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Dean, Chair; Senator Oelrich, Vice Chair; Senators Detert, Jones, Latvala, Rich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 512** Negron (Similar CS/H 293)	Vessels; Revises penalty provisions for violation of navigation rules. Provides that such violations that do not constitute reckless operation of a vessel are noncriminal violations. Provides for increased penalties for certain noncriminal violations. Deletes a duplicate provision. Conforms a cross-reference to changes made by the act. Reenacts and amends provision relating to penalties, to incorporate changes made by the act in references thereto, etc. EP 03/17/2011 Temporarily Postponed EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0
2	**SB 850** Hays (Compare H 663)	State Forests; Provides for Wounded Warrior special hunt areas for certain disabled veterans. Provides for funding. Provides eligibility requirements. MS 03/23/2011 Favorable EP 03/30/2011 Favorable BC	Favorable Yeas 6 Nays 0
3	**CS/SB 1174** Agriculture / Siplin (Similar H 421)	Exemptions to Water Management Requirements; Revises an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands. Provides that the exemption applies to certain agricultural lands and does not apply to specified permitted activities. Provides exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions. Requires a specified memorandum of agreement between the department and each water management district, etc. AG 03/21/2011 Fav/CS EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1404** Evers (Compare CS/H 991, H 1153, S 1718, S 1966)	Environmental Permitting; Authorizes the provision of certain notices under the Administrative Procedure Act via a link to a publicly available Internet website. Provides that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy by a local government is a valid and permitted land use. Authorizes expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs, etc. EP 03/30/2011 Temporarily Postponed CA AG BC	Temporarily Postponed
5	**SB 1514** Latvala (Identical H 1001, Compare H 651)	Permitting of Consumptive Uses of Water; Requires consumptive use permits to be issued for a period of 20 years. Directs each water management district to consult with the Department of Environmental Protection to examine options for improving the coordination between the consumptive use permitting process and the water supply planning process by extending and reconciling certain permitting provisions. Requires each water management district to provide a report to the Governor and the Legislature, etc. EP 03/30/2011 Fav/CS AG BC	Fav/CS Yeas 6 Nays 0
6	**CS/SB 1698** Health Regulation / Dean (Compare H 13, H 167, H 1479, S 82, S 130, S 168)	Onsite Sewage Treatment and Disposal Systems; Defines the term "bedroom." Provides for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property. Provides circumstances in which an onsite sewage treatment and disposal system is not considered abandoned. Provides for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system, etc. HR 03/28/2011 Fav/CS EP 03/30/2011 Fav/CS CA BC	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 1290** Agriculture / Dean (Similar CS/CS/H 949, Compare S 2076)	Pest Control; Provides rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means. Increases the minimum bodily injury and property damage insurance coverage required for pest control businesses. Provides for the certification of commercial wildlife trappers. Increases the minimum financial responsibility requirements for licensees that perform certain inspections, etc. AG 03/21/2011 Fav/CS EP 03/30/2011 Fav/CS BC	Fav/CS Yeas 6 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
8	**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	Governing Board of the Northwest Florida Water Management District		
	Roberts, George (Panama City Beach)	03/01/2014	Recommend Confirm Yeas 6 Nays 0

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 512
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Negron
SUBJECT:	Vessels
DATE:	March 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the civil penalties for navigation rule violations that result in an accident but do not cause serious bodily injury or death, depending on the judge's discretion as follows:

- first offense up to $500;
- second offense up to $750 and;
- third offense up to $1,000.

The penalty for a navigation violation that causes serious bodily injury or death is a second degree misdemeanor.

This CS amends sections 327.33, 327.73, 327.70, 327.72, and 327.731(1) of the Florida Statutes.

II. Present Situation:

Currently, under s. 327.33(3), F.S., all navigation rule violations are noncriminal infractions except those navigation rule violations that result in boating accidents. If a navigation rule violation results in a boating accident, the charge is increased from a noncriminal infraction to a misdemeanor of the second degree. When a reckless operation violation occurs the penalties are more severe and include a first degree misdemeanor charge, a maximum $1,000 fine and up to a year in jail.

In accordance with s. 327.73, F.S., individuals charged with noncriminal infractions sign and accept a citation indicating a promise to appear in court or pay the civil penalty, by mail or in person, within 30 days. If the person elects to pay the civil penalty, he or she is deemed to have admitted the noncriminal infraction and waived the right to a hearing. Such admittance shall not be used as evidence in any other hearing. The amount of the civil penalty assessed for the noncriminal navigation rule violation is $50 plus court specific additions if the violator elects to pay the fine without a court appearance. If the person elects to appear in court to plead the case, he/she has waived the limitations of the civil penalty. If the court determines the infraction has been committed, it may impose a civil penalty of up to $500.[1]

Section 327.731 F.S., requires any person who is convicted of two noncriminal infractions in a 12-month period to enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the Florida Fish and Wildlife Conservation Commission (FWC or Commission).

Anyone charged with a navigation rule violation that results in an accident is charged with a second degree misdemeanor. Upon the finding of guilt for a second degree misdemeanor, in accordance with s. 775.082, F.S., and s. 775.083, F.S., a person may be fined up to $500 and/or subjected to imprisonment not to exceed 60 days, at the discretion of the judge. In addition to the punishment, a judge, in accordance with s. 775.089, F.S., can order restitution to a victim for damage or loss related to the defendant's criminal act. There is not a civil penalty provision that an individual may pay in person or mail-in for second degree misdemeanors in lieu of sentencing as described above for noncriminal infractions.

Per s. 327.731, F.S., mandatory education is required for anyone convicted under Chapter 327, F.S., of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, as defined in s. 327.30(2), F.S., or two noncriminal infractions in a twelve month period. Additionally, Commission rule 68D-36.106, F.A.C. (created under Legislative authority granted in s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and anyone convicted of any criminal boating violation to complete an additional online boating course. Reportable boating accidents include those that must be reported to law enforcement under s. 327.30(2), F.S. They include:

- accidents involving any kind of vessel if the accident involves a vessel capsizing;
- a vessel colliding with another vessel or object;

[1] Florida Fish and Wildlife Conservation Commission, *Senate Bill 512 Fiscal Analysis* (February 10, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation)

- a vessel sinking;
- serious personal injury (requiring more than basic first aid);
- death;
- disappearance of any person onboard under circumstances suggestive of a likelihood of death or injury; or
- damage to the vessel or any property in an aggregate amount greater than $2000.00.

According to the FWC, from 2007-2010, there were 452 individuals cited for second degree misdemeanor violations of navigation rules that resulted in a boating accident. During the same time frame, there were 303 individuals cited for noncriminal infractions for navigation rule violations that did not result in a boating accident.

All civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund to be used for boating safety education purposes (see s. 327.73(8), F.S.). Also, the court assesses the costs payable to the Clerk for each noncriminal violation (see s. 327.73(11), F.S.).

Under s. 775.083(1), F.S., all fines collected for convictions of second degree misdemeanors are deposited into the county's Fine and Forfeiture Fund (established in section 142.01, F.S.) for use by the clerk of the circuit court in performing court-related functions.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S. and removes the criminal charge for those individuals who violate a navigation rule that results in an accident but does not cause serious bodily injury or death or rise to the level of reckless operation from a second degree misdemeanor to a noncriminal infraction.

Section 2 amends s. 327.73(1) and (5), F.S., to increase the civil penalty for individuals who violate a navigation rule that result in a boating accident and to provide for increased penalties for repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to $500 for a first offense, up to $750 for a second offense, and up to $1000 for a third or subsequent offense.

Section 3 amends s. 327.70(2)(a)1., F.S. This is a technical change to remove an unneeded reference to reckless or careless operation of vessel in section 327.33(3)(b), F.S.

Section 4 amends s. 327.72, F.S., to incorporate changes to s. 327.73, F.S., by reference.

Section 5 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

Section 6 creates an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes may increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders.

C. Government Sector Impact:

According to the FWC, there will be a fiscal impact because all civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund to be used for boating safety education purposes. The exact fiscal impact is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

VIII. Additional Information:

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

CS by Environmental Preservation and Conservation on March 31, 2010:
The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the fines for navigational violations that result in an accident but do not cause bodily injury or death up to $500 for the first offense, up to $750 for the second offense, and up to $1,000 for a third or subsequent offense.

B. Amendments:

None.

306272

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Oelrich) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(3) Each person operating a vessel upon the waters of this state shall comply with the navigation rules.

(a) A person who violates ~~whose violation of~~ the navigation rules and the violation results in a boating accident causing serious bodily injury as defined in s. 327.353 or death, but the

306272

~~whose~~ violation does ~~did~~ not constitute reckless operation of a vessel, commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates ~~whose violation of~~ the navigation rules and the violation ~~does not result in a boating accident and~~ does not constitute reckless operation of a vessel commits ~~is guilty of~~ a noncriminal violation as defined in s. 775.08, punishable as provided in s. 327.73.

(c) Law enforcement vessels may deviate from the navigational rules when such diversion is necessary to the performance of their duties and when such deviation may be safely accomplished.

Section 2. Subsections (1) and (5) of section 327.73, Florida Statutes, are amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(a) Section 328.46, relating to operation of unregistered and unnumbered vessels.

(b) Section 328.48(4), relating to display of number and possession of registration certificate.

(c) Section 328.48(5), relating to display of decal.

(d) Section 328.52(2), relating to display of number.

(e) Section 328.54, relating to spacing of digits and letters of identification number.

(f) Section 328.60, relating to military personnel and registration of vessels.

(g) Section 328.72(13), relating to operation with an expired registration.

306272

(h) Section 327.33(2), relating to careless operation.

(i) Section 327.37, relating to water skiing, aquaplaning, parasailing, and similar activities.

(j) Section 327.44, relating to interference with navigation.

(k) Violations relating to boating-restricted areas and speed limits:

1. Established by the commission or by local governmental authorities pursuant to s. 327.46.

2. Speed limits established pursuant to s. 379.2431(2).

(l) Section 327.48, relating to regattas and races.

(m) Section 327.50(1) and (2), relating to required safety equipment, lights, and shapes.

(n) Section 327.65, relating to muffling devices.

(o) Section 327.33(3)(b), relating to a violation of navigation rules:~~.~~

1. That does not result in an accident; or

2. That results in an accident not causing serious bodily injury or death, for which the penalty is:

a. For a first offense, up to a maximum of $500.

b. For a second offense, up to a maximum of $750.

c. For a third or subsequent offense, up to a maximum of $1,000.

(p) Section 327.39(1), (2), (3), and (5), relating to personal watercraft.

(q) Section 327.53(1), (2), and (3), relating to marine sanitation.

(r) Section 327.53(4), (5), and (7), relating to marine sanitation, for which the civil penalty is $250.

306272

(s) Section 327.395, relating to boater safety education.

(t) Section 327.52(3), relating to operation of overloaded or overpowered vessels.

(u) Section 327.331, relating to divers-down flags, except for violations meeting the requirements of s. 327.33.

(v) Section 327.391(1), relating to the requirement for an adequate muffler on an airboat.

(w) Section 327.391(3), relating to the display of a flag on an airboat.

(x) Section 253.04(3)(a), relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior conviction, $250.

3. For a third offense occurring within 36 months after a prior conviction, $500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, $1,000.

Any person cited for a violation of any ~~such~~ provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such

306272

citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

~~Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.~~

(5) Any person electing to appear before the county court or who is required so to appear shall be deemed to have waived the limitations on the civil penalty specified in subsection (1). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed $500 or a higher amount as specified in subsection (1).

Section 3. For the purpose of incorporating the amendment made by this act to section 327.73, Florida Statutes, in a reference thereto, section 327.72, Florida Statutes, is

306272

reenacted and amended to read:

327.72 Penalties.—Any person failing to comply with the provisions of this chapter or chapter 328 not specified in s. 327.73 or not paying the civil penalty specified in s. 327.73 ~~said section~~ within 30 days, except as otherwise provided in this chapter or chapter 328, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. For the purpose of incorporating the amendment made by this act to section 327.73, Florida Statutes, in a reference thereto, subsection (1) of section 327.731, Florida Statutes, is reenacted to read:

327.731 Mandatory education for violators.—

(1) Every person convicted of a criminal violation of this chapter, every person convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, and every person convicted of two noncriminal infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a boating safety course that meets minimum standards established by the commission by rule; however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;

(b) File with the commission within 90 days proof of successful completion of the course;

(c) Refrain from operating a vessel until he or she has

306272

filed the proof of successful completion of the course with the commission.

Any person who has successfully completed an approved boating course shall be exempt from these provisions upon showing proof to the commission as specified in paragraph (b).

Section 5. This act shall take effect October 1, 2011.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to vessels; amending s. 327.33, F.S.; revising penalty provisions for the violation of navigation rules; providing that a violation resulting in serious bodily injury or death is a second-degree misdemeanor; providing that a violation that does not constitute reckless operation of a vessel is a noncriminal violation; amending s. 327.73, F.S.; providing for increased penalties for certain noncriminal violations of navigation rules; deleting a duplicate provision; reenacting and amending s. 327.72, F.S., relating to penalties, to incorporate the amendment made to s. 327.73, in a reference thereto; correcting a cross-reference; reenacting s. 327.731(1), F.S., relating to mandatory education for violators, to incorporate the amendment made to s. 327.73, F.S., in a reference thereto; providing an

306272

effective date.

By Senator Negron

28-00703-11 2011512__

A bill to be entitled

An act relating to vessels; amending s. 327.33, F.S.; revising penalty provisions for violation of navigation rules; providing that such violations that do not constitute reckless operation of a vessel are noncriminal violations; amending s. 327.73, F.S.; providing for increased penalties for certain noncriminal violations; deleting a duplicate provision; amending s. 327.70, F.S.; conforming a cross-reference to changes made by the act; reenacting and amending s. 327.72, F.S., relating to penalties, to incorporate changes made by the act in references thereto; reenacting s. 327.731(1), F.S., relating to mandatory education for violators, to incorporate changes made by the act in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless operation of vessel.—

(3) Each person operating a vessel upon the waters of this state shall comply with the navigation rules.

~~(a) A person whose violation of the navigation rules results in a boating accident, but whose violation did not constitute reckless operation of a vessel, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(a) ~~(b)~~ A person who violates ~~whose violation of~~ the navigation rules and the violation ~~does not result in a boating accident and~~ does not constitute reckless operation of a vessel commits ~~is guilty of~~ a noncriminal violation as defined in s. 775.08, punishable as provided in s. 327.73.

(b) ~~(c)~~ Law enforcement vessels may deviate from the navigational rules when such diversion is necessary to the performance of their duties and when such deviation may be safely accomplished.

Section 2. Subsections (1) and (5) of section 327.73, Florida Statutes, are amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(a) Section 328.46, relating to operation of unregistered and unnumbered vessels.

(b) Section 328.48(4), relating to display of number and possession of registration certificate.

(c) Section 328.48(5), relating to display of decal.

(d) Section 328.52(2), relating to display of number.

(e) Section 328.54, relating to spacing of digits and letters of identification number.

(f) Section 328.60, relating to military personnel and registration of vessels.

(g) Section 328.72(13), relating to operation with an expired registration.

(h) Section 327.33(2), relating to careless operation.

(i) Section 327.37, relating to water skiing, aquaplaning, parasailing, and similar activities.

(j) Section 327.44, relating to interference with navigation.

(k) Violations relating to boating-restricted areas and speed limits:

1. Established by the commission or by local governmental authorities pursuant to s. 327.46.

2. Speed limits established pursuant to s. 379.2431(2).

(l) Section 327.48, relating to regattas and races.

(m) Section 327.50(1) and (2), relating to required safety equipment, lights, and shapes.

(n) Section 327.65, relating to muffling devices.

(o) Section 327.33(3)~~(b)~~, relating to navigation rules, for which the penalty is:

1. For a first offense, up to a maximum of $500.

2. For a second offense, up to a maximum of $750.

3. For a third or subsequent offense, up to a maximum of $1,000.

(p) Section 327.39(1), (2), (3), and (5), relating to personal watercraft.

(q) Section 327.53(1), (2), and (3), relating to marine sanitation.

(r) Section 327.53(4), (5), and (7), relating to marine sanitation, for which the civil penalty is $250.

(s) Section 327.395, relating to boater safety education.

(t) Section 327.52(3), relating to operation of overloaded or overpowered vessels.

(u) Section 327.331, relating to divers-down flags, except for violations meeting the requirements of s. 327.33.

(v) Section 327.391(1), relating to the requirement for an

adequate muffler on an airboat.

(w) Section 327.391(3), relating to the display of a flag on an airboat.

(x) Section 253.04(3)(a), relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:

1. For a first offense, $50.

2. For a second offense occurring within 12 months after a prior conviction, $250.

3. For a third offense occurring within 36 months after a prior conviction, $500.

4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, $1,000.

Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

~~Any person cited for a violation of any such provision shall be~~

~~deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.~~

(5) Any person electing to appear before the county court or who is required so to appear shall be deemed to have waived the limitations on the civil penalty specified in subsection (1). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed $500 or a higher amount specified in subsection (1).

Section 3. Subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2)(a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:

1. Section 327.33(3)~~(b)~~, relating to navigation rules.

2. Section 327.44, relating to interference with

navigation.

3. Section 327.50(2), relating to required lights and shapes.

4. Section 327.53, relating to marine sanitation.

5. Section 328.48(5), relating to display of decal.

6. Section 328.52(2), relating to display of number.

(b) Citations issued to livery vessels under this subsection shall be the responsibility of the lessee of the vessel if the livery has included a warning of this responsibility as a part of the rental agreement and has provided to the agency issuing the citation the name, address, and date of birth of the lessee when requested by that agency. The livery is not responsible for the payment of citations if the livery provides the required warning and lessee information.

Section 4. For the purpose of incorporating the amendment made by this act to section 327.73, Florida Statutes, in a reference thereto, section 327.72, Florida Statutes, is reenacted and amended to read:

327.72 Penalties.—Any person failing to comply with the provisions of this chapter or chapter 328 not specified in s. 327.73 or not paying the civil penalty specified in s. 327.73 ~~said section~~ within 30 days, except as otherwise provided in this chapter or chapter 328, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. For the purpose of incorporating the amendment made by this act to section 327.73, Florida Statutes, in a reference thereto, subsection (1) of section 327.731, Florida Statutes, is reenacted to read:

327.731 Mandatory education for violators.—

(1) Every person convicted of a criminal violation of this chapter, every person convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, and every person convicted of two noncriminal infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

(a) Enroll in, attend, and successfully complete, at his or her own expense, a boating safety course that meets minimum standards established by the commission by rule; however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;

(b) File with the commission within 90 days proof of successful completion of the course;

(c) Refrain from operating a vessel until he or she has filed the proof of successful completion of the course with the commission.

Any person who has successfully completed an approved boating course shall be exempt from these provisions upon showing proof to the commission as specified in paragraph (b).

Section 6. This act shall take effect October 1, 2011.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 850
INTRODUCER:	Senator Hays
SUBJECT:	State Forests
DATE:	March 31, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	**Favorable**
2.	Wiggins	Yeatman	EP	**Favorable**
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill requires the Division of Forestry (division) of the Department of Agriculture and Consumer Services (DACS) to designate "Wounded Warrior special hunt areas" on state forest lands and provide hunt areas for disabled veterans.

This bill substantially amends s. 589.19 of the Florida Statutes.

II. Present Situation:

The division within DACS manages and administers all state forests in the interests of the public.[1] The division is authorized to direct multiple-use management of forest lands owned by the state. Such use includes, but is not limited to, water-resource protection, forest-ecosystems protection, natural-resource-based low-impact recreation, and sustainable timber management for forest products.[2] Furthermore, the division cooperates with federal, state, and local government agencies, non-profit organizations, and other persons to apply for, solicit, and receive grants and funds from those agencies, organizations, firms and individuals.[3]

There are 35 state forests in Florida, totaling more than 1,052,000 acres.[4] Under the direction of the Fish and Wildlife Conservation Commission, many state forests are open to regulated

[1] s. 589.21, F.S.
[2] s. 589.04(4), F.S.
[3] s. 589.04(1)(B), F.S.
[4] *State Forests in Florida*, DIVISION OF FORESTRY, http://www.fl-dof.com/state_forests/#history (last visited March 21, 2011).

hunting and fishing.[5] Hunting requires a license and a permit and is allowed only in designated Wildlife Management Areas (WMAs) during specific seasons.[6] Fishing also requires a valid license.[7]

A veteran is defined in s. 1.01, F.S, as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions.[8] Peacetime service means Army, Navy, Marines, Coast Guard, or Air Force service that is not during a wartime era as defined in s. 1.01(14).[9] Additionally, the veteran must have a service-connected disability as determined by the United States Department of Veterans Affairs or has been discharged or released from military service because of a disability incurred or aggravated in the line of duty. According to the FWC, the definition for mobility impaired includes the following:

- paraplegic,
- hemiplegic;
- quadriplegic;
- permanently dependent upon a wheelchair for ambulation;
- permanently required to use assisting aids to walk;
- permanently required to use braces or prostheses on both legs;
- single-leg above the knee amputation, and
- other injuries that the Office of Veterans Affairs has identified as mobility impaired.[10]

Non-profit organizations such as Wounded Warrior Outdoors, Inc.[11] and Wounded Warriors In Action[12] provide wounded servicemen and servicewomen with opportunities for outdoor recreational activities. In the past, such activities have included hunting and fishing excursions in various parts of the country. The organizations assert that such activities are therapeutic and an important part of physical and mental recovery. The funding required for specialized accommodations will be provided through the Friends of Florida State Forests Program (FFSF). The FFSF described in s.589.012, F.S., was established within DACS and its purpose is to provide support and assistance for existing and future programs of the division. These programs must be consistent with the division's mission statement. The purpose of the program is to:

- conduct programs and activities related to environmental education, fire prevention, recreation, and forest management,
- identify and pursue methods to provide resources and materials for these programs; and;

---

[5] *State Forest Recreation*, DIVISION OF FORESTRY, http://www.fl-dof.com/forest_recreation/index.html (last visited March 21, 2011).
[6] *Id.*
[7] *Id.*
[8] s. 1.01(14), F.S.
[9] s. 296.02(7), F.S.
[10] Florida Fish and Wildlife Conservation Commission Analysis, *Senate Bill 850* (March 4, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[11] ABOUT WWO INC., http://www.woundedwarrioroutdoors.com/about.html (last visited March 21, 2011).
[12] ABOUT WWIA, http://www.woundedwarriorsinaction.org/about.html (last visited March 21, 2011).

- establish a statewide method to integrate these resources and materials.[13]

Currently, the division provides a hunting area in Lake Wales Ridge State Forest for a nearby "Wounded Warrior" organization. The hunts typically last for a weekend or several days and include special accommodations as needed by the wounded warriors, such as turkey blinds with space for operation of a motorized wheelchair.

III. Effect of Proposed Changes:

This bill amends s. 589.19, F.S., to require the division to designate "Wounded Warrior special hunt areas" on state forest lands to provide hunt areas for disabled veterans. The general statewide hunting regulations will apply to these special hunt areas. A person is eligible to hunt in a Wounded Warrior special hunt area if he or she is a veteran as defined in s. 1.01, F.S., or has eligible peacetime service, as defined in s. 296.02, F.S., and has a service-connected disability as determined by the United States Department of Veterans Affairs or has been discharged or released from military service because of a disability incurred or aggravated in the line of duty. In addition, persons required to assist the veteran because of his or her disability are authorized to use such areas.

This bill provides that the funding required for specialized accommodations shall be provided through FFSF created in s. 589.012, F.S. FFSF is a charitable not-for-profit corporation that supports programs within Florida's state forests and is governed by a board of directors representing all areas of the state.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[13] s. 589.012, F.S.

B. Private Sector Impact:

Friends of Florida State Forests would fund specialized accommodations needed in the Wounded Warrior special hunt areas.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Hays

20-01076-11 2011850__

A bill to be entitled

An act relating to state forests; amending s. 589.19, F.S.; providing for Wounded Warrior special hunt areas for certain disabled veterans; providing for funding; providing eligibility requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 589.19, Florida Statutes, is amended to read:

589.19 Creation of certain state forests; naming of certain state forests; Wounded Warrior special hunt areas.—

(1) When the Board of Trustees of the Internal Improvement Trust Fund, any state agency, or any agency created by state law, authorized to accept reforestation lands in the name of the state, approves the recommendations of the Division of Forestry in reference to the acquisition of land and acquire such land, the said board, state agency, or agency created by state law, may formally designate and dedicate any area as a reforestation project, or state forest, and where so designated and dedicated such area shall be under the administration of the division which shall be authorized to manage and administer said area according to the purpose for which it was designated and dedicated.

(2) The first state forest acquired by the Board of Trustees of the Internal Improvement Trust Fund in Baker County is to be named the John M. Bethea State Forest. This is to honor Mr. John M. Bethea who was Florida's fourth state forester and

whose distinguished career in state government spanned 46 years and who is a native of Baker County.

(3) The state forest managed by the Division of Forestry in Seminole County is to be named the Charles H. Bronson State Forest to honor Charles H. Bronson, the tenth Commissioner of Agriculture, for his distinguished contribution to this state's agriculture and natural resources.

(4)(a) The Division of Forestry shall designate "Wounded Warrior special hunt areas" on state forest lands to provide hunt areas for disabled veterans. Funding required for specialized accommodations shall be provided through the Friends of Florida State Forests Program created in s. 589.012. The use of such areas shall be limited to a veteran who is eligible pursuant to paragraph (b) and other persons required to assist the veteran because of his or her disability.

(b) A person is eligible to hunt in a Wounded Warrior special hunt area if he or she is a veteran, as defined in s. 1.01, or has eligible peacetime service, as defined in s. 296.02, and:

1. Has a service-connected disability as determined by the United States Department of Veterans Affairs; or

2. Has been discharged or released from military service because of a disability incurred or aggravated in the line of duty.

Section 2. This act shall take effect July 1, 2011.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Agriculture Committee

BILL:	CS/CS/SB 1174
INTRODUCER:	Environmental Preservation and Conservation Committee, Agriculture Committee and Senators Siplin and Lynn
SUBJECT:	Agricultural-related Exemptions to Water Management Requirements
DATE:	March 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Spalla	AG	**Fav/CS**
2.	Uchino	Yeatman	EP	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This Committee Substitute for Committee Substitute (CS) provides that the exemption allowing the topography of land to be altered for agricultural activities without an environmental resource permit (ERP) will not be superseded by language in the Warren S. Henderson Wetlands Protection Act[1] (Wetlands Protection Act) so long as the alteration is not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. It specifies certain lands and certain activities that do not qualify for this exemption.

The CS provides that the Department of Agriculture and Consumer Services (DACS) has exclusive authority to make a binding determination as to whether an activity qualifies for an agricultural-related exemption upon request from a water management district (WMD) or a landowner. The CS gives DACS necessary rulemaking authority and requires the DACS and each WMD to enter into or amend existing memoranda of agreement to implement a binding determination process.

[1] Chapter 84-79, Laws of Florida.

The CS establishes circumstances under which land converted from agricultural uses will not be subject to mitigation and it redefines the definition of agricultural activities contained in the Wetlands Protection Act.

This CS substantially amends sections 373.406. 373.407, and 403.927 of the Florida Statutes.

II. Present Situation:

Agricultural Activities and State Surface Water and Wetland Permitting

Part IV, ch. 373, F.S., addresses the management and storage of surface waters in Florida. Persons engaged in certain agricultural occupations are currently exempted from having to obtain an environmental resource permit from a WMD when altering the topography of land unless such alteration is being done for the sole or predominant purpose of impounding or obstructing surface waters.[2] The Wetlands Protection Act[3] established a permitting process for dredge and fill permits to protect and manage wetlands and it provides that agricultural activities are not subject to specific discharge permits except that the Department of Environmental Protection (DEP) may require a stormwater permit or discharge permit at the point of discharge from an agricultural water management system.

In 2009, two appellate court decisions were entered regarding a challenge by a large agricultural entity to certain rules of a WMD and its statutory interpretation of s. 373.406(2), F.S. The entity was charged with constructing numerous drainage ditches without obtaining a permit and appealed the Administrative Law Judge's (ALJ) recommended order[4] which was adopted by the WMD. *Duda I* addressed only the rule challenge and found in favor of the WMD. While the enforcement issue was not addressed, *Duda I* recognized that the exemption providing for the alteration of the topography of land for agriculture purposes was limited by the further statutory provision that the alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters. The WMD interpreted that to mean "that there is no exemption if the alteration of topography has the effect of more than incidentally trapping, obstructing or diverting surface waters."[5] After a lengthy analysis, the *Duda I* court made a finding that such interpretation rendered the agricultural exemption in s. 373.406(2), F.S., virtually meaningless and that the ALJ had erred in accepting the WMD's erroneous interpretation[6] and remanded that part of the appeal for further review by the ALJ. In *Duda II,* a panel made up of different judges from the same court found that the WMD had shown sufficient evidence that wetlands had been impacted and agreed that the company had to either restore the impacted wetlands or apply for after-the-fact permits. While this was the result of the court's second opinion, the court also said that the opinion in *Duda I* did not address the interplay between s. 373.406(2), F.S., and the language in the Wetlands Protection Act and reiterated the prior panel's finding that those provisions, read together, virtually eliminate the agricultural exemption as it applies to alterations

[2] Section 373.406(2), F.S.
[3] Section 403.927, F.S., the remaining section of the Warren S. Henderson Wetlands Protection Act that has not been repealed.
[4] *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) (Duda I) and 22 So. 3d 622 (Fla. 5th DCA 2009) (Duda II).
[5] *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) at 741.
[6] *Id*. at 744.

impacting wetlands. Various persons, entities, and organizations involved in agricultural industries and occupations have expressed concerns about the practical usefulness of the agricultural exemption in s. 373.406(2), F.S., because of the conflict between the WMD's interpretation and the findings in *Duda I* and *Duda II.*

Pursuant to s. 373.407, F.S., DACS and each of the five WMD's entered into memoranda of agreement (MOA) in 2007 which sets forth a procedure for DACS to make a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). DACS reports that this involves a site visit, review of technical support materials and issuance of a written non-binding determination. DACS further states that only one or two requests per year are received from the WMDs and would expect that number to increase when landowners can also make a request for a binding determination.

Currently, if land served by a water management system is converted to a use other than agricultural use, that land will no longer be entitled to agricultural-related exemptions. And the definition of "Agricultural activities" contained in the Wetlands Protection Act does not include the activities of cultivating, fallowing, or leveling nor does the predominant purpose of the activity matter if the result is that it impedes or diverts the flow of surface water.

Federal Permitting for Surface Water and Wetlands in Florida

For activities occurring in "waters of the United States" in Florida, including wetlands, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the Clean Water Act (CWA).[7] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[8] although the focus of this legislation is primarily maintaining navigable waters.[9] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP permit or the WMD permit and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the ERP program under section 401 of the CWA. The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities.

III. Effect of Proposed Changes:

Section 1 amends s. 373.406, F.S., to specify that, notwithstanding the provisions of s. 403.927, F.S., the Wetlands Protection Act, persons engaged in agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, so long as that is not the sole or predominate purpose of the activity or alteration of the topography. The CS provides that the exemption applies only to lands classified as agricultural pursuant to s. 193.461, F.S., and to activities requiring an ERP pursuant to part IV, ch. 373, F.S. The exemption shall specifically not apply to activities previously permitted under part IV, ch. 373, F.S., or permitted under ch. 403, F.S.

[7] 33 U.S.C. ss. 1251-1387.
[8] 33 U.S.C. s. 403.
[9] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (2005).

Section 2 amends s. 373.407, F.S., to provide that a WMD or a landowner may request the DACS to make a binding determination in the event of a dispute about whether an existing or proposed activity qualifies for an agricultural-related exemption under s. 373.406(2), F.S. The CS requires the DACS and each WMD to enter into or amend existing MOAs to set forth how it will make its review and issue a binding determination. The CS further states that the DACS has exclusive authority to make this binding determination and may adopt rules to implement this procedure.

Section 3 amends s. 403.927, F.S., to provide that when land is converted to a purpose other than an agricultural use, mitigation under chs. 373 or 403, F.S., is not required to offset any adverse effects caused by agricultural activities if such activities occurred in the four years preceding the conversion. It also redefines "agricultural activities" to add "cultivating," "fallowing" and "leveling" to the existing list of activities and it specifies that activities do not qualify as "agricultural activities" if they are for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Section 4 provides that the act shall take effect July 1, 2011.

Other Potential Implications:

Exemptions for altering (impeding, diverting or adversely affecting) wetlands and surface waters without a permit for agricultural activities may expose both private landowners and state agencies to liability. There are several legal theories available to a lower (servient) parcel's landowner if changes to the surface water or wetlands of an upper parcel increase flow, intensity of flow or generally alter natural drainage patterns. Common law nuisance and trespass, and negligence causes of action are well established in case law and can and do apply to surface water flooding and alteration to wetlands.[10] Courts have consistently held that both private and public landowners may be liable for damages for filling or draining wetlands that result in flooding or other impacts to other properties.[11]

[10] Jon Kusler, *Common Legal Questions: Landowner Liability for Draining or Filling Wetlands*, Assoc. of State Wetland Managers, Inc., http://www.aswm.org/propub/4_liability_6_26_06.pdf (last visited Mar 27, 2011). No landowner has a right to use his or her land in a manner that substantially interferes, in a physical sense, with the use of adjacent lands. See, e.g., *Sandifer Motor, Inc. v. City of Rodland Park*, 628 P.2d 239 (Kan. 1981). Landowners can also bring trespass actions for activities that result in a physical invasion of private property such as flooding or drainage. See *Hadfield v. Oakleim County Drain Com'r*, 422 N.W.2d 205 (Mich., 1998).

[11] *Id.* at 3. See *Hendrickson v. Wagners, Inc.*, 598 N.W.2d 507 (S.D., 1999) (Court granted an injunction to require landowner who altered wetlands with resultant flooding to lower estate to fill drainage ditches); *Boren v. City of Olympia*, 112 Wash. App. 359, 53 P.3d 1020 (Wash. 2002) (City was potentially negligent for increasing discharge of water to a wetland which damaged landowner); *Snohomish County v. Postema*, 978 P.2d 1101 (Wash. 1998) (Lower landowner had potential trespass action against upper landowner who cleared and drained wetland); *Lang et al v. Wonnenberg et al*, 455 N.W.2d 832 (N.D. 1990) (Court upheld award of damages against landowner who drained wetlands which resulted in periodic flooding of neighboring properties.). In some cases, the permitting agency may also be liable. See *Hurst v. United States*, 739 F. Supp. 1377 (D.S.D 1990) (Court held the U.S. Army Corps of Engineers liable for negligently supervising the project and for failing to issue a prohibitory order which resulted in flood and erosion damage.).

The WMDs have expressed concerns with various provisions of the CS:

- The CS expands the original intent of the agricultural exemption contained in the Wetlands Protection Act. The original act did not allow for "leveling" as a defined agricultural activity, which will allow agricultural operations to fill depressional wetlands. While "cultivating" and "fallowing" were also added, they are not seen as significant expansions.
- The CS specifies that the DACS is the sole regulator of wetlands on agricultural lands and must issue binding determinations. Currently, the DACS assists the WMDs in making a determination, but ultimately, the determination is made by a WMD. The concern is whether the department has the necessary expertise or staff to carry out this requirement.
- The exemption allows for activities that impede or divert surface waters or adversely impact wetlands. Wetlands are regulated by both state (the DEP and WMDs) and federal agencies (the EPA and the Corps). It is unknown what impact the provisions of this CS will have on federal delegation to the state of certain wetland permitting functions.
- The provision for negating the mitigation of adverse effects occurring before the conversion of the land from agriculture to another use appears to provide a "loophole" for flipping land from agricultural to development within four years without obtaining permits.

Further, allowing agricultural activities to alter wetlands and surface waters without a permit may create additional litigation. Third parties may challenge a ruling that the alterations are for the sole or predominate purpose of impeding or diverting surface waters or adversely impacting wetlands. The current rule does not allow the exemption if it impacts surface waters or wetlands – an objective standard. The CS sets up the determination as a subjective standard, which can lead to confusion if litigation does arise.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There are potential savings of time and expense for agricultural operations that may be exempt from obtaining ERPs to alter topography. There also may be increased litigation

costs for agricultural operations and third parties who challenge the exemptions and binding determinations. Additionally, agricultural land converted to other uses but having been in agricultural activities for the previous four years prior to conversion are not subject to mitigation requirements for those alterations.

C. Government Sector Impact:

The DACS estimates two new positions, at a minimum, would be needed to handle the additional workload arising from requests for determination as set forth below:

	FY 10-11	FY 11-12	FY 12-13
	Amount/FTE	Amount/FTE	Amount/FTE
Revenues:			
Recurring	$175,000/2	$175,000/2	$175,000/2
Non-Recurring	-0-	-0-	-0-

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Environmental Preservation and Conservation on Mar 30, 2011
The CS narrows the agricultural-related exemption to those activities requiring an ERP pursuant to Part IV, ch. 373, F.S., rather than all activities regulated pursuant to this part. It also does not require mitigation to offset any adverse effects caused by agricultural activities if such activities occurred in the four years preceding the conversion.

CS by Agriculture on March 21, 2011:
The CS removed language making the agricultural-related exemption retroactive to July 1, 1984[12] and replaced it with provisions that limit the exemption to lands classified as agricultural pursuant to s. 193.461, F.S., and to activities regulated pursuant to part IV, ch. 373, F.S. It also added language that specifically states that the exemption shall not apply to activities previously permitted under part IV, ch. 373, or ch. 403, F.S.

B. Amendments:

None.

[12] The effective date of the Warren S. Henderson Wetlands Protection Act.

820452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Rich) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 42
and insert:
This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 7

820452

and insert:

applies to certain agricultural lands and certain activities requiring an environmental resource permit and does not

612756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment

Delete lines 86 - 87
and insert:
the activities occurred on the land in the last 4 years preceeding the conversion.

By the Committee on Agriculture; and Senators Siplin and Lynn

575-02800-11 20111174c1

A bill to be entitled

An act relating to agricultural-related exemptions to water management requirements; amending s. 373.406, F.S.; revising an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands; providing that the exemption applies to certain agricultural lands and does not apply to specified permitted activities; amending s. 373.407, F.S.; providing exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions; requiring a specified memorandum of agreement between the department and each water management district; authorizing the department to adopt rules; amending s. 403.927, F.S.; providing an exemption from mitigation requirements for converted agricultural lands under certain conditions; revising the definition of the term "agricultural activities" to include cultivating, fallowing, and leveling and to provide for certain impacts to surface waters and wetlands; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 373.406, Florida Statutes, is amended to read:

373.406 Exemptions.—The following exemptions shall apply:

(2) Notwithstanding s. 403.927, nothing herein, or in any

rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the practice of such occupation. However, such alteration or activity may not be for the sole or predominant purpose of impeding ~~impounding~~ or diverting the flow of ~~obstructing~~ surface waters or adversely impacting wetlands. This exemption is applicable only on lands classified as agricultural pursuant to s. 193.461 and to activities regulated pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit, a permit for the management and storage of surface waters issued pursuant to this part, or a dredge and fill permit issued pursuant to chapter 403.

Section 2. Section 373.407, Florida Statutes, is amended to read:

373.407 Determination of qualification ~~Memorandum of agreement~~ for an agricultural-related exemption.—In the event of a dispute as to the applicability of an exemption, ~~No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agriculture and Consumer Services shall assist in a determination by~~ a water management district or landowner may ~~as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall~~

~~provide a process by which, upon the~~ request ~~of a water management district,~~ the Department of Agriculture and Consumer Services to make a binding determination ~~shall conduct a nonbinding review~~ as to whether an existing or proposed activity qualifies for an agricultural-related exemption under ~~in~~ s. 373.406(2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement or amend an existing memorandum of agreement which sets forth ~~shall provide~~ processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its ~~this~~ review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s. 373.406(2) ~~issue a recommendation~~.

Section 3. Subsection (3) and paragraph (a) of subsection (4) of section 403.927, Florida Statutes, are amended to read:

403.927 Use of water in farming and forestry activities.—

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter. However, mitigation under chapter 373 or this chapter to offset any adverse effects caused by agricultural activities that occurred before the conversion of the land is not required if the activities occurred on the land in at least 4 of the last 7 years preceding the conversion.

(4) As used in this section, the term:

(a) "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, and placement of bridges and culverts, provided such operations are not for the sole or predominant purpose of impeding ~~do not impede~~ or diverting ~~divert~~ the flow of surface waters or adversely impacting wetlands.

Section 4. This act shall take effect July 1, 2011.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	PCS/SB 1404 (975266)
INTRODUCER:	Environmental Preservation and Conservation Committee
SUBJECT:	Environmental Permitting
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Pre-meeting**
2.			CA	
3.			AG	
4.			BC	
5.				
6.				

I. Summary:

The proposed committee substitute (PCS) creates, amends and redefines provisions relating to environmental permitting. It addresses development, construction, operating and building permits; permit application requirements and procedures, including waivers, variances, revocation and challenges; state programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, aggregate mitigation fees and solid mineral mining activities. Specifically the PCS:

- Provides that the burden of persuasion and evidence falls on third party, non-applicants who wish to challenge an agency's decision for those challenges arising under chs. 373, 378 or 403, F.S;
- Prohibits a local government or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allows applicants 90 days to respond to requests for additional information (RAI);
- Prohibits a county from requiring an applicant to obtain state and federal permits as a condition of approval for development permits;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;
- Clarifies beach and shore restoration requirements;
- Specifies additional uses and activities in the Biscayne Bay Aquatic Preserve;
- Expands the use of Internet-based self-certification services for exemptions and general permits;

- Requires the Florida Department of Transportation to use private mitigation banks, if available, to mitigate its environmental impacts;
- Clarifies how the Department of Environmental Protection issues RAIs;
- Provides for an expanded state programmatic general permit;
- Shifts the proceeds of the Lake Belt water treatment upgrade fee to the South Florida Water Management District from Miami-Dade County for a limited time;
- Requires certain counties and municipalities with specified populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;
- Expands the statutory exemptions for certain solid mineral mines;
- Revises the definition for "financially disadvantaged small community";
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Provides for incentive-based environmental permitting;
- Revises the definition of industrial sludge;
- Revises provisions related to solid waste disposal and management;
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action;
- Provides expedited permitting for inland multimodal facilities;
- Clarifies creation of regional action teams for expedited permitting for certain businesses;
- Establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects;
- Allows for sale of unblended fuels for specified applications;
- Extends certain deadlines for petroleum storage tank upgrades;
- Clarifies statutory requirements related to the Uniform Mitigation and Assessment Method; and
- Adds an exemption for certain entities to the reduced or waived permit fee provisions.

This PCS substantially amends ss. 120.569, 125.022, 161.041, 163.3180, 166.033, 218.075, 258.397, 373.026, 373.413, 373.4136, 373.4137, 373.414, 373.4141, 373.4144, 373.41492, 373.441, 376.30715, 380.06, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.707, 403.814, 403.973, 526.203, Florida Statutes.

This PCS creates ss. 161.032 and 403.0874, Florida Statutes, and an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas proposed to be amended by this PCS are diverse. They include administrative hearing challenge requirements and burdens, shortened timelines to review applications, biofuels manufacturing, limiting redundant federal, state and local permitting authority, agency requests for additional information (RAIs), burdens and requirements on challenging parties, Internet-based self-certification, state programmatic general permitting, delegation of permitting authority, incentive-based permitting, general permits for surface water management systems, solid mineral mining, expedited permitting for economic

development projects and mitigation. Each programmatic area will be addressed in the "effect of proposed changes" of the PCS to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 120.569, F.S., relating to challenges under the Administrative Procedures Act.[1]

Chapter 120, F.S., is called the Administrative Procedures Act (APA). It regulates how executive branch agencies adopt rules used to implement and administer their powers and duties. Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency. Under current law, when a third party challenges an agency action, the applicant has the ultimate burden of persuasion and evidence in a de novo administrative proceeding.[2]

The PCS establishes the procedures for any hearing arising under chapters 373,[3] 378,[4] or 403,[5] F.S. If a third party, non-applicant challenges an agency's issuance of a license, permit or conceptual approval, the applicant may go first to present a prima facie case demonstrating a right to the license, permit or conceptual approval, followed by the issuing agency. The third party then has the burden of ultimate persuasion and the burden of going forward to prove the case. The applicant and the agency may present rebuttal evidence to demonstrate the application meets the conditions for issuance. This change focuses the challenge to specific issues, rather than making the applicant defend the entire application, as is currently the case. It also shifts the burden of persuasion to the third party challenger instead of the applicant.

Section 2 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The PCS prohibits a county from making processing of a development permit conditional on the applicant securing permits from any other state or federal agency, unless the agency issues a notice of intent to deny the permit before the county's action. It specifies that issuance of a county development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for the applicant's failure to fulfill its

[1] Section 120.51, F.S.
[2] See *Fla. Dep't of Transportation v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).
[3] Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.
[4] Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.
[5] Chapter 403, F.S., establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.

legal obligations. The PCS allows a county to require that an applicant obtain all state and federal permits before commencing development.

Section 3 creates s. 161.032, F.S., relating to application review and RAIs.

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 for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a "take" as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues permits for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.[6]

The PCS specifies how the Department of Environmental Protection (DEP) processes applications and issues RAIs. The PCS requires the DEP to issue any RAIs within 30 days of receiving an application. It limits the types of information that can be included in a RAI. Once the RAI is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the RAI is not authorized by law or rule, he or she may request the DEP to process the application. Additionally, the PCS allows the applicant 90 days to respond to a RAI and for one 90-day extension for applicants who notify the DEP. Further extensions may be granted for good cause. Failure of the applicant to sufficiently answer an RAI results in denial of the permit without prejudice.

The PCS authorizes the DEP to issue a permit in advance of an applicant securing an incidental take permit from the U.S. Fish and Wildlife Service if the permit contains conditions that prohibit the authorized activity from occurring until the incidental take permit is approved.

Section 4 amends s. 161.041, relating to permits required for beach and shore preservation.

Beach restoration and nourishment projects are permitted by the DEP pursuant to Rule 62B-41.008(1)(k)4.b., Florida Administrative Code (F.A.C.). Permit applications must include a quality control/assurance plan to ensure the sediment from the sand borrow area will meet the

[6] U.S. Fish and Wildlife Service, *Endangered Species Permits*, http://www.fws.gov/midwest/endangered/permits/hcp/index.html (last visited Apr. 8, 2011).

standards contained in Rule 62B-41-007(2)(j), F.A.C.[7] Some coastal counties conducting or planning beach nourishment projects have expressed concerns over the DEP's inconsistent rule interpretation on the percentage of silt, clay or colloids allowed in beach fill. The rule provides that silt, clay or colloids cannot make up more than five percent by weight of the borrowed sand.

Proviso language in the Fiscal Year 2008-2009 General Appropriations Act called for creation of a working group to evaluate the effectiveness of Florida's beach management program. The working group included the Secretary of Environmental Protection along with city and county representatives, experts, engineers and environmental stakeholders. The working group was tasked with coming up with recommendations to address funding challenges, increasing regulatory costs and the need for better program accountability.[8] One of the recommendations was to amend chapter 161, F.S., to include Legislative intent to simplify the permitting of maintenance nourishment projects previously permitted by the DEP under the Joint Coastal Permit process.[9]

The PCS provides that the incentive-based program created in new s. 403.0874, F.S., of this PCS, applies to all permits issued under chapter 161, F.S. It also prohibits the DEP from requiring higher standards than those contained in existing rules or statutes for sediment quality specifications or turbidity standards for beach restoration projects. Additionally, it prohibits the DEP from issuing guidelines that are enforced as standards without conducting rulemaking. The PCS directs the DEP to amend rules to streamline the permitting process for periodic beach maintenance projects when renourishment of the beach at issue has been previously permitted.

Section 5 amends s. 163.3180, F.S., relating to concurrency.

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) 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 a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.[10]

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), F.A.C., allows local governments to evaluate transportation

---

[7] Florida Dep't of Environmental Protection, *Guidelines for Preparing Sediment Quality Control / Quality Assurance Plans for Submittal to the Florida Department of Environmental Protection*, available at http://www.dep.state.fl.us/beaches/publications/pdf/QCQAPlan9-09.pdf (last visited Apr. 8, 2011).

[8] Beach Management Working Group, *Recommendations of the Beach Management Working Group* (on file with the Senate Committee on Environmental Preservation and Conservation).

[9] *Id.* at 7.

[10] Florida Dep't of Community Affairs, *Division of Community Planning*, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm (last visited Mar. 27, 2011).

concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.[11]

The Florida Department of Transportation (DOT) is responsible for establishing level-of-service 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.

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or "*de minimis*" are exempted from concurrency, where certain criteria are met. There are two alternatives:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit."[12] To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

The PCS provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and

[11] *Id.*
[12] Section 163.31801(15)(a), F.S.

associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is proximate to regionally significant road and rail transportation facilities; and
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 6 amends s. 166.033, F.S., relating to municipal development permits.

This section of the PCS is substantially similar to section two of the PCS, except it addresses municipalities instead of counties. The PCS prohibits a municipality from making processing of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations. The PCS allows a municipality to require that an applicant obtain all state and federal permits before commencing development.

Section 7 amends s. 258.397, F.S., relating to the Biscayne Bay Aquatic Preserve.

Florida has 41 aquatic preserves, encompassing approximately 2 million acres. Biscayne Bay Aquatic preserve is located in Southeast Florida in Miami-Dade and Monroe Counties. Its boundaries, management authorities, and rules are established in Rule 18-18, F.A.C.[13] The Board of Trustees of the Internal Improvement Trust Fund (Board) may not convey sovereignty submerged lands within the preserve except upon a showing of extreme hardship by the applicant and that the conveyance is in the public interest. There are no exceptions for municipal projects. In addition, dredging and filling activities are restricted to four activities:

- For public navigation, public necessity or preservation of the bay;
- For enhancement of the quality and utility of the preserve;
- For creation and maintenance of marinas, piers and docks and their associated activities as long as the Board makes a specific finding that the dredge and fill activities will not adversely affect the quality and utility of the preserve; and
- For the purpose of eliminating public health hazards, stagnant waters, islands and spoil banks, if the dredging will enhance the aesthetic and environmental quality and utility of the preserve.

The PCS exempts a municipal applicant from having to show extreme hardship for a proposed project, although the Board must still find the project is in the public interest. The PCS also

[13] Florida Dep't of Environmental Protection, *About the Biscayne Bay Aquatic Preserve*, http://www.dep.state.fl.us/coastal/sites/biscayne/info.htm (last visited Apr. 9, 2011).

expands specified dredge and fill activities to allow for creation of public waterfront promenades.

Section 8 amends s. 373.026, F.S., relating to DEP powers and duties and self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self-certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing, repairing, and adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[14]

In addition, the water management districts (WMD) allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[15] interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project 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.

The PCS requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits, if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 9 amends s. 373.413, F.S., relating to permits for construction or alteration that affect management and storage of surface waters.

The PCS requires that the "Florida Incentive-based Permitting Act," created in this PCS, applies to permits for construction or alteration of water management systems issued under this section of the Florida Statutes.

---

[14] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Mar. 26, 2011).

[15] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf (last visited Mar. 26, 2011).

Section 10 amends s. 373.4137, F.S., relating to the mitigation requirement for specified transportation projects.

Enacted in 1996, s. 373.4137, F.S., directs the DOT to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The DOT creates escrow accounts with the DEP or a WMD for its mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., are also able to create escrow accounts with the WMDs and the DEP for their mitigation requirements.

On a annual basis, the DOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over or under transfer of funds.

The PCS provides Legislative intent that mitigation credits for transportation projects must be purchased from private mitigation banks, or if not available, through any other mitigation options that satisfy state and federal requirements. The requirement that private mitigation banks be used first also applies to mitigation plans submitted pursuant to s. 373.4137(4), F.S. In determining the activities to include in the plans, the WMDs are required to purchase mitigation credits from a private or public mitigation bank. Consideration of other mitigation options shall not be included in the plan even if they are more cost-effective. The PCS makes it optional for transportation authorities to participate in the program. It provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD will have continuing responsibility for the mitigation project. Lastly, it allows the DOT, a transportation authority or a WMD to unilaterally exclude specific projects from the mitigation plan.

Section 11 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

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 RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request that the agency process the application if he or she believes that an RAI is not authorized by law or rule. 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, or limitation to the number of times the agency may request additional information.

The PCS prohibits the DEP or a WMD from requesting more than two RAIs unless the applicant waives this limitation in writing. If the applicant does not respond to a RAI within 90 days, or a different time frame if agreed upon with the DEP or a WMD, the application is considered withdrawn. The PCS also shortens the time frame that permits must be notice for a proposed agency action from 90 days to 60. Additionally, the PCS prohibits an agency from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 12 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[16]

For activities occurring in "waters of the United States" in Florida, including wetlands, the Federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).[17] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[18] although the focus of that legislation is primarily maintaining navigable waters.[19] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the state Environmental Resource Permit (ERP)[20] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[21]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

---

[16] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Mar. 28, 2011).
[17] 33 U.S.C. §§ 1251-1387.
[18] 33 U.S.C. § 403.
[19] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Mar. 28, 2011).
[20] *See generally* ch. 373, Part IV, F.S.
[21] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Mar. 28, 2011).

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorization for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[22] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The PCS requires the DEP to obtain an expanded SPGP or a series of regional general permits from the Corps for activities in waters similar in nature that will only cause minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Where appropriate, the SPGP program should be used to eliminate the need for a separate individual approval from the Corps.

The PCS directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The PCS authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the SPGP is at least as protective as existing state and federal laws. The PCS would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

The PCS also removes obsolete language requiring the DEP to report to the Legislature on how to consolidate federal and state wetland permitting functions.

Section 13 amends s. 373.41492, F.S., relating to mitigation for mining activities within the Miami-Dade County Lake Belt.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning; these issues include the quality of the rock; thickness of overburden; water table levels, and sinkhole conditions. The most economically advantageous deposits of aggregate materials are located in 79 square miles in Northwest Miami-Dade County known as the Lake Belt. The Lake Belt is distinct in that it has been identified as the highest concentration of the highest quality aggregate indigenous to Florida. Nearly all aggregates mined in Florida are used instate.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. The Lake Belt Plan protects the Everglades from encroaching development while maintaining the numerous economic benefits of the state's limestone industry. Under the plan, the Lake Belt

[22] *Id. at* 20.

limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the Corps.

In 2008 Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately $350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately $16.2 million in rockmining fees. About $9.8 million has been spent on planning and design, and about $6.4 million remains, of which $3 million is committed to the current design contract.

The PCS adds seepage mitigation projects, as authorized in an ERP, to the various activities that can be funded by the Miami-Dade County Lake Belt water treatment plant upgrade fee. Those projects may include hydrological structures. It defines "proceeds of the fee" to mean all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees; and provides that the amount deducted for administrative costs may not exceed three percent of the total revenues collected and may equal only those costs attributable to the fees.

The PCS provides that beginning January 1, 2012, and ending either December 31, 2017 or upon issuance of Water Quality Certification for Phase II mining activities, whichever occurs sooner, proceeds from the water treatment plant upgrade fee, less administrative costs, must be redirected to South Florida WMD and deposited into the Lake Belt Mitigation Trust Fund. Also, beginning January 1, 2018 this same fee is to be returned to Miami-Dade County for activities authorized under this section.

The PCS provides that the proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund must only be used to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an ERP issued by DEP for mining activities within the Miami-Dade County Lake Belt Area.

Section 14 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and rules authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments.[23] Local governments are entitled to request delegation authority from the DEP for a variety of programs and the DEP has authority to approve those delegations. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is

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

permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.[24] Currently, only Broward County has a received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to "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
- 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.[25]

According to the statute, delegation includes the applicability of chapter 120, F. S., (the APA), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

The PCS requires any county having a population of 200,000 or more, or a municipality that has local pollution control programs regulating wetlands within its geographic boundary and serving populations of more than 100,000, to apply for delegation of ERP authority on or before Jun 1, 2012. Local governments that fail to receive delegation of all or part of ERP authority within one year or June 1, 2013, may not require permits that are substantially similar to the requirements needed to obtain an ERP from the DEP or a WMD. The PCS includes a grandfather clause for local governments that receive ERP delegation by June 1, 2012.

The PCS specifies that the DEP is responsible for all ERP delegations to local governments. The DEP must approve or deny the application with one year of receipt. If a delegation is denied, a challenge to the denial tolls the one year deadline until the issue is resolved. The PCS also prohibits a WMD from regulating activities subject to a delegated authority unless specifically required to do so in a delegation agreement.

The PCS does not prohibit or limit a local government from regulating wetlands or surface waters after June 1, 2012, if it receives delegation of all or part of ERP authority within one year of application. If an application is denied, the same tolling provision applies until the issue is resolved.

Section 15 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

---

[24] Florida Dep't of Environmental Protection, *Delegations*, available at http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf (last visited Mar. 26, 2011).

[25] Rule 62-344, F.A.C., 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.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The PCS provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The PCS allows applicants who were previously denied coverage to reapply.

Section 16 amends s. 380.06, F.S., relating to solid mineral mining activities.

Section 380.06, F.S., provides for 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 local government.[26] Regional planning councils assist the developer by coordinating multi-agency developments of regional impact (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 DRIs for compliance with state law and to identify th regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.[27]

The PCS exempts any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from DRI review. Any proposed changes to any previously approved solid mineral mine DRI's development orders having vested rights will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.[28] Any previously approved solid mineral mine DRI development orders will continue to be effective unless rescinded by the developer. The PCS also provides that all local government regulations of proposed solid mineral mines or addition, expansion or change to solid mineral mines remain in effect.

Section 17 amends s. 403.1838, F.S., relating to the small community sewer construction act.

[26] Section 380.06(1), F.S.
[27] Section 380.06(24), F.S.
[28] Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design, and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The PCS increases the population size to 10,000 or fewer to qualify as a financially disadvantaged small community.

Section 18 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(t), F.S., a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility, also called an inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.[29] The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[30]

The PCS specifies that any inland multimodal facility that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

[29] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Mar. 26, 2011).
[30] Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Mar. 26, 2011).

Section 19 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

"Zone of Discharge" is defined in Rule 62-520.200(27), F.A.C. It means "a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded." Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

> The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

Further, Rule 62-520.200(10), F.A.C., defines "existing installation" as:

> [A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations don't have a permit or groundwater monitoring plan. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The PCS authorizes zones of discharge to groundwater from the property boundary to the base of the uppermost aquifer or a specifically designated aquifer or aquifers. Discharges occurring within a zone of discharge or on land that is over a zone of discharge do not create liability under chapters 373 or 376 for site cleanup. The PCS also specifies that exceedances of soil cleanup target levels do not constitute a basis for enforcement or site cleanup.

Section 20 amends s. 403.087, F.S., relating to revocation of permits.

Currently, the DEP may revoke permits for the following reasons:
- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[31]

[31] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person

The PCS allows the DEP to revoke a permit if the permit holder failed to submit required operational reports or other information that directly relate to the permit and has refused to correct or cure such violations when requested to do so. It also clarifies that the DEP may revoke a permit when a permit holder has refused a lawful inspection at a specific permitted facility.

Section 21 creates s. 403.0874, F.S., relating to the "Florida Incentive Based Permitting Act."

There were several bills introduced during the 2007 Regular Session that addressed incentive-based permitting.[32] Ultimately, none passed. Currently, the DEP has no comprehensive program to reward those in the regulated community who consistently meet or exceed their permit requirements, although having a record of compliance may lead to increased permit durations in some instances.[33] However, the DEP does not consistently consider applicants' past violations or compliance when reviewing requests for new permits.

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility. In addition to listed permit requirements, pursuant to Rule 62-4.070(5), F.A.C., the DEP must consider environmental violations of the applicant, at any location in the state, when determining whether the applicant has provided the necessary "reasonable assurance" that it will be able to meet the permit requirements. However, the rule does not specify exactly which violations may be considered, leading to inconsistent application throughout the DEP's permitting programs.

Within certain individual program areas of the DEP, additional rules or statutes narrow the scope of Rule 62-620.320, F.A.C. For example, s. 403.707(8), F.S., authorizes the DEP to deny a permit application for a solid waste management facility if an applicant has repeatedly violated statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and is deemed to be irresponsible, as defined by Rule 62-701.320(3)(b), F.A.C. For wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination.[34] For ERPs, the DEP considers specific ERP rule and permit violations.[35] Similar to Rule 62-620.320, F.A.C., none of these programmatic rules or statutes provide guidance as to what type of violations should be considered or how far back into an applicant's history the DEP should review.

Additionally, under s. 403.0611, F.S., the DEP has statutory authority to adopt alternative permitting programs on a pilot project basis. The Legislature directed the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution. To date the DEP has not implemented a pilot program under this section.

---

obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

[32] See SB 738, HB 297 and HB 7171 (2007 Reg. Session).

[33] See s. 403.087(3), F.S.

[34] See Rule 62-620.320, F.A.C.

[35] See Rule 40B-400.104(2), F.A.C.

In June of 2000, the EPA established the National Environmental Performance Track program. The EPA discontinued the program in March 2009.[36] The last year data are available for the program is 2007. The goal of the program was for government to complement existing programs with tools and strategies that protected people and the environment, reduced cost and spurred technological innovation.[37] Benefits of membership included exclusive regulatory and administrative benefits, reduced routine inspections, and public recognition.[38]

The PCS creates s. 403.0874, F.S., the "Florida Incentive-based Permitting Act." It establishes the Legislature's finding that the DEP should consider a permit applicant's site-specific and program-specific history of compliance when considering whether to issue, renew, amend or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This PCS applies to all persons and regulated activities subject to permitting requirements of chs. 161, 373, and 403, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However, it does not apply to environmental permitting or authorization laws that regulate zoning, growth management or land use. Additionally, it does not apply where its implementation would jeopardize the state's delegation or assumption of federal law or permit programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system or project, for which a permit, certification or authorization is required under chs. 161, 373 and 403, F.S.

The PCS directs the DEP to consider permit applicants' compliance histories for 10 years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least eight of the 10 years prior; or
- Have conducted the same regulated activity at a different site within the state for at least eight of the last 10 years prior; and
- Not have been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge (ALJ) or civil or criminal court found the applicant violated any environmental law or rule or otherwise been subject to an administrative settlement or consent order that established a violation of an applicable law or rule; and
- Demonstrate that during the 10-year compliance history period, the implementation of activities or practices that reduced discharges or emissions, reduced impacts to public lands or natural resources, and implemented voluntary environmental performance programs.

[36] U.S. Environmental Protection Agency, Letter to Performance Track Partners, available at http://www.epa.gov/performancetrack/downloads/PTClosure_MEMO_CKent.pdf (last visited Mar. 26, 2011).
[37] U.S. Environmental Protection Agency, *National Environmental Performance Track*, available at http://www.epa.gov/performancetrack/ (last visited Mar. 26, 2011).
[38] *Id.*

The PCS requires that an applicant must request applicable compliance incentives at the time of application submittal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 30 days after the application is filed and final agency action shall be taken no later than 60 days after the application is deemed complete;
- Priority review of permit applications;
- Reduced number of routine compliance inspections;
- No more than two requests for additional information under s. 120.60, F.S.; and
- Longer permit durations.

Furthermore, the PCS allows the DEP adopt additional incentives by rule, which are binding on the WMDs and any local government that has been delegated or assumed a regulatory program to which the incentive-based permitting program applies. The PCS also contains a savings clause related to an applicant's responsibility to provide assurances and to the DEP's, a WMD's or a local government's ability to consider factors when evaluating an application.

Section 22 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The PCS clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

Section 23 amends 403.707, F.S., relating to permitting of solid waste disposal.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by DEP. Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP

under this chapter or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The PCS allows an entity that is authorized by a permit or exemption to dispose of its own waste on its own property and to also dispose of the waste in other new areas of the property without further express authorization if the new areas are properly monitored. It also provides that permits issued to a solid waste management facility with a leachate control system will have a 20-year term, which applies to all solid waste management facilitates that obtain an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 24 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[39] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes,
- Installation and repair of riprap at the base of existing seawalls,
- Installation of culverts associated with stormwater discharge facilities, and
- Construction and modification of certain utility and public roadway construction activities.

The PCS directs the DEP to create a general permit for construction, alteration, and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale;
- The project does not:
  - Cause adverse water quantity or flooding to receiving waters or adjacent lands;
  - Cause adverse impacts to existing surface water storage and conveyance capabilities;
  - Cause violations of state water quality standards;
  - Cause adverse impacts to the maintenance of surface or groundwater levels or surface water flows or a work of a WMD; and
- The water management system design plans are signed and sealed by a registered professional.

[39] Section 403.814(1), F.S.

Section 25 amends 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

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., 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 50 jobs; or
- Create 25 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.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. 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.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- 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; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ's recommended order is not the final state agency action unless the

participating agencies of the state opt at the preliminary hearing conference to allow the ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for 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; or
- 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.

The PCS revises the structure and process for expedited permitting of targeted industries. It substitutes the Secretary of DEP, or his or her designee, for OTTED. It clarifies that commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs qualify for expedited review. The PCS requires regional teams to be established through the execution of a project-specific MOA. It also clarifies that subsection 403.973(14), F.S., applies to permits issued by the department pursuant to a federal program, but that the DEP, not the Governor, issues the final order for those permits. Finally, the PCS provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 26 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[40]

[40] U.S. Department of Energy's website: http://www.eere.energy.gov/afdc/incentives_laws_security.html.

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent. There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The bill provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The bill provided that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The PCS provides that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted above.

Section 27 creates an unnumbered section of law relating to the installation of fuel tank upgrades.

Rule 62-761.510, F.A.C., provides deadlines for Category-A and Category-B petroleum storage tank systems to meet the standards for secondary containment, Category-C storage tank systems by certain dates. The DEP has been regulating both underground and aboveground petroleum storage tank systems since 1983.[41]

The PCS extends the deadline to December 31, 2012, for entities to comply with petroleum tank upgrade requirements for those who bought their facilities in 2009. The extension applies even if the owners of the facilities have previously signed consent orders requiring earlier upgrades.

Section 28 amends 373.414, revising rules of the DEP relating to the Uniform Mitigation Assessment Method (UMAM) for activities in surface waters and wetlands.

Subsection 373.414(18), F.S., directed the DEP and WMDs, in cooperation with local governments and the relevant federal agencies, to develop a state-wide method to determine the amount of mitigation required for regulatory permits. The UMAM rule[42] went into effect on February 2, 2004. Although only the DEP was required to adopt the method by rule, it is now the sole means for all state entities (DEP, WMDs, local governments and other governmental entities) to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to determine mitigation bank credits awarded and debited.

The rule is not intended to affect the many other aspects of wetland regulation that remain intact in current rules, such as ascertaining that the direct and secondary impacts have been reduced or eliminated, that the project does not result in unacceptable cumulative impacts, the appropriateness of the mitigation, and so forth.

Although UMAM is used by all state and local agencies, the state cannot require the Corps to use it. Nonetheless, the Corps' Jacksonville office conducted a study of UMAM and recommended that it be used for federal wetland regulatory purposes starting August 1, 2005. The Corps continues to use its time lag table rather than the state's time lag table for assessment purposes. The time lag associated with mitigation means the period of time between when the wetland functions are lost at an impact site and when the mitigation site has achieved the outcome that was scored as part of the UMAM process.

The PCS incorporates many aspects of the UMAM rule into subsection 373.414(18), F.S. The PCS provides clearer DEP oversight to ensure consistency in statewide application. It also allows any mitigation banker to apply for a reassessment of mitigation credits pursuant to the proposed changes if the request is made no later than September 30, 2011.

Section 29 amends 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Mitigation Banks are permitted by the DEP or a WMD that have adopted rules, based on the location of the bank and activity-based considerations. Additionally, a mitigation bank requires

[41] Florida Dep't of Environmental Protection, *Storage Tank Regulation*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Apr. 11, 2011).
[42] See Rule 62-345, F.A.C.

federal authorization in the form of a Mitigation Bank Instrument signed by several agencies, with the Corps as lead. The mitigation bank applicant is strongly encouraged to have at least one pre-application meeting with an interagency Mitigation Bank Review Team, consisting of all state and federal agencies that will be involved in processing the permit. Both public and private entities are eligible to set up and operate mitigation banks if they can show sufficient legal interest in the property to operate the bank and can meet financial responsibility requirements. Special provisions apply to WMD and DEP operated banks.[43]

The PCS provides, for mitigation banks subject to UMAM, that the number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using the UMAM adopted pursuant to 373.414(18), F.S. It strikes language allowing for methodologies other than UMAM.

Section 30 amends 218.075, F.S., relating to reduction or waiver of permit fees.

The DEP and WMDs are required to reduce or waive permit fees for counties and municipalities with certain populations.

The PCS adds entities created by special act or local ordinance or interlocal agreement of local governments to the list of those who qualify for reduced or waive permit fees.

Section 31 provides an effective of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[43] Florida Dep't of Environmental Protection, *Mitigation and Mitigation Banking*, http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (last visited Apr. 10, 2011).

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs for those who qualify for incentive-based rewards will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated at this point.

Defendant parties to administrative hearings may save on litigation costs as their burdens will be reduced. Alternatively, the costs for interested third parties in administrative hearings will likely increase as their burdens for persuasion and evidence will be increased or shifted to them.

Private mitigation banks should see significant increases in revenue as they will be the required method of mitigation for many projects. However, the total impact cannot be determined at this time.

C. Government Sector Impact:

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. Conversely, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues.

The WMDs have expressed concerns that the changes to the DOT mitigation funding scheme may leave them with insufficient funds to provide mitigation for DOT projects. Further, mitigation costs for certain DOT projects may increase because of the requirement that private mitigation banks be used regardless of whether they are the most cost-effective mitigation option available.

The DEP and the WMDs will see reduced permit revenue from the additional exemption applied to entities that qualify for a reduction or waiver of permit processing fees.

Miami-Dade County has expressed reservations with the provision that diverts rockmining fees away from drinking water treatment facilities Even though the diversion is for a limited time (until December 31, 2017), it will adversely impact the county's ability to design and construct the additional treatment facilities to protect the drinking water supply in the area. This fee is $0.15 per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

In section 14 of the PCS, local governments who do not receive delegation of ERP authority within one year or by June 1, 2013 are prohibited from requiring substantially similar permits. The dates can be inconsistently applied. Questions may arise as to what date applies and under what circumstances.

VII. Related Issues:

In section 11 of the PCS, language that notice of agency action must be provided within 60 days will create an unintended problem for the DEP. For some types of smaller projects, the DEP does not issue notices of intent to issue, but simply issues the permit with the notice of rights included on the permit. This language could be construed to mean that the DEP must always issue an intent to issue, which would actually slow down the permitting process.

VIII. Additional Information:

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

None.

B. Amendments:

None.

305080

LEGISLATIVE ACTION

Senate . House

.

.

.

.

.

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 645 - 650

and insert:

(4) A state agency may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit approval from any other local agency unless the pending project is inconsistent with the local comprehensive plan or land development code as determined by the local government. Notwithstanding the foregoing, a state agency may not require a permit or approval from another agency of the state or a federal agency without


305080

explicit statutory authority to require such permit or approval from another state or federal agency.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 43 and 44

insert:

prohibiting conditional approvals for a permit or completing a pending application unless certain conditions are met;

714966

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 1212 and 1213
insert:

Section 23. Section 403.70611, Florida Statutes, is amended to read:

403.70611 Requirements relating to solid waste disposal facility permitting.—

(1) Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider construction of a waste-to-energy facility as an alternative to additional landfill space.

714966

(2) The Department of Environmental Protection may not issue a construction permit for a new privately owned Class I landfill that will be located within 75 miles of an active Class I landfill.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 100 and 101

insert:

403.70611, F.S.; prohibiting the Department of Environmental Protection from issuing construction permit for certain Class I landfills; amending s.

123930

LEGISLATIVE ACTION

Senate . House

.

.

.

.

.

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 184 - 209.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to environmental permitting;

721256

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 945 - 976.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 119 - 123

and insert:

the general permits;

754684

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 188 - 209

and insert:

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding shall be for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration shall be made by entering into evidence the application and material

754684

submitted to the agency in support of the application, the agency's staff report and notice of intent to approve the permit, license, or conceptual approval, which the petitioner shall rebut with competent and substantial evidence. The permit applicant and agency may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 3 - 7

and insert:

s. 120.569, F.S.; requiring that a nonapplicant who petitions to challenge an agency's issuance of a license or conceptual approval rebut with competent and substantial evidence certain evidence submitted by the agency;

951764

LEGISLATIVE ACTION

Senate . House

.

.

.

.

.

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete lines 470 - 473

and insert:

districts, including the use of mitigation banks or any other mitigation options that satisfy state and federal requirements ~~established~~

887788

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete lines 570 - 571
and insert:
the districts shall utilize

891122

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete line 582

and insert:

districts shall also consider the purchase of credits from

588044

LEGISLATIVE ACTION

Senate . House

.

.

.

.

.

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete lines 586 - 589
and insert:
would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost effective mitigation option. The mitigation plan shall be submitted to the

528796

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete line 552

and insert:

the Department of Transportation's or the participating authorities'

975266

EP.EP.04006

Proposed Committee Substitute by the Committee on Environmental Preservation and Conservation

A bill to be entitled

An act relating to environmental permitting; amending s. 120.569, F.S.; providing that a nonapplicant who petitions to challenge an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 125;022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 161.032, F.S.; requiring that the Department of Environmental Protection review an application for certain permits under the Beach and Shore Preservation Act and request additional information within a specified time; requiring that the department proceed to process the application if the applicant believes that a request for additional information is not authorized by law or rule; extending the period for an applicant to timely submit additional information, notwithstanding certain provisions of the Administrative Procedure Act; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from another state or federal agency as a


975266

EP.EP.04006

condition of approving a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; amending s. 258.397, F.S.; specifying additional uses and activities in the Biscayne Bay Aquatic Preserve; amending s. 373.026, F.S.; requiring the Department of Environmental Protection to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; requiring that a request by the department or a water management district that an applicant provide additional information be accompanied by the signature of specified officials of the department or district; reducing the time within which the department or district must approve or deny a permit application; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; requiring that the department report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring that certain counties or municipalities apply by a specified date to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district

may not regulate activities that are subject to the delegation; clarifying the authority of local governments to adopt pollution control programs under certain conditions; amending s. 376.30715, F.S.; providing that the transfer of a contaminated site from an owner to a child or corporate entity does not disqualify the site from the innocent victim petroleum storage system restoration financial assistance program; authorizing certain applicants to reapply for financial assistance; amending s. 403.061, F.S.; requiring the Department of Environmental Protection to establish reasonable zones of mixing for discharges into specified waters; providing that certain discharges do not create liability for site cleanup; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; creating s. 403.0874, F.S.; providing a short title; providing legislative findings and intent with respect to the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered is issuing or renewing a permit; providing criteria to be considered by the Department of Environmental Protection; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authorizing the department to make additional incentives available under certain circumstances;

providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring the department to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties; amending ss. 161.041 and 373.413, F.S.; specifying that s. 403.0874, F.S., authorizing expedited permitting, applies to provisions governing beaches and shores and surface water management and storage; amending s. 403.087, F.S.; revising conditions under which the department is authorized to revoke a permit; amending s. 403.1838, F.S.; revising the term "financially disadvantaged small community"; amending s. 403.7045, F.S.; specifying that sludge from industrial waste treatment works is not solid wastes; amending s. 403.707, F.S.; revising provisions relating to disposal by persons of solid waste resulting from their own activities on their property; clarifying what constitutes "addressed by a groundwater monitoring plan" with regard to certain effects on groundwater and surface waters; authorizing the disposal of solid waste over a zone of discharge; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; extending the duration of all permits issued to solid waste management facilities; providing applicability; providing that certain disposal of solid waste does not create liability for site cleanup; amending s. 403.814, F.S.; providing for issuance of general

permits for the construction, alteration, and maintenance of certain surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 380.06, F.S.; exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from provisions governing developments of regional impact; providing certain exceptions; amending ss. 380.0657 and 403.973, F.S.; authorizing expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review and certification of a business as eligible for expedited permitting by the Secretary of Environmental Protection rather than by the Office of Tourism, Trade, and Economic Development; amending s.163.3180, F.S.; providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities; specifying project criteria; amending s. 373.4137, F.S., relating to transportation projects; revising legislative findings with respect to the options for mitigation; revising certain requirements for determining the habitat impacts of transportation projects; requiring water management districts to

purchase credits from public or private mitigation banks under certain conditions; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan; amending s. 373.41492, F.S.; imposing a mitigation fee for mining activities within the Miami-Dade County Lake Belt Area; authorizing the use of proceeds from the water treatment plant upgrade fee to pay for specified mitigation projects; requiring proceeds from the water treatment plant upgrade fee to be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund for a specified period of time; providing, after that period, for the proceeds of the water treatment plant upgrade fee to return to being transferred by the Department of Revenue to a trust fund established by Miami-Dade County for specified purposes; conforming a term; amending s. 526.203, F.S.; authorizing the sale of unblended fuels for certain uses; revising rules of the Department of Environmental Protection relating to the uniform mitigation assessment method for activities in surface waters and wetlands; directing the Department of Environmental Protection to make additional changes to conform; providing for reassessment of mitigation banks under certain conditions; amending s. 373.4136, F.S.; clarifying the

use of the uniform mitigation assessment method for mitigation credits for the establishment and operation of mitigation banks; providing for fuel tank system deadlines and exemption; amending s. 373.414, F.S.; revising uniform mitigation assessment method implementation; amending s. 218.075, F.S; revising requirements regarding reducing or waiving permit processing fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (p) is added to subsection (2) of section 120.569, Florida Statutes, to read:

120.569 Decisions which affect substantial interests.—

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding shall be for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by simply entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the license, permit, or

conceptual approval has the ultimate burden of persuasion and has the burden of going forward to prove its case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence. The permit applicant and agency may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of processing a development permit that an applicant obtain a permit or approval from any other state or federal agency unless the agency has issued a notice of intent to deny the federal or state permit before the county action on the local development permit. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or a federal agency. A county may attach such a disclaimer to the issuance of

a development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Section 161.032, Florida Statutes, is created to read:

161.032 Application review; request for additional information.—

(1) Within 30 days after receipt of an application for a permit under this part, the department shall review the application and shall request submission of any additional information the department is permitted by law to require. If the applicant believes that a request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review such additional information and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes that the request for such additional information by the department is not authorized by law or rule, the department, at the applicant's request, shall proceed to process the permit application.

(2) Notwithstanding s. 120.60, an applicant for a permit under this part has 90 days after the date of a timely request for additional information to submit such information. If an applicant requires more than 90 days in order to respond to a request for additional information, the applicant must notify

the agency processing the permit application in writing of the circumstances, at which time the application shall be held in active status for no more than one additional period of up to 90 days. Additional extensions may be granted for good cause shown by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the timely requested information by the applicable deadline shall result in denial of the application without prejudice.

(3) Notwithstanding any other provision of law, the department is authorized to issue permits pursuant to this part in advance of the issuance of any incidental take authorization as provided for in the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition requiring that authorized activities shall not commence until such incidental take authorization is issued.

Section 4. Subsections (5), (6), and (7) are added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

(5) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to all permits issued under this chapter.

(6) The department may not require as a permit condition sediment quality specifications or turbidity standards more stringent than those provided for in this chapter, chapter 373, or the Florida Administrative Code. The department may not issue guidelines that are enforceable as standards without going through the rulemaking process pursuant to chapter 120.

(7) As an incentive for permit applicants, it is the

Legislature's intent to simplify the permitting for periodic maintenance of beach renourishment projects previously permitted and restored under the Joint Coastal Permit process pursuant to this section or part IV of chapter 373. The department shall amend chapters 62B-41 and 62B-49, Florida Administrative Code, as necessary, to streamline the permitting process for periodic maintenance projects.

Section 5. Subsection (10) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(10)(a) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted

level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(b) There shall be a limited exemption from the Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with the local comprehensive plan as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may, if developed as proposed, include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The limited exemption applies if the project meets all of the following criteria:

1. The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150 percent within the first 5 years of the project's development.

2. The project, upon completion, would result in the creation of at least 50 full-time jobs.

3. The project is compatible with existing and planned adjacent land uses.

4. The project is consistent with local and regional

economic development goals or plans.

5. The project is proximate to regionally significant road and rail transportation facilities.

6. The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average.

Section 6. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of processing a development permit, that an applicant obtain a permit or approval from any other state or federal agency unless the agency has issued a notice of intent to deny the federal or state permit before the municipal action on the local development permit. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or federal agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit

condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 7. Paragraphs (a) and (b) of subsection (3) of section 258.397, Florida Statutes, are amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands in the preserve shall be approved or consummated by the board of trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the board of trustees that such sale, transfer, or lease is in the public interest. A municipal applicant proposing a project under this subsection is exempt from showing extreme hardship.

(b) No further dredging or filling of submerged lands of the preserve shall be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for preservation of the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions, including the placement of riprap, as may be necessary to enhance the


975266

EP.EP.04006

quality and utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such projects may only be authorized upon a specific finding by the board of trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality and utility of the preserve. This subparagraph shall not authorize the connection of upland canals to the waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, islands, and spoil banks, the dredging of which would enhance the aesthetic and environmental quality and utility of the preserve and be clearly in the public interest as determined by the board of trustees.

5. Such dredging and filling as is necessary for the creation of public waterfront promenades.

Any dredging or filling under this subsection or improvements under subsection (5) shall be approved only after public notice as provided by s. 253.115.

Section 8. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or

interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of applicable professional certification.

Section 9. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(6) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to permits issued under this section.

Section 10. Subsections (1) and (2), paragraph (c) of subsection (3), and subsection (4) of section 373.4137, Florida Statutes, are amended to read:

Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department


975266

EP.EP.04006

of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the water management districts, through ~~including~~ the use of privately owned mitigation banks where available or, if a privately owned mitigation bank is not available, through any other mitigation options that satisfy state and federal requirements ~~established pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future

transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities

established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C.s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the

project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the department or the participating transportation authorities' obligation will be satisfied, the water management district will have continuing responsibility for the mitigation project, and the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Prior to March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, private mitigation banks shall be used when available, and, when a mitigation bank is not available, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters,


975266

EP.EP.04006

to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall ~~also consider the~~ purchase ~~of~~ credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project~~, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost effective mitigation option~~. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days prior to approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or ~~and~~ the appropriate water management district ~~that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process. The water management district may choose to exclude a project in whole or~~


975266

EP.EP.04006

~~in part if the district is unable to identify mitigation that would offset impacts of the project~~.

Section 11. Section 373.4141, Florida Statutes, is amended to read:

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. The department or water management district may request additional information no more than twice, unless the applicant waives this limitation in writing. If the applicant does not provide a written response to the second request for additional information within 90 days, or another time period mutually agreed upon between the applicant and department or water management district, the application shall be considered withdrawn.

(2) A permit shall be subject to a notice of proposed agency action ~~approved or denied~~ within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

(4) A state agency or agency of the state may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit or approval from any other local, state or federal agency without explicit statutory authority to require such permit or approval from another agency.

Section 12. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this


975266

EP.EP.04006

section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by~~


975266

EP.EP.04006

~~the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92 -500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this~~

~~section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) Nothing in this section shall be construed to preclude the department from pursuing a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

Section 13. Subsections (2) and (3), paragraph (a) of subsection (4), and paragraph (a) of subsection (6) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or

manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 12 cents per ton beginning January 1, 2007; 18 cents per ton beginning January 1, 2008; 24 cents per ton beginning January 1, 2009; and 45 cents per ton beginning close of business December 31, 2011. To pay for seepage mitigation projects, including hydrological structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this subsection for each ton of limerock and sand sold shall be 15 cents per ton beginning on January 1, 2007, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand


975266

EP.EP.04006

miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.

(3) The mitigation fee and the water treatment plant upgrade fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the water treatment plant upgrade fees must be accompanied by a form prescribed by the Department of Revenue. The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2012, and ending December 31, 2017, or upon issuance of water quality certification by the department for mining activities within Phase II of the Miami-Dade County Lake Belt Plan, whichever occurs sooner, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2018, the proceeds of the water treatment plant


975266

EP.EP.04006

upgrade fee, less administrative costs, must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a). ~~As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.~~

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation and water treatment plant upgrade fees authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fees may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not apply to the fees imposed by this section.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such

mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. The proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area. The proceeds of the water treatment plant upgrade fee that are transferred to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County. As used in this section, the terms "upgrade a water treatment plant" or "water treatment plant upgrade" means those works necessary to treat or filter a surface water source or supply or both.

Section 14. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (6), (7), and (8), respectively, and new subsections (3), (4),

and (5) are added to that section, to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county having a population of 200,000 or more or a municipality having a population of 100,000 or more that implements a local pollution control program regulating all or a portion of the wetlands or surface waters throughout its geographic boundary must apply for delegation of state environmental resource permitting authority on or before June 1, 2012. Any such county or municipality that fails to receive delegation of all or a portion of permitting authority within one year, or by June 1, 2013, may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit. Any county or municipality that has already received delegation prior to June 1, 2012 need not reapply.

(4) The department shall be responsible for all delegations of the environmental resource permitting program to local governments. The department must grant or deny any application for delegation submitted by a county or municipality meeting the criteria in section (3) within one year after receipt of said application. In the event an application for delegation is denied, any available legal challenge to said denial shall toll the one year preemption deadline until resolution of the legal challenge. Upon delegation to a qualified local government, the department and water management district may not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.


975266

EP.EP.04006

(5) This section does not prohibit or limit a local government meeting the criteria in subsection (3) from regulating wetlands or surface waters after June 1, 2012, if the local government receives delegation of all or a portion of state environmental resource permitting authority within one year after application. In the event an application for delegation is denied, any available legal challenge to said denial shall toll the one year preemption deadline until resolution of the legal challenge.

(6) Notwithstanding subsections (3), (4), and (5) above, none of the provisions in this section shall apply to environmental resource permitting or reclamation applications for solid mineral mining and nothing in this section shall prohibit the application of local government regulations to any new solid mineral mine, or to any proposed addition to, expansion of, or change to an existing solid mineral mine.

(7) ~~(3)~~ Delegation of authority shall be approved if the local government meets the requirements set forth in rule 62-344, Florida Administrative Code. This section does not require a local government to seek delegation of the environmental resource permit program.

(8) ~~(4)~~ This section does not affect or modify land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(9) ~~(5)~~ The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Florida Electric

Transmission Line Siting Act, regulated under this part.

Section 15. Section 376.30715, Florida Statutes, is amended to read:

376.30715 Innocent victim petroleum storage system restoration.—A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6) (a). For purposes of this section, the term "acquired" means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse or child of the owner, a surviving spouse or child of the owner in trust or free of trust, ~~or~~ a revocable trust created for the benefit of the settlor, or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance pursuant to s. 376.305(6) and applicants previously denied coverage may reapply. Eligible sites shall be ranked in accordance with s. 376.3071(5).

Section 16. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from the provisions of this section. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights is not subject to further review or approval as a development of regional impact or notice of proposed change


975266

EP.EP.04006

review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer. All local government regulations of proposed solid mineral mines shall be applicable to any new solid mineral mine or to any proposed addition to, expansion of, or change to an existing solid mineral mine.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 17. Subsection (2) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For purposes of this section, the

term "financially disadvantaged small community" means a municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer ~~less~~, according to the latest decennial census or ~~and~~ a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

Section 18. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility, receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 19. Subsection (11) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary

noise. The department is authorized to establish reasonable zones of mixing for discharges into waters. For existing installations as defined by rule 62-520.200(10), Florida Administrative Code, effective July 12, 2009, zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of the uppermost aquifer or a specifically designated aquifer or aquifers. Exceedances of primary and secondary groundwater standards that occur within a zone of discharge shall not create liability pursuant to this chapter or chapter 376 for site clean-up, nor shall exceedances of soil cleanup target levels be a basis for enforcement or site clean-up.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) No mixing zone for point source discharges shall be permitted in Outstanding Florida Waters except for:

1. Sources that have received permits from the department

prior to April 1, 1982, or the date of designation, whichever is later;

2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act;

3. Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary; and

4. The discharge of demineralization concentrate which has been determined permittable under s. 403.0882 and which meets the specific provisions of s. 403.0882(4)(a) and (b), if the proposed discharge is clearly in the public interest.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1). The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 20. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation;

prohibition; penalty.—

(7) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder has:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for such permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions;

(c) ~~Has~~ Failed to submit operational reports or other information required by department rule which directly relate to such permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 21. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based permitting program.—

(1) SHORT TITLE.—This section may be cited as the "Florida Incentive-based Permitting Act."

(2) FINDINGS AND INTENT.—The Legislature finds and declares that the department should consider compliance history when deciding whether to issue, renew, amend, or modify a permit by evaluating an applicant's site-specific and program-specific relevant aggregate compliance history. Persons having a history of complying with applicable permits or state environmental laws and rules are eligible for permitting benefits, including, but not limited to, expedited permit application reviews, longer duration permit periods, decreased announced compliance

inspections, and other similar regulatory and compliance incentives to encourage and reward such persons for their environmental performance.

(3) APPLICABILITY.—

(a) This section applies to all persons and regulated activities that are subject to the permitting requirements of chapter 161, chapter 373, or this chapter, and all other applicable state or federal laws that govern activities for the purpose of protecting the environment or the public health from pollution or contamination.

(b) Notwithstanding paragraph (a), this section does not apply to certain permit actions or environmental permitting laws such as:

1. Environmental permitting or authorization laws that regulate activities for the purpose of zoning, growth management, or land use; or

2. Any federal law or program delegated or assumed by the state to the extent that implementation of this section, or any part of this section, would jeopardize the ability of the state to retain such delegation or assumption.

(c) As used in this section, a the term "regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chapter 161, chapter 373, or this chapter.

(4) COMPLIANCE HISTORY.—The compliance history period shall be the 10 years before the date any permit or renewal application is received by the department. Any person is entitled to the incentives under paragraph (5)(a) if:

(a)1. The applicant has conducted the regulated activity at the same site for which the permit or renewal is sought for at least 8 of the 10 years before the date the permit application is received by the department; or

2. The applicant has conducted the same regulated activity at a different site within the state for at least 8 of the 10 years before the date the permit or renewal application is received by the department; and

(b) In the 10 years before the date the permit or renewal application is received by the department or water management district, the applicant has not been subject to a final administrative order or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant violated the applicable law or rule, and has not been the subject of an administrative settlement or consent orders, whether formal or informal, that established a violation of an applicable law or rule; and

(c) The applicant can demonstrate during a 10-year compliance history period the implementation of activities or practices that resulted in:

1. Reductions in actual or permitted discharges or emissions;

2. Reductions in the impacts of regulated activities on public lands or natural resources; and

3. Implementation of voluntary environmental performance programs, such as environmental management systems.

(5) COMPLIANCE INCENTIVES.—

(a) An applicant shall request all applicable incentives at the time of application submittal. Unless otherwise prohibited

by state or federal law, rule, or regulation, and if the applicant meets all other applicable criteria for the issuance of a permit or authorization, an applicant is entitled to the following incentives:

1. Expedited reviews on permit actions, including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that the initial request for additional information regarding a permit application shall be issued no later than 30 days after the application is filed, and final agency action shall be taken no later than 60 days after the application is deemed complete;

2. Priority review of permit application;

3. Reduced number of routine compliance inspections;

4. No more than two requests for additional information under s. 120.60; and

5. Longer permit period durations.

(6) RULEMAKING.—The department may adopt additional incentives by rule. Such incentives shall be based on, and proportional to, actions taken by the applicant to reduce the applicant's impacts on human health and the environment beyond those actions required by law. The department's rules adopted under this section are binding on the water management districts and any local government that has been delegated or assumed a regulatory program to which this section applies.

(7) SAVINGS PROVISION.—This section is not intended to affect an applicant's responsibility to provide reasonable assurance of compliance with applicable statutes and rules as a condition precedent to issuance of a permit, nor to limit factors the department, a water management district, or a

delegated program can consider in evaluating a permit application under existing law.

Section 22. Paragraph (f) of subsection (1) of section 403.7045, Florida Statutes, is amended to read:

403.7045 Application of act and integration with other acts.—

(1) The following wastes or activities shall not be regulated pursuant to this act:

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined under s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not considered to be solid waste as defined in s. 403.703(32).

Section 23. Subsections (2) and (3) of section 403.707, Florida Statutes, are amended to read:

403.707 Permits.—

(2) Except as provided in s. 403.722(6), a permit under


975266

EP.EP.04006

this section is not required for the following~~, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders~~:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if the environmental effects of such disposal on groundwater and surface waters are:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by


975266

EP.EP.04006

the department. If the facility has a permit authorizing disposal activity, new areas where solid waste is disposed of that are being monitored by an existing or modified ground water monitoring plan are not required to be specifically authorized by permit or certification.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person’s responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities. Additionally, any permit issued to a

975266

EP.EP.04006

solid waste management facility that is designed with a leachate control system meeting department requirements shall be for a term of 20 years, or should the applicant request, a lesser number of years. Existing permit fees for qualifying solid waste management facilities shall be prorated to the permit term authorized by this section. This provision applies to all qualifying solid waste management facilities that apply for an operating or construction permit, or renew an existing operating or construction permit, on or after July 1, 2012.

Section 24. Subsection (12) is added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(f) The project is not part of a larger common plan of development or sale.


975266

EP.EP.04006

(g) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; and

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086; and

(h) The surface water management system design plans must be signed and sealed by a Florida registered professional who shall attest that the system will perform and function as proposed and has been designed in accordance with appropriate, generally accepted performance standards and scientific principles.

Section 25. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (14), (15), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or


975266

EP.EP.04006

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the office and~~ the respective heads of the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government

shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan


975266

EP.EP.04006

amendment for that agency;

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a

project that provides a net ecosystem benefit.

(14)(a) Challenges to state agency action in the expedited permitting process for projects processed under this section are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and shall not constitute the final action of the state agency. In those proceedings where the action of only one agency of the state other than the Department of Environmental Protection is challenged, the agency of the state shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. For ~~This paragraph does not apply to~~ the issuance of department licenses required under any federally delegated or approved permit program~~. In such instances,~~ the department, and not the Governor, shall enter the final order. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. If a participating local


975266

EP.EP.04006

government agrees to participate in the summary hearing provisions of s. 120.574 for purposes of review of local government comprehensive plan amendments, s. 163.3184(9) and (10) apply.

(b) Projects identified in paragraph (3) (f) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(15) The office, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities <u>that the office has certified to be</u> eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the office, the agencies shall provide to the office a statement as to each site’s necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(18) The office, working with the Rural Economic Development Initiative ~~and the agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan


975266

EP.EP.04006

amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 26. Subsection (5) is added to section 526.203, Florida Statutes, to read:

526.203 Renewable fuel standard.—

(5) This section does not prohibit the sale of unblended fuels for the uses exempted under subsection (3).

Section 27. The installation of fuel tank upgrades to secondary containment systems shall be completed by the deadlines specified in rule 62-761.510, Florida Administrative Code, Table UST. However, notwithstanding any agreements to the contrary, any fuel service station that changed ownership interest through a bona fide sale of the property between January 1, 2009, and December 31, 2009, is not required to complete the upgrades described in Rule 62-761.510, Florida Administrative Code, Table UST, until December 31, 2012.

Section 28. Subsection (18) of section 373.414, Florida Statutes, is amended to read:

373.414 Additional criteria for activities in surface waters and wetlands.—

(18) The department in coordination with ~~and~~ each water management district responsible for implementation of the


975266

EP.EP.04006

environmental resource permitting program shall develop a uniform mitigation assessment method for wetlands and other surface waters. ~~The department shall adopt the uniform mitigation assessment method by rule no later than July 31, 2002~~. The rule shall provide an exclusive, uniform and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters, and, once effective, shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts. Except when evaluating mitigation bank applications, which must meet the criteria of 373.4136(1), the rule shall be applied only after determining that the mitigation is appropriate to offset the values and functions of wetlands and surface waters to be adversely impacted by the proposed activity. 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. A water management district and any other governmental agency subject to chapter 120 may apply the uniform mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It


975266

EP.EP.04006

shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection~~, and, when applied to mitigation banks, the factors listed in s. 373.4136(4)~~. The uniform mitigation assessment method shall also account for the expected time-lag associated with offsetting impacts and the degree of risk associated with the proposed mitigation. The uniform mitigation assessment method shall account for different ecological communities in different areas of the state. In developing the uniform mitigation assessment method, the department and water management districts shall consult with approved local programs under s. 403.182 which have an established mitigation program for wetlands or other surface waters. The department and water management districts shall consider the recommendations submitted by such approved local programs, including any recommendations relating to the adoption by the department and water management districts of any uniform mitigation methodology that has been adopted and used by an approved local program in its established mitigation program for wetlands or other surface waters. Environmental resource permitting rules may establish categories of permits or thresholds for minor impacts under which the use of the uniform mitigation assessment method will not be required. The application of the uniform mitigation assessment method is not subject to s. 70.001. In the event the rule establishing the uniform mitigation assessment method is


975266

EP.EP.04006

deemed to be invalid, the applicable rules related to establishing needed mitigation in existence prior to the adoption of the uniform mitigation assessment method, including those adopted by a county which is an approved local program under s. 403.182, and the method described in paragraph (b) for existing mitigation banks, shall be authorized for use by the department, water management districts, local governments, and other state agencies.

(a) In developing the uniform mitigation assessment method, the department shall seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

(b) An entity which has received a mitigation bank permit prior to the adoption of the uniform mitigation assessment method shall have impact sites assessed, for the purpose of deducting bank credits, using the credit assessment method, including any functional assessment methodology, which was in place when the bank was permitted; unless the entity elects to have its credits redetermined, and thereafter have its credits deducted, using the uniform mitigation assessment method.

(c) The department shall ensure statewide coordination and consistency in the interpretation and application of the uniform mitigation assessment method rule by providing programmatic training and guidance to staff of the department, water management districts, and local governments. To ensure that the uniform mitigation assessment method rule is interpreted and applied uniformly, the department’s interpretation, guidance, and approach to applying the uniform mitigation assessment

method rule shall govern.

(d) Applicants shall submit the information needed to perform the assessment required under the uniform mitigation assessment method rule, and may submit the qualitative characterization and quantitative assessment for each assessment area specified by the rule. The reviewing agency shall review that information and notify the applicant of any inadequacy in the information or application of the assessment method.

(e) When conducting qualitative characterization of artificial wetlands and other surface waters, such as borrow pits, ditches, and canals under the uniform mitigation assessment method rule, the native community type to which it is most analogous in function shall be used as a reference. For wetlands or other surface waters that have been altered from their native community type, the historic community type at that location shall be used as a reference, unless the alteration has been of such a degree and extent that a different native community type is now present and self sustaining.

(f) When conducting qualitative characterization of upland mitigation assessment areas, the characterization shall include functions that the upland assessment area provides to the fish and wildlife of the associated wetland or other surface waters. These functions shall be considered and accounted for when scoring the upland assessment area for preservation, enhancement, or restoration.

(g) Preservation mitigation, as used in the uniform mitigation assessment method, means the protection of important wetland, other surface water or upland ecosystems (predominantly in their existing condition and absent restoration, creation or

enhancement) from adverse impacts by placing a conservation easement or other comparable land use restriction over the property or by donation of fee simple interest in the property. Preservation may include a management plan for perpetual protection of the area. The preservation adjustment factor set forth in rule 62-345.500(3), Florida Administrative Code, shall only apply to preservation mitigation.

(h) When assessing a preservation mitigation assessment area under the uniform mitigation assessment method the following shall apply:

1. "Without preservation" shall consider the reasonably anticipated loss of functions and values provided by the assessment area, assuming the area is not preserved.

2. Each of the considerations of the preservation adjustment factor specified in Rule 62-345.500(3) (a), Florida Administrative Code shall be equally weighted and scored on a scale from 0 (no value) to 0.2 (optimal value). In addition, the minimum preservation adjustment factor shall be 0.2.

(i) The location and landscape support scores, pursuant to rule 62-345.500, Florida Administrative Code, may change in the "with mitigation" or "with impact" condition in both upland and wetland assessment areas, regardless of the initial community structure or water environment scores.

(j) When a mitigation plan for creation, restoration, or enhancement includes a preservation mechanism (such as a conservation easement), the "with mitigation" assessment of that creation, restoration, or enhancement shall consider, and the scores shall reflect, the benefits of that preservation mechanism, and the benefits of that preservation mechanism shall

not be scored separately.

(k) Any entity holding a mitigation bank permit that was evaluated under the uniform mitigation assessment method prior to the effective date of paragraphs (c)-(j), may submit a permit modification request to the relevant permitting agency to have such mitigation bank reassessed pursuant to the provisions set forth in this section, and the relevant permitting agency shall reassess such mitigation bank, if such request is filed with that agency no later than September 30, 2011.

Section 29. Subsection (4) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.—

(4) MITIGATION CREDITS.—After evaluating the information submitted by the applicant for a mitigation bank permit and assessing the proposed mitigation bank pursuant to the criteria in this section, the department or water management district shall award a number of mitigation credits to a proposed mitigation bank or phase of such mitigation bank. An entity establishing and operating a mitigation bank may apply to modify the mitigation bank permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. The number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using the uniform mitigation assessment method adopted pursuant to s. 373.414(18). ~~a functional assessment~~


975266

EP.EP.04006

~~methodology~~. ~~In determining the degree of improvement in ecological value, each of the following factors, at a minimum, shall be evaluated:~~

~~(a) The extent to which target hydrologic regimes can be achieved and maintained.~~

~~(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.~~

~~(c) The proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired through governmental or nonprofit land acquisition programs for environmental conservation; and the extent to which the mitigation bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.~~

~~(d) The quality and quantity of wetland or upland restoration, enhancement, preservation, or creation.~~

~~(e) The ecological and hydrological relationship between wetlands and uplands in the mitigation bank.~~

~~(f) The extent to which the mitigation bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats that are unique for that mitigation service area.~~

~~(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.~~

~~(h) The extent to which lands to be preserved would be~~


975266

EP.EP.04006

~~adversely affected if they were not preserved.~~

~~(i) Any special designation or classification of the affected waters and lands.~~

Section 30. Section 218.075, Florida Statutes, is amended to read:

218.075 Reduction or waiver of permit processing fees.—Notwithstanding any other provision of law, the Department of Environmental Protection and the water management districts shall reduce or waive permit processing fees for counties with a population of 50,000 or less on April 1, 1994, until such counties exceed a population of 75,000 and municipalities with a population of 25,000 or less, or an entity created by special act or local ordinance or interlocal agreement of such counties or municipalities or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers shall be 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:

(1) Per capita taxable value is less than the statewide average for the current fiscal year;

(2) Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;

(3) Any condition specified in s. 218.503(1) which results in the county or municipality being in a state of financial emergency;

(4) Ad valorem operating millage rate for the current


975266

EP.EP.04006

fiscal year is greater than 8 mills; or

(5) 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 or an entity created by special act or local ordinance or interlocal agreement 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.

Section 31. This act shall take effect July 1, 2011.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1404
INTRODUCER:	Senator Evers
SUBJECT:	Environmental Permitting
DATE:	March 27, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Pre-meeting**
2.			CA	
3.			AG	
4.			BC	
5.				
6.				

I. Summary:

The bill creates, amends and redefines provisions relating to environmental permitting. It addresses development, construction, operating and building permits; permit application requirements and procedures, including waivers, variances, revocation and challenges; local government comprehensive plans and plan amendments; state programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, biofuel and renewable energy facilities and phosphate mining activities. The bill revises requirements for demonstrating injury in order to seek relief under the Environmental Protection Act and shifts the burden of persuasion and evidence to third parties in certain instances. Specifically the bill:

- Authorizes notice of the procedure to obtain an administrative hearing or judicial review to be available online;
- Shifts the burden of persuasion and evidence to third parties who wish to challenge an agency's decision for those challenges arising under chs. 373, 378 or 403, F.S;
- Shortens the time frame an agency has to approve or deny a completed application for a license from 90 to 60 days; allows an applicant to request his or her application be processed if he or she believes all legally required information has been provided;
- Directs local governments to include the construction and operation of bio-fuel processing and renewable energy facilities as a valid industrial, agricultural and silviculture use permitted within those land use categories of their local comprehensive plans; directs local governments to establish an expedited review process of comprehensive plan amendments if these types of facilities are not in their original comprehensive plans;

- Prohibits a local government or 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;
- Allows applicants 90 days to respond to requests for additional information (RAI);
- Redefines the term "affected person" to require persons affected by local government comprehensive plans to demonstrate that their substantial interests will be affected in order to challenge comprehensive plan changes;
- Redefines the term "aggrieved or adversely affected party" to require that any local government or person must demonstrate that their substantial interest will be affected in order to be granted standing to challenge the development order;
- Prohibits a county from requiring an applicant to obtain state and federal permits as a condition of approval for development permits;
- Expands the use of Internet-based self-certification services for exemptions and general permits;
- Expands the process for submitting RAIs;
- Provides for an expanded state programmatic general permit;
- Provides for incentive-based environmental permitting;
- Requires certain counties/municipalities with certain populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting;
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action;
- Provides expedited permitting for inland multimodal facilities; clarifies creation of regional action teams for expedited permitting for certain businesses; establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects; and
- Clarifies mitigation requirements for impacts related to transportation projects.

This bill substantially amends ss. 120.569, 120.60, 125.022, 161.041, 163.3180, 163.3184, 163.3215, 166.033, 373.026, 373.413, 373.4137, 373.4141, 373.4144, 373.441, 380.06, 380.0657, 403.061, 403.087, 403.412, 403.814, 403.973, Florida Statutes.

This bill creates ss. 125.0112, 161.032, 166.0447, 403.0874, Florida Statutes.

II. Present Situation:

There is no aspect of our daily lives that is not affected by environmental permitting, from the air we breathe and the water we drink to the roads we drive on and the homes we live in. Some activities require permits from the federal government on down to the local level and can be incredibly complex, such as airports. Others have such little cumulative impacts that they qualify for online self-certification, such as small single family docks.

The affected permitting and other areas proposed to be amended by this bill are diverse. They include administrative hearing challenge requirements and burdens, shortened timelines to review applications, biofuels manufacturing, limiting redundant federal, state and local permitting authority, agency requests for additional information (RAIs), burdens and requirements on challenging parties, Internet-based self-certification, state programmatic general

permitting, delegation of permitting authority, incentive-based permitting, general permits for surface water management systems, solid mineral mining, expedited permitting for economic development projects and mitigation. Each programmatic area will be addressed in the "effect of proposed changes" of the bill to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 120.569, F.S., relating to challenges under the Administrative Procedures Act.[1]

Chapter 120, F.S., is called the Administrative Procedures Act (APA). It regulates how executive branch agencies adopt rules used to implement and administer their powers and duties. Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency. Pursuant to this section, a party is entitled to notification of any order, including a final order, arising from an administrative hearing. Notice must be mailed to each party or his or her attorney to the address on record. Additionally, under current law, when a party challenges an agency action, the applicant has the ultimate burden of persuasion and evidence in a de novo administrative proceeding.[2]

The bill provides that the notice described above, including any items required by the uniform rules adopted pursuant to s. 120,54(5), F.S.,[3] may be provided via a link to a publicly available Internet website. The bill also provides that for any proceeding arising under Chapters 373,[4] 378,[5] or 403,[6] F.S., if a third party nonapplicant challenges an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence. This shifts the burden from the applicant to the third party nonapplicant who challenges the agency's action.

Section 2 amends s. 120.60, F.S., relating to reviews of license applications.

Pursuant to s. 120.60(1), F.S., upon receipt of an application for a license, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and RAI. The application is not deemed "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

[1] Section 120.51, F.S.
[2] See *Fla. Dep't of Transportation v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).
[3] Section 120.54(5), F.S., provides that the Administration Commission shall adopt one or more sets of uniform rules of procedure for agencies to comply with. These rules shall establish procedures that comply with the requirements of Chapter 120. The uniform rules shall be the rules of procedure for each agency subject to Chapter 120 unless the Administration Commission grants an exception to the agency.
[4] Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.
[5] Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.
[6] Chapter 403, F.S., establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.

request additional information. Under s. 373.4141, F.S., if a permit applicant believes an agency's RAI is not permitted by law or rule, he or she may request that the agency process the permit application. Such language is not included for licensing purposes.

The bill requires agencies to approve or deny licenses within 60 days instead of 90 days. It also allows a license applicant to request that a license application be processed if he or she believes the agency's RAI is not permitted by law or rule.

Section 3 creates s. 125.0112, F.S., relating to biofuels and renewable energy in counties.

Section 125.01, F.S., establishes the powers and duties of county governments. These powers and duties include the power to prepare and enforce comprehensive plans for development of the county and to establish, coordinate, and enforce zoning and business regulations as necessary to protect the public.[7] Section 166.021, F.S., establishes the powers of municipalities. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. Municipal purpose is defined as any activity or power which may be exercised by the state or its political subdivisions. Accordingly, municipalities may adopt and enforce land use regulations as well.

To make biofuel processing and biomass generating facilities[8] economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced. Transporting the feedstock can reduce the cost-effectiveness of these facilities. Currently, local land use plans may require a property owner to obtain an amendment to the local comprehensive plan, a special exemption, or some similar relief to allow the combination of industrial, agricultural, and/or silvicultural land uses on a site that the owner intends to use for purposes of biofuel processing or biomass generation.

The alternative state review process contained in s. 163.32465, F.S., is an expedited review process for local comprehensive plan amendments for urbanized areas. The Legislature's intent was to provide for less state oversight of comprehensive plan amendments from local governments in urban areas because of their planning capabilities and resources.

This statute states that "The Legislature finds and declares that this state's urban areas require a reduced level of state oversight because of their high degree of urbanization and the planning capabilities and resources of many of their local governments. An alternative state review process that is adequate to protect issues of regional or statewide importance should be created for appropriate local governments in these areas. Further, the Legislature finds that development, including urban infill and redevelopment, should be encouraged in these urban areas. The

[7] *See* s. 125.01(g) and (h), F.S.

[8] Section 366.91(2)(d), F.S., defines renewable energy as, "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." Section 366.91(2)(a), F.S., defines "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food process, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

Legislature finds that an alternative process for amending local comprehensive plans in these areas should be established with an objective of streamlining the process and recognizing local responsibility and accountability."

The bill directs counties to define the construction and operation of a biofuels processing facility or renewable energy generating facility as a valid industrial, agricultural and silvicultural use in their comprehensive plans. If no such definition exists in counties' comprehensive plans, the bill directs counties to establish a review process to determine the necessary changes to allow for construction of these types of facilities. The bill does not require counties to adopt the changes to allow these types of facilities. If, however, a county wishes to amend its comprehensive plan, the amendment is eligible for the alternative state review process pursuant to s. 163.32465, F.S. It also clarifies that construction and operation of one of these types of facilities does not affect the remainder property's classification as agricultural.

Section 4 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The bill prohibits a county from making approval of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a county development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for the applicant's failure to fulfill its legal obligations. The bill allows a county to require that an applicant obtain all state and federal permits before commencing development.

Section 5 creates s. 161.032, F.S., relating to application review and RAIs.

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 for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The bill specifies how the Department of Environmental Protection (DEP) processes applications and issues RAIs. The bill requires the DEP to issue any RAIs within 30 days of receiving an application. It limits the types of information that can be included in a RAI. Once the RAI is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the RAI is not authorized by law or rule, he or she may request the DEP to process the application. Additionally, the bill allows the

applicant 90 days to respond to a RAI and for one 90-day extension for applicants who notify the DEP. Further extensions may be granted for good cause.

Section 6 amends s. 163.3184, F.S., relating to challenges to comprehensive plan amendments.

The Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act (GMA),[9] was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management bills in 2005 and 2009. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. Pursuant to s. 163.3184, F.S., an "affected person" has the right to petition for an administrative hearing to challenge a Department of Community Affair's (DCA) decision on a comprehensive plan or plan amendment.[10] "Affected person" is defined as:

- The local government that adopted the plan or plan amendment,
- Persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment,
- Owners of real property abutting real property that is the subject of a future land use map, and
- An adjoining local government that can demonstrate substantial impacts to areas within its jurisdiction.

The bill adds an additional requirement to the "affected person" definition before persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment would receive this status. Under the bill, parties have to demonstrate that their "substantial interests" are being affected by the comprehensive plan or plan amendment before they can challenge a plan or plan amendment. This change will reduce the number of people determined to be "affected persons."

Section 7 amends s. 163.3215, F.S., relating to standing to enforce local comprehensive plans through development orders.

The GMA gives no regulatory authority to the DCA to enforce local government development order consistency with the provisions of its adopted comprehensive plans. However, s. 163.3215, F.S., provides that any "aggrieved or adversely affected party" can challenge a development order issued by a local government that is believed to be inconsistent with the adopted comprehensive plan. An "aggrieved or adversely affected party" must show he or she has an interest protected by a local government's comprehensive plan, and this interest will be adversely affected in some degree greater than the general public's interest. The term includes the owner, developer, or applicant for a development order.

The bill changes the definition of "aggrieved or adversely affected party" by requiring persons or local governments to demonstrate that their substantial interests will be affected by the development order before being granted this status. It also deletes language that allows for parties with lesser impacts to qualify for this status. This change will make it harder to attain

[9] *See* chapter 163, Part II, F.S.
[10] See s. 163.3184, F.S.

legal standing in challenges involving enforcement of local comprehensive plans through development orders.

Section 8 amends s. 166.033, F.S., relating to municipal development permits.

This section of the bill is substantially similar to section four of the bill, except it addresses municipalities instead of counties. The bill prohibits a municipality from making approval of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations. The bill allows a municipality to require that an applicant obtain all state and federal permits before commencing development.

Section 9 creates s. 166.0447, F.S., relating to biofuels and renewable energy in municipalities.

This section of the bill is substantially similar to section 3 of this bill, except it addresses municipalities instead of counties. The bill directs municipalities to define the construction and operation of a biofuels processing facility or renewable energy generating facility as a valid industrial, agricultural and silvicultural use in their comprehensive plans and for zoning purposes in their unincorporated areas. The bill prohibits municipalities from requiring operators of such facilities to obtain comprehensive plan amendments, rezoning, special exemptions, use permits, waivers, or variances. It prohibits municipalities from assessing any special fees in excess of $1000.00 for operation of a facility in a area zoned industrial, agricultural or silvicultural. The bill requires facilities to meet applicable building codes. It also clarifies that construction and operation of one of these types of facilities does not affect the remainder property's classification as agricultural.

Section 10 amends s. 373.026, F.S., relating to DEP powers and duties.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self-certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing, repairing, and adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[11]

[11] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Mar. 26, 2011).

In addition, the water management districts (WMDs) allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[12] interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project 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.

The bill requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits, if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 11 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

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 RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request that the agency process the application if he or she believes that an RAI is not authorized by law or rule. 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, or limitation to the number of times the agency may request additional information.

The bill requires a second RAI by the DEP or a WMD be signed by the supervisor of the project manager; a third by the division director who oversees the program area; a fourth by the assistant secretary of the DEP or the assistant executive director of the WMD; and beyond that, by the secretary of the DEP or the executive director of the WMD. The bill also shortens the time frame that permits must be approved or denied from 90 days to 60. Additionally, the bill requires local governments to approve or deny any permits that also need a state permit within 60 days of receiving the original application. Any application which is not approved or denied within 60 days is approved by default.

Section 12 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At

[12] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf (last visited Mar. 26, 2011).

times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[13]

For activities occurring in "waters of the United States" in Florida, including wetlands, the Federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).[14] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[15] although the focus of that legislation is primarily maintaining navigable waters.[16] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the state Environmental Resource Permit (ERP)[17] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[18]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorization for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[19] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

---

[13] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Mar. 28, 2011).
[14] 33 U.S.C. §§ 1251-1387.
[15] 33 U.S.C. § 403.
[16] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Mar. 28, 2011).
[17] *See generally* ch. 373, Part IV, F.S.
[18] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Mar. 28, 2011).
[19] *Id. at* 20.

The bill requires the DEP to obtain an expanded SPGP or a series of regional general permits from the Corps for activities in waters similar in nature that will only cause minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Where appropriate, the SPGP program should be used to eliminate the need for a separate individual approval from the Corps.

The bill directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the SPGP is at least as protective as existing state and federal laws. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

The bill also removes obsolete language requiring the DEP to report to the Legislature on how to consolidate federal and state wetland permitting functions.

Section 13 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and Florida Administrative Code (F.A.C.) sections authorize and provide procedures and considerations for the DEP to delegate the Environmental Resource Permit (ERP) program to local governments.[20] Local governments are entitled to request delegation authority from the DEP for a variety of programs. The DEP has authority to approve those delegations based on Florida law. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.[21] Currently, only Broward County has a received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to "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

[20] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.
[21] Florida Dep't of Environmental Protection, *Delegations*, available at http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf (last visited Mar. 26, 2011).

- 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.[22]

According to the statute, delegation includes the applicability of chapter 120, F. S., (the APA), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

The bill requires any county having a population of 75,000 or more, or a municipality that has local pollution control programs serving populations of more than 50,000, to apply for delegation of authority on or before Jun 1, 2012. Local governments that fail to apply for delegation of authority may not require permits that are similar, in part or in full, to the requirements needed to obtain an ERP from the DEP or the WMDs. The bill also prohibits the DEP and the WMDs from regulating the activities subject to the delegation within a jurisdiction unless regulation is required pursuant to the terms of the delegation agreement. This change will force local governments that meet the criteria to apply for ERP delegation or stop local permitting programs that are similar to the state ERP program.

Section 14 amends s. 403.061, F.S., to prohibit local governments from requiring a signature or other proof from DEP permit review staff that a project qualifies for a permit exemption or meets the permitting requirements of chs. 161, 253, 373 or 403, and self-certification permits. For more information about the present situation of this issue, see "Section 10" above.

Sections 15 creates s. 403.0874, F.S., relating to the "Florida Incentive Based Permitting Act."

There were several bills introduced during the 2007 Regular Session that addressed incentive-based permitting.[23] Ultimately, none passed. Currently, the DEP has no comprehensive program to reward those in the regulated community who consistently meet or exceed their permit requirements, although having a record of compliance may lead to increased permit durations in some instances.[24] However, the DEP does not consistently consider applicants' past violations or compliance when reviewing requests for new permits.

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility. In addition to listed permit requirements, pursuant to Rule 62-4.070(5), F.A.C., the DEP must consider environmental violations of the applicant, at any location in the state, when determining whether the applicant has provided the necessary "reasonable assurance" that it will be able to meet the permit requirements. However, the rule does not specify exactly which violations may be considered, leading to inconsistent application throughout the DEP's permitting programs.

[22] Chapter 62-344, F.A.C., 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.
[23] See SB 738, HB 297 and HB 7171 (2007 Reg. Session).
[24] See s. 403.087(3), F.S.

Within certain individual program areas of the DEP, additional rules or statutes narrow the scope of Rule 62-620.320, F.A.C. For example, s. 403.707(8), F.S., authorizes the DEP to deny a permit application for a solid waste management facility if an applicant has repeatedly violated statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and is deemed to be irresponsible, as defined by Rule 62-701.320(3)(b), F.A.C. For wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination.[25] For ERPs, the DEP considers specific ERP rule and permit violations.[26] Similar to Rule 62-620.320, F.A.C., none of these programmatic rules or statutes provide guidance as to what type of violations should be considered or how far back into an applicant's history the DEP should review.

Additionally, under s. 403.0611, F.S., the DEP has statutory authority to adopt alternative permitting programs on a pilot project basis. The Legislature directed the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution. To date the DEP has not implemented a pilot program under this section.

In June of 2000, the EPA established the National Environmental Performance Track program. The EPA discontinued the program in March 2009.[27] The last year data are available for the program is 2007. The goal of the program was for government to complement existing programs with tools and strategies that protected people and the environment, reduced cost and spurred technological innovation.[28] Benefits of membership included exclusive regulatory and administrative benefits, reduced routine inspections, and public recognition.[29]

The bill creates s. 403.0874, F.S., the "Florida Incentive-based Permitting Act." It establishes the Legislature's finding that the DEP should consider a permit applicant's site-specific and program-specific history of compliance when considering whether to issue, renew, amend, or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This bill applies to all persons and regulated activities subject to permitting requirements of chs. 161, 373, and 403, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However, it does not apply to environmental permitting or authorization laws that regulate zoning, growth management or land use. Additionally, it does not apply where its implementation would jeopardize the state's delegation or assumption of federal law or permit

[25] See Rule 62-620.320, F.A.C.
[26] See Rule 40B-400.104(2), F.A.C.
[27] U.S. Environmental Protection Agency, Letter to Performance Track Partners, available at http://www.epa.gov/performancetrack/downloads/PTClosure_MEMO_CKent.pdf (last visited Mar. 26, 2011).
[28] U.S. Environmental Protection Agency, *National Environmental Performance Track*, available at http://www.epa.gov/performancetrack/ (last visited Mar. 26, 2011).
[29] *Id.*

programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chs. 161, 373 and 403, F.S.

The DEP is directed to consider permit applicants' compliance history for five years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least four of the five years prior; or
- Have conducted the same regulated activity at a different site within the state for at least four of the last five years prior; and
- Have not been subject to a formal administrative or civil judgment or criminal conviction in the last five years where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

The bill requires that an applicant must request applicable compliance incentives at the time of submitting a permit application or renewal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 15 days after the application is filed and final agency action shall be taken no later than 45 days after the application is deemed complete;
- Priority review of permit applications;
- Reduced number of routine compliance inspections;
- No more than two requests for additional information under s. 120.60, F.S.; and
- Longer permit durations.

Furthermore, the DEP is directed to identify and provide additional incentives to applicants who have 10-year compliance histories that resulted in:

- Reductions in actual or permitted discharges or emissions; or
- Reductions in the impacts of regulated activities on public lands or natural resources; or
- Implementation of voluntary environmental performance programs, such as environmental management systems; and
- The applicant having not been subject in the 10 years before the renewal application to a formal administrative or civil judgment or criminal conviction where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant meeting any of the first three criteria and the fourth criterion during the 10-year compliance history is entitled to automatic renewals, if there are no substantial changes in permitted activities or circumstances, and reduced or waived application fees.

The DEP must implement rulemaking within six months after the act becomes law. The DEP may identify additional incentives and programs consistent with this section's purpose. All rules must produce certain compliance incentives established in this bill. Rules adopted pursuant to this section are binding on the WMDs and any local government, which has delegated authority or assumed a regulatory program covered under this section.

Sections 16 and 17 amend ss. 161.041 and 373.413, F.S., respectively. They are conforming sections for the "Florida Incentive-based Permitting Act" and apply to beach and shore preservation and construction or alteration of affecting surface waters.

Section 18 amends 403.087, F.S., relating to permit revocation.

Currently, the DEP may revoke permits for the following reasons:
- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[30]

There is no requirement that the permit holder knowingly engaged in any of the four activities listed above. There is also no requirement that the violation directly relates to the permit at issue or that the DEP give the permit holder an opportunity to cure the cause of the violations.

The bill requires the DEP to prove that a permit holder knowingly violated any of the four conditions of the permit that may lead to revocation. It also requires the DEP to only look at the violations for the specific permit, or permitted facility, at issue. The bill allows the permit holder to correct the violation before the DEP revokes the permit.

Section 19 amends 403.412, F.S., relating to third party intervention in administrative proceedings.

Section 403.412, F.S., created the Environmental Protection Act of 1971 (Act). The Act permits the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief against:
- Any agency with the duty of enforcing laws, rules, and regulation for the protection of the environment of the state to compel enforcement; or
- Any person, including corporations, or governmental agencies to stop them from violating laws intended to protect the environment.

[30] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

The statute explicitly states no demonstration of special injury different in kind from the general public at large is required. The Florida Supreme Court has ruled that the act authorizes private citizens, both corporate and non-corporate, to institute a suit under the act without a showing of special injury (i.e. a violation that causes injury different both in kind and degree from that suffered by the public at large).[31] However, to state a cause of action under the act, it must appear that the question raised is real and not merely theoretical, and that the plaintiff has a bona fide and direct interest in the result. A mere allegation of an irreparable injury not sustained by any allegation of facts will not ordinarily warrant the granting of injunctive relief.

Before filing such a suit, the party must file with the appropriate agency a verified complaint describing the facts and explaining how the party is affected. This verified complaint is then forwarded by the agency to the parties charged with the violation. The agency has 30 days to take appropriate action before the complaining party can start court proceedings. If appropriate action is not taken within that 30 days the complaining party may institute suit.

In that suit, the court may add as a defendant, any agency who is responsible for enforcing the applicable environmental laws, rules, and regulations. However, a person cannot sue if the party charged with the violation is acting pursuant to a valid permit issued by the proper agency and is complying with that permit. The court may grant injunctive relief to stop the complained of activity and may also impose conditions on the defendant consistent with law and any rules or regulations adopted by any state or local environmental agency.

The prevailing party is entitled to costs and attorneys' fees. However, in an action involving a state NPDES permit, the court has discretions on whether to award attorneys' fees. If the court is doubtful about the plaintiff's ability to pay such costs and fees, the court may order the plaintiff to post a good and sufficient surety bond or cash.

In administrative, licensing, or other environmental proceedings, s. 403.12(5), F.S., grants the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state standing to intervene as a party. In order to intervene, a verified pleading must be filed asserting that the activity, conduct, or product to be licensed or permitted has or will have a negative effect on the environment of the state. The term "intervene," under s. 403.12, F.S., has been interpreted to mean that a party can initiate ss. 120.57 or s. 120.569, F.S., hearings in an administrative, licensing, or other environmental proceeding after notice of proposed agency action.

The APA allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. Under s. 120.52(1)(b)(8), F.S., "agency" is defined to include each entity described in chapter 380, F.S., which would include WMD governing boards. Administrative hearings involving disputed issues of fact are generally referred to the Division of Administrative Hearings (DOAH), comprised of an independent group of administrative law judges (ALJ), that hears cases involving most state agencies.

[31] *See Florida Wildlife Federation v. Dep't. of Environmental Regulation*, 390 So.2d 64 (Fla. 1980).

In a challenge to a rule under s. 120.56, F.S., any person substantially affected by a rule or proposed rule may seek a determination as to whether the proposed or existing agency rule is an invalid exercise of delegated legislative authority. In the case of proposed rules, an invalid determination may be based on constitutional grounds. The hearings are conducted by an ALJ in the same way as provided in ss. 120.569 and 120.57, F.S., discussed below.

Under s. 120.569, F.S., in adjudicatory cases, where a decision affects "substantial interests," the ALJ has the role of making findings of fact and drawing conclusions of law and providing a recommended order. The affected agency is responsible for entering a final order. Findings of fact by ALJs continue to be presumptively correct, and may not be lightly set aside by the agency. The ALJ conducts an evidentiary hearing and makes a determination as to the facts in question. These proceedings are less formal than court proceedings and function in most respects like a non-jury trial with an ALJ presiding. Section 120.57, F.S., sets out the procedures used. In a hearing involving disputed issues of material fact, an agency may enter a final order rejecting or modifying findings of fact upon review of the entire record and after stating with particularity that the findings were not based upon competent substantial evidence or did not comply with essential requirements of law. An agency may enter a final order rejecting or modifying conclusions of law over which it has substantive jurisdiction. The agency must state its reasons with particularity and must find that its substituted conclusion of law is at least as reasonable as the conclusion of law it rejected. Procedures applicable to cases not involving disputed issues of material fact are described in s. 120.57(2), F.S. Appellate review of agency actions is authorized by s. 120.68, F.S.

The bill removes language that specifically allows third parties to intervene without having to demonstrate a special injury different in kind than the general public. The change will make it more difficult for third parties to intervene in administrative proceedings to challenge an agency's actions in that they will have to prove a "special injury."

Section 20 amends s. 403.814, F.S., relating to general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[32] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes,
- Installation and repair of riprap at the base of existing seawalls,
- Installation of culverts associated with stormwater discharge facilities, and
- Construction and modification of certain utility and public roadway construction activities.

The bill allows the DEP to create a general permit for construction, alteration and maintenance of a surface water management system for up to 40 acres. If the DEP chooses to create a general permit for these types of systems, the system may be constructed without action by the DEP or a WMD if:

[32] Section 403.814(1), F.S.

- Design and calculations are certified by a professional engineer licensed under chapter 471, F.S.;
- It will not be located in surface waters or wetlands, as delineated in s. 373.421(1), F.S.;
- It will not cause water quantity impacts to receiving water and adjacent lands;
- It will not flood onsite or off-site property;
- It will not cause adverse impacts to surface water storage or conveyance;
- It will not cause water quality in receiving waters to violate applicable water quality standards or rules;
- It will not adversely impact groundwater levels or surface water flows;
- It will not adversely impact WMD works;
- It is not part of a larger plan of development or sale;
- It will comply with all NPDES requirements; and
- The professional engineer who is responsible for the design provides written notice to the DEP within 10 days of commencement of construction.

Additionally, the bill directs the DEP to create a general permit for construction, alteration, and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and
- The project is not part of a larger common plan of development or sale.

Section 21 amends s. 380.06, F.S., relating to mining activities.

Section 380.06, F.S., provides for 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 local government.[33] Regional planning councils assist the developer by coordinating multi-agency developments of regional impact (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 DRIs for compliance with state law and to identify th regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.[34]

The bill exempts any proposed phosphate mine and any proposed addition to, expansion of, or change to an existing phosphate mine from DRI review. Any proposed changes to any previously approved solid mineral mine DRI's development orders having vested rights will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or

[33] Section 380.06(1), F.S.
[34] Section 380.06(24), F.S.

approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.[35] Finally, any previously approved solid mineral mine DRI orders will continue to be effective unless rescinded by the developer.

Section 22 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.
The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(2)(t), F.S., a "target industry business" is defined as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility, also called an inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.[36] The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[37]

The bill allows for expedited permitting for any inland multimodal facility that receives and sends cargo to and from Florida's ports.

Section 23 amends 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

---

[35] Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.
[36] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Mar. 26, 2011).
[37] Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Mar. 26, 2011).

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., 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 50 jobs; or
- Create 25 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.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. 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;
- 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;
- 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; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's

recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for 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; or
- 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.

The bill revises the structure and process for expedited permitting of targeted industries. It substitutes the Secretary of DEP, or his or her designee, for OTTED. It clarifies that commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs qualify for expedited review. The bill requires regional teams to be established through the execution of a project-specific MOA. Finally, the bill provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 24 amends 163.3180, F.S., relating to concurrency.

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) 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 a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.[38]

[38] Florida Dep't of Community Affairs, *Division of Community Planning*, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm (last visited Mar. 27, 2011).

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), F.A.C., allows local governments to evaluate transportation concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.[39]

The Florida Department of Transportation (DOT) is responsible for establishing level-of-service 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.

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or "*de minimis*" are exempted from concurrency, where certain criteria are met. There are two alternatives:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit."[40] To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

The bill provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo

[39] *Id.*
[40] Section 163.31801(15)(a), F.S.

storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is proximate to regionally significant road and rail transportation facilities; and
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 25 amends s. 373.4137, F.S., relating to mitigation requirement for specified transportation projects.

Enacted in 1996, s. 373.4137, F.S., directs the Florida Department of Transportation (DOT) to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The DOT creates escrow accounts with the DEP or a WMD for its mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., are also able to create escrow accounts with the WMDs and the DEP for their mitigation requirements.

On a annual basis, the DOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over or under transfer of funds.

In addition to using mitigation banks to offset the adverse effects of transportation projects on wetlands, the bill provides for the use of any other mitigation options that satisfy state and federal requirements, including, but not limited to U.S. general compensatory mitigation requirements.[41] The bill makes it optional for transportation authorities to participate in the program. It provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD

[41] 33 U.F.R. s. 332.3(b), available at http://edocket.access.gpo.gov/cfr_2009/julqtr/pdf/33cfr332.3.pdf (last visited Mar. 27, 2011).

will have continuing responsibility for the mitigation project. Lastly, it allows the DOT, a transportation authority or a WMD to elect to exclude specific projects from the mitigation plan.

Section 26 provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 ($1.88 million for FY 2010-2011), are exempt.

If a local government's comprehensive plan does not allow for construction of a biofuels processing facility, this bill requires the local government to establish a review process for that purpose. It is not known how many local governments allow for the construction of biofuels processing facilities in their comprehensive plans. Further examination is necessary to determine the number of impacted local governments and the costs associated with establishing a review process. However, given the relative complexity of these facilities, this requirement is likely a mandate and will require a two-thirds vote and a finding of important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs for those who qualify for incentive-based rewards will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated at this point.

Defendant parties to administrative hearings may also save on litigation costs as their burdens will be reduced. Alternatively, the costs for interested third parties in administrative hearings will likely increase as their burdens for persuasion, evidence and simply proving their substantial interests will be increased or shifted to them.

The DEP's reduced permit revocation ability may result in the loss of federal delegation of some programs. Such a loss would increase permit application costs for private parties because both federal and state permits would subsequently be required. The DEP has indicated that permit costs may actually increase due to time limitations on both permit application reviews and RAIs. However, the impact of this cannot be determined to be either positive or negative as there are too many variables.

Biofuel and renewable energy facilities should have an easier path get permitted at the local government level. This impact cannot be determined but may be significant in both savings and economic development.

C. Government Sector Impact:

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. When a local government is a permit applicant, increased availability of web-based authorizations should reduce permitting costs, as well as reduced permit approval times, will save them money, but only if overall permit times are actually reduced. Additionally, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues.

According to the DEP's analysis, reducing the time frame for permit application reviews, RAIs, and ultimately approval or denial will require the addition of 100 full-time equivalents (FTE). The DEP has calculated that each FTE's entire compensation package is between $50,000 to $75,000. The total impact to the DEP to implement all requirements of this bill in FTEs alone will be between $5 million to $7.5 million annually. If the DEP's assessment is accurate, similar costs could also affect the WMDs permitting costs. Lastly, the WMDs have expressed concerns that the changes to the DOT mitigation funding scheme may leave them with insufficient funds to provide mitigation for DOT projects.

VI. Technical Deficiencies:

In section 21, the bill applies the DRI review exemption inconsistently to both "phosphate" and "solid mineral" mines. While all phosphate mines are solid mineral mines, not all solid mineral

mines are phosphate mines. This may cause confusion as to how the bill is applied to mining activities.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

464514

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (p) is added to subsection (2) of section 120.569, Florida Statutes, to read:

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding shall be for the permit applicant to present a prima facie case

demonstrating entitlement to the license, permit, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case, the petitioner initiating the action challenging the issuance of the license, permit, or conceptual approval has the ultimate burden of persuasion and has the burden of going forward to prove its case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence. The permit applicant may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 2. Section 125.0112, Florida Statutes, is created to read:

125.0112 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility of 50 million gallons per year or less or a renewable energy generating facility of 50 megawatts or less, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, shall be considered by a local government to be a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan. If the local comprehensive plan does not specifically allow for the construction of a biofuel processing facility or renewable energy facility, the local government may establish a specific review process that may include expediting local review of any

464514

necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. Local expedited review of a proposed biofuel processing facility or a renewable energy facility does not obligate a local government to approve such proposed use. A comprehensive plan amendment necessary to accommodate a biofuel processing facility or renewable energy facility shall, if approved by the local government, be eligible for the alternative state review process in s. 163.32465. The construction and operation of a facility and related improvements on a portion of a property under this section does not affect the remainder of the property's classification as agricultural under s. 193.461.

Section 3. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of processing a development permit, that an applicant obtain a permit or approval from any other state or federal agency unless the agency has issued a notice of intent to deny the federal or state permit before the county action on the local development permit. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the

county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or a federal agency. A county may attach such a disclaimer to the issuance of a development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 4. Section 161.032, Florida Statutes, is created to read:

161.032 Application review; request for additional information.—

(1) Within 30 days after receipt of an application for a permit under this part, the department shall review the application and shall request submission of any additional information the department is permitted to require by law. If the applicant believes that a request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review such additional information and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes that the request for such additional information by the department is not authorized by law or rule, the department, at the applicant's request, shall proceed to process the permit application.

(2) Notwithstanding s. 120.60, an applicant for a permit

464514

under this part has 90 days after the date of a timely request for additional information to submit such information. If an applicant requires more than 90 days in order to respond to a request for additional information, the applicant must notify the agency processing the permit application in writing of the circumstances, at which time the application shall be held in active status for no more than one additional period of up to 90 days. Additional extensions may be granted for good cause shown by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the timely requested information by the applicable deadline shall result in denial of the application without prejudice.

Section 5. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of processing a development permit, that an applicant obtain a permit or approval from any other state or federal agency unless the agency has issued a notice of intent to deny the federal or state permit before the municipal action on the local development permit. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from another state

or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or federal agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 6. Section 166.0447, Florida Statutes, is created to read:

166.0447 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility of 50 million gallons per year or less or a renewable energy generating facility of 50 megawatts or less, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, are each a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan and for purposes of any local zoning regulation within an incorporated area of a municipality. Such comprehensive land use plans and local zoning regulations may not require the owner or operator of a biofuel processing facility or a renewable energy generating facility to obtain any comprehensive plan amendment, rezoning, special exemption, use permit, waiver, or variance, or

to pay any special fee in excess of $1,000 to operate in an area zoned for or categorized as industrial, agricultural, or silvicultural use. This section does not exempt biofuel processing facilities and renewable energy generating facilities from complying with building code requirements. The construction and operation of a facility and related improvements on a portion of a property pursuant to this section does not affect the remainder of that property's classification as agricultural pursuant to s. 193.461.

Section 7. Paragraphs (a) and (b) of subsection (3) of section 258.397, Florida Statutes, are amended to read:

258.397 Biscayne Bay Aquatic Preserve.—

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands in the preserve shall be approved or consummated by the board of trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the board of trustees that such sale, transfer, or lease is in the public interest. A municipal applicant proposing a project under this subsection is exempt from showing extreme hardship.

(b) No further dredging or filling of submerged lands of the preserve shall be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for

preservation of the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions, including the placement of riprap, as may be necessary to enhance the quality and utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such projects may only be authorized upon a specific finding by the board of trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality and utility of the preserve. This subparagraph shall not authorize the connection of upland canals to the waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, islands, and spoil banks, the dredging of which would enhance the aesthetic and environmental quality and utility of the preserve and be clearly in the public interest as determined by the board of trustees.

5. Such dredging and filling as is necessary for the creation of public waterfront promenades.

Any dredging or filling under this subsection or improvements under subsection (5) shall be approved only after public notice as provided by s. 253.115.

Section 8. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The

department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of applicable professional certification.

Section 9. Section 373.4141, Florida Statutes, is amended to read:

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not

authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. The department or water management district may request additional information no more than twice, unless the applicant waives this limitation in writing. If the applicant does not provide a written response to the second request for additional information within 90 days, or another time period mutually agreed upon between the applicant and department or water management district, the application shall be considered withdrawn.

(2) A permit shall be approved or denied within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

(4) A state agency or agency of the state may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit or approval from any other local, state, or federal

agency without explicit statutory authority to require such permit or approval from another agency.

Section 10. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the

United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the~~

~~referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) Nothing in this section shall be construed to preclude the department from pursuing a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or

waters, including navigable waters, within the state.

Section 11. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (6), (7), and (8), respectively, and new subsections (3), (4), and (5) are added to that section to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county having a population of 75,000 or more or a municipality having a population of more than 50,000 which implements a local pollution control program regulating wetlands or surface waters throughout its geographic boundary must apply for delegation of state environmental resource permitting authority on or before June 1, 2012. A county, municipality, or local pollution control program that fails to receive delegation of authority by June 1, 2013, may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.

(4) Upon delegation to a qualified local government, the department and water management district may not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

(5) This section does not prohibit or limit a local government from adopting a pollution control program regulating wetlands or surface waters after June 1, 2012, if the local government applies for and receives delegation of state environmental resource permitting authority within 1 year after adopting such a program.

Section 12. Section 376.30715, Florida Statutes, is amended


464514

to read:

376.30715 Innocent victim petroleum storage system restoration.—A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6)(a). For purposes of this section, the term "acquired" means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse or child of the owner, a surviving spouse or child of the owner in trust or free of trust, ~~or~~ a revocable trust created for the benefit of the settlor, or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance pursuant to s. 376.305(6) and applicants previously denied coverage may reapply. Eligible sites shall be ranked in accordance with s. 376.3071(5).

Section 13. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based permitting program.-

(1) SHORT TITLE.—This section may be cited as the "Florida Incentive-based Permitting Act."

(2) FINDINGS AND INTENT.—The Legislature finds and declares that the department should consider compliance history when deciding whether to issue, renew, amend, or modify a permit by evaluating an applicant's site-specific and program-specific relevant aggregate compliance history. Persons having a history of complying with applicable permits or state environmental laws and rules are eligible for permitting benefits, including, but not limited to, expedited permit application reviews, longer

duration permit periods, decreased announced compliance inspections, and other similar regulatory and compliance incentives to encourage and reward such persons for their environmental performance.

(3) APPLICABILITY.—

(a) This section applies to all persons and regulated activities that are subject to the permitting requirements of chapter 161, chapter 373, or this chapter, and all other applicable state or federal laws that govern activities for the purpose of protecting the environment or the public health from pollution or contamination.

(b) Notwithstanding paragraph (a), this section does not apply to certain permit actions or environmental permitting laws such as:

1. Environmental permitting or authorization laws that regulate activities for the purpose of zoning, growth management, or land use; or

2. Any federal law or program delegated or assumed by the state to the extent that implementation of this section, or any part of this section, would jeopardize the ability of the state to retain such delegation or assumption.

(c) As used in this section, a the term "regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chapter 161, chapter 373, or this chapter.

(4) COMPLIANCE HISTORY.—The compliance history period shall be the 10 years before the date any permit or renewal application is received by the department. Any person is

entitled to the incentives under paragraph (5)(a) if:

(a)1. The applicant has conducted the regulated activity at the same site for which the permit or renewal is sought for at least 8 of the 10 years before the date the permit application is received by the department; or

2. The applicant has conducted the same regulated activity at a different site within the state for at least 8 of the 10 years before the date the permit or renewal application is received by the department.

(b) In the 10 years before the date the permit or renewal application is received by the department or water management district, the applicant has not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant violated the applicable law or rule or has been the subject of an administrative settlement or consent orders, whether formal or informal, that established a violation of an applicable law or rule.

(c) The applicant can demonstrate during a 10-year compliance history period the implementation of activities or practices that resulted in:

1. Reductions in actual or permitted discharges or emissions;

2. Reductions in the impacts of regulated activities on public lands or natural resources; and

3. Implementation of voluntary environmental performance programs, such as environmental management systems.

(5) COMPLIANCE INCENTIVES.—

(a) An applicant shall request all applicable incentives at

464514

the time of application submittal. Unless otherwise prohibited by state or federal law, rule, or regulation, and if the applicant meets all other applicable criteria for the issuance of a permit or authorization, an applicant is entitled to the following incentives:

1. Expedited reviews on permit actions, including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any request for additional information regarding a permit application shall be issued no later than 15 days after the application is filed, and final agency action shall be taken no later than 45 days after the application is deemed complete;

2. Priority review of permit application;

3. Reduced number of routine compliance inspections;

4. No more than two requests for additional information under s. 120.60; and

5. Longer permit period durations.

(6) RULEMAKING.—The department shall implement rulemaking within 6 months after the effective date of this act. Such rulemaking may identify additional incentives and programs not expressly enumerated under this section, so long as each incentive is consistent with the Legislature’s purpose and intent of this section. Any rule adopted by the department to administer this section shall be deemed an invalid exercise of delegated legislative authority if the department cannot demonstrate how such rules will produce the compliance incentives set forth in subsection (5). The department’s rules adopted under this section are binding on the water management districts and any local government that has been delegated or

assumed a regulatory program to which this section applies.

Section 14. Subsections (5), (6), and (7) are added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

(5) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to all permits issued under this chapter.

(6) The department may not require as a permit condition sediment quality specifications or turbidity standards more stringent than those provided for in this chapter, chapter 373, or the Florida Administrative Code. The department may not issue guidelines that are enforceable as standards without going through the rulemaking process pursuant to chapter 120.

(7) As an incentive for permit applicants, it is the intent of the Legislature to simplify the permitting for periodic maintenance of beach renourishment projects previously permitted and restored under the Joint Coastal Permit process pursuant to this section or part IV of chapter 373. The department shall amend chapters 62B-41 and 62B-49 of the Florida Administrative Code to streamline the permitting process for periodic maintenance projects.

Section 15. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(6) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to permits issued under this section.

Section 16. Subsection (11) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department shall ~~is authorized to~~ establish reasonable zones of mixing for discharges into waters where assimilative capacity in the receiving water is available. Zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Discharges that occur within a zone of discharge or on land that is over a zone of discharge do not create liability under this chapter or chapter 376 for site cleanup and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) No mixing zone for point source discharges shall be permitted in Outstanding Florida Waters except for:

1. Sources that have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act;

3. Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary; and

4. The discharge of demineralization concentrate which has been determined permittable under s. 403.0882 and which meets the specific provisions of s. 403.0882(4)(a) and (b), if the proposed discharge is clearly in the public interest.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1). The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that


464514

presents a threat to humans, animals or plants, or to the environment.

Section 17. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(7) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for such permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions;

(c) ~~Has~~ Failed to submit operational reports or other information required by department rule which directly relate to such permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 18. Subsection (2) of section 403.1838, Florida Statutes, is amended to read:

403.1838 Small Community Sewer Construction Assistance Act.—

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For purposes of this section, the term "financially disadvantaged small community" means a

464514

municipality that has ~~with~~ a population of 10,000 ~~7,500~~ or fewer ~~less~~, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

Section 19. Subsection (32) of section 403.703, Florida Statutes, is amended to read:

403.703 Definitions.—As used in this part, the term:

(32) "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (24) are not solid waste. The term does not include sludge from a waste treatment works if the sludge is not discarded.

Section 20. Subsections (2) and (3) of section 403.707, Florida Statutes, are amended to read:

403.707 Permits.—

(2) Except as provided in s. 403.722(6), a permit under this section is not required for the following~~, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders~~:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks,

soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if:

1. The environmental effects of such disposal on groundwater and surface waters are:

a.~~1.~~ Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

b.~~2.~~ Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department. As used in this sub-subparagraph, the term "addressed by a groundwater monitoring plan" means the plan is sufficient to monitor groundwater or surface water for contaminants of concerns associated with the solid waste being disposed. A groundwater monitoring plan can be demonstrated to be sufficient irrespective of whether the groundwater monitoring plan or disposal is referenced in a department permit or other

authorization.

2. The disposal of solid waste takes place within an area which is over a zone of discharge.

The disposal of solid waste pursuant to this paragraph does not create liability under this chapter or chapter 376 for site cleanup and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person’s responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

464514

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities. Additionally, any permit issued to a solid waste management facility that is designed with a leachate control system meeting Department requirements shall be for a term of 20 years, or should the applicant request, a lesser number of years. Existing permit fees for qualifying solid waste management facilities shall be prorated to the permit term authorized by this section. This provision applies to all qualifying solid waste management facilities that apply for an operating or construction permit, or renew an existing operating or construction permit, on or after July 1, 2012.

Section 21. Subsection (12) is added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent,


464514

and will not use pumps in any manner;

(f) The project is not part of a larger common plan of development or sale;

(g) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; and

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a Work of the District established pursuant to s. 373.086; and

(h) The surface water management system design plans must be signed and sealed by a registered professional and must be capable, based on generally accepted engineering and scientific principles, of being performed and functioning as proposed.

Section 22. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from the provisions of this section. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights is not subject to further review or approval as a development of regional impact or notice of proposed change review or approval pursuant to subsection (19), except for those

464514

applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer. All local regulations of proposed solid mineral mines and any proposed addition to, expansion of , or change to an existing solid mineral mine shall remain applicable.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 23. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality

or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility, receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 24. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (14), (15), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the office and~~ the respective heads of the

464514

Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise

464514

held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary’s determination that the project is eligible for expedited review. Subsequent interagency meetings


464514

may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(14)(a) Challenges to state agency action in the expedited permitting process for projects processed under this section are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and shall not constitute the final action of the state agency. In those proceedings where the action of only one agency of the state other than the Department of Environmental Protection is challenged, the agency of the state shall issue the final order within 45 working days after receipt of the administrative law


464514

judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. For ~~This paragraph does not apply to~~ the issuance of department licenses required under any federally delegated or approved permit program~~. In such instances,~~ the department shall enter the final order and not the Governor. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. If a participating local government agrees to participate in the summary hearing provisions of s. 120.574 for purposes of review of local government comprehensive plan amendments, s. 163.3184(9) and (10) apply.

(b) Projects identified in paragraph (3) (f) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless

of whether the parties agree to the summary proceeding.

(15) The office, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities that the office has certified to be eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the office, the agencies shall provide to the office a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(18) The office, working with the Rural Economic Development Initiative ~~and the agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 25. Subsection (10) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—


464514

(10)(a) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(b) There shall be a limited exemption from the Strategic

Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with the local comprehensive plan as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may, if developed as proposed, include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The limited exemption applies if the project meets all of the following criteria:

1. The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150 percent within the first 5 years of the project's development.

2. The project, upon completion, would result in the creation of at least 50 full-time jobs.

3. The project is compatible with existing and planned adjacent land uses.

4. The project is consistent with local and regional economic development goals or plans.

5. The project is proximate to regionally significant road and rail transportation facilities.

6. The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average.

Section 26. Subsections (1) and (2), paragraph (c) of subsection (3), and subsection (4) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the water management districts, through ~~including~~ the use of privately owned mitigation banks where available or, if a privately owned mitigation bank is not available, through any other mitigation options that satisfy state and federal requirements ~~established pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the

next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be

paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year’s transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a water management district may be released if

the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the department or the participating transportation authorities' obligation will be satisfied, the water management district will have continuing responsibility for the mitigation project, and the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Prior to March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, private mitigation banks shall be used when available, and, when a mitigation bank is not available, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management

districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall ~~also consider the~~ purchase ~~of~~ credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project~~, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option~~. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days before ~~prior to~~ approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or

~~and~~ the appropriate water management district ~~that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process. The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project~~.

Section 27. Subsections (2) and (3), paragraph (a) of subsection (4), and paragraph (a) of subsection (6) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 12 cents per ton beginning January 1, 2007; 18 cents per ton beginning January 1, 2008; 24 cents per ton beginning January 1, 2009; and 45 cents per ton beginning close of business December 31, 2011. <u>To pay</u>


464514

for seepage mitigation projects, including hydrological structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this subsection for each ton of limerock and sand sold shall be 15 cents per ton beginning on January 1, 2007, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under


464514

this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.

(3) The mitigation fee and the water treatment plant upgrade fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the water treatment plant upgrade fees must be accompanied by a form prescribed by the Department of Revenue. The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2012, and ending December 31, 2017, or upon issuance of water quality certification by the department for mining activities within Phase II of the Miami-Dade County Lake Belt Plan, whichever occurs later, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2018, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a). ~~As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3~~


464514

~~percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.~~

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation and water treatment plant upgrade fees authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fees may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not apply to the fees imposed by this section.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the

Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. The proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area. The proceeds of the water treatment plant upgrade fee that are transferred to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County. As used in this section, the terms "upgrade a water treatment plant" or "water treatment plant upgrade" means those works necessary to treat or filter a surface water source or supply or both.

Section 28. Subsection (5) is added to section 526.203, Florida Statutes, to read:

526.203 Renewable fuel standard.—

(5) This section does not prohibit the sale of unblended fuels for the uses exempted under subsection (3).

Section 29. Subsection (18) of section 373.414, is amended to read:

(18) The department and each water management district responsible for implementation of the environmental resource permitting program shall develop a uniform mitigation assessment

method for wetlands and other surface waters. ~~The department shall adopt the uniform mitigation assessment method by rule no later than July 31, 2002~~. The rule shall provide an exclusive, uniform and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters, and, once effective, shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts. 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. A water management district and any other governmental agency subject to chapter 120 may apply the uniform mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection~~, and, when~~


464514

~~applied to mitigation banks, the factors listed in s.~~ 373.4136~~(4)~~. The uniform mitigation assessment method shall also account for the expected time-lag associated with offsetting impacts and the degree of risk associated with the proposed mitigation. The uniform mitigation assessment method shall account for different ecological communities in different areas of the state. In developing the uniform mitigation assessment method, the department and water management districts shall consult with approved local programs under s. 403.182 which have an established mitigation program for wetlands or other surface waters. The department and water management districts shall consider the recommendations submitted by such approved local programs, including any recommendations relating to the adoption by the department and water management districts of any uniform mitigation methodology that has been adopted and used by an approved local program in its established mitigation program for wetlands or other surface waters. Environmental resource permitting rules may establish categories of permits or thresholds for minor impacts under which the use of the uniform mitigation assessment method will not be required. The application of the uniform mitigation assessment method is not subject to s. 70.001. In the event the rule establishing the uniform mitigation assessment method is deemed to be invalid, the applicable rules related to establishing needed mitigation in existence prior to the adoption of the uniform mitigation assessment method, including those adopted by a county which is an approved local program under s. 403.182, and the method described in paragraph (b) for existing mitigation banks, shall be authorized for use by the department, water management

districts, local governments, and other state agencies.

(a) In developing the uniform mitigation assessment method, the department shall seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

(b) An entity which has received a mitigation bank permit prior to the adoption of the uniform mitigation assessment method shall have impact sites assessed, for the purpose of deducting bank credits, using the credit assessment method, including any functional assessment methodology, which was in place when the bank was permitted; unless the entity elects to have its credits redetermined, and thereafter have its credits deducted, using the uniform mitigation assessment method.

(c) The department shall ~~be responsible for~~ ensure statewide coordination and consistency in the interpretation and application of the uniform mitigation assessment rule by providing programmatic training and guidance to staff of the department, water management districts, and local governments. To ensure that the uniform mitigation assessment rule is interpreted and applied uniformly, any interpretation or application of the rule by any agency or local government that differs from the department's interpretation or application of the rule shall be incorrect and invalid. The department's interpretation, application and implementation of the uniform mitigation assessment rule shall be the only acceptable method.

(d) Applicants shall submit the information needed to perform the assessment required under the uniform mitigation assessment rule, and may submit the qualitative characterization

and quantitative assessment for each assessment area specified by the rule. The reviewing agency shall review that information and notify the applicant of any inadequacy in the information or application of the assessment method.

(e) When conducting qualitative characterization of artificial wetlands and other surface waters, such as borrow pits, ditches, and canals under the uniform mitigation assessment rule, the native community type to which it is most analogous in function shall be used as a reference. For wetlands or other surface waters that have been altered from their native community type, the historic community type at that location shall be used as a reference, unless the alteration has been of such a degree and extent that a clearly defined different native community type is now present and self sustaining.

(f) When conducting qualitative characterization of upland mitigation assessment areas, the characterization shall include functions that the upland assessment area provides to the fish and wildlife of the associated wetland or other surface waters. These functions shall be considered when scoring the upland assessment area for preservation, enhancement, or restoration. Any increase in these functions resulting from activities in an upland mitigation assessment area shall be accounted for in the upland assessment area scoring.

(g) Preservation mitigation, as used the uniform mitigation assessment method, means the protection of important wetland, other surface water or upland ecosystems, predominantly in their existing condition and absent restoration, creation or enhancement, from adverse impacts by placing a conservation easement or other comparable land use restriction over the

property or by donation of fee simple interest in the property. Preservation may include a management plan for perpetual protection of the area. The preservation adjustment factor set forth in rule 62-345.500(3), Florida Administrative Code, shall only apply to preservation mitigation.

(h) When assessing a preservation mitigation assessment area under the uniform mitigation assessment method the following shall apply:

1. "Without preservation" shall consider the reasonably anticipated impacts to the assessment area, assuming the area is not preserved, and the temporary or permanent nature of those impacts, considering the protection provided by existing easements, regulations and land use restrictions, without the need for zoning or comprehensive plan changes.

2. Each of the considerations of the preservation adjustment factor specified in rule 62-345.500(3)(a), Florida Administrative Code shall be equally weighted and scored on a scale from 0 (no value) to 0.2 (optimal value). In addition, the minimum preservation adjustment factor shall be 0.2.

3. Assessment areas shall not be delineated based upon the likely activities that would occur in the "without preservation" condition.

(i) When assessing an upland preservation mitigation assessment area pursuant to rule 62-345.500(2)(a), Florida Administrative Code, it shall be recognized that an increase in location and landscape support can occur when the community structure score is a number other than zero in the without mitigation condition.

(j) When scoring the "with mitigation" assessment as used


464514

in rule 62-345.500(1)(b), Florida Administrative Code, for assessment areas involving enhancement, restoration or creation activities and that are also proposed to be placed under a conservation easement or other similar land protection mechanism, the with mitigation score shall reflect the combined preservation and enhancement/restoration/creation value of the specified assessment area, and the preservation adjustment factor set forth in rule 62-345.500(3), Florida Administrative Code, shall not apply to such "with mitigation" assessment.

(k) Any entity holding a mitigation bank permit that was evaluated under the uniform mitigation assessment rule prior to the effective date of paragraphs (c) through (j) above, may submit a permit modification request to the relevant permitting agency to have such mitigation bank reassessed pursuant to the provisions set forth in this section, and the relevant permitting agency shall reassess such mitigation bank, if such request is filed with that agency no later than September 30, 2011.

(l) The department shall amend the uniform mitigation assessment rule as necessary to incorporate the provisions of paragraphs (c) through (j) above, including revising the worksheet portions of rule.

Section 30. Subsection (4) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.—

(4)MITIGATION CREDITS.—After evaluating the information submitted by the applicant for a mitigation bank permit and assessing the proposed mitigation bank pursuant to the criteria in this section, the department or water management district

shall award a number of mitigation credits to a proposed mitigation bank or phase of such mitigation bank. An entity establishing and operating a mitigation bank may apply to modify the mitigation bank permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. The number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using the uniform mitigation assessment method adopted pursuant to s. 373.414(18) for mitigation bank permit applications that are subject to this method. ~~a functional assessment methodology~~. For mitigation bank permit applications not subject to the uniform mitigation assessment method, ~~In determining the degree of improvement in ecological value,~~ each of the following factors, at a minimum, shall be evaluated to determine the degree of improvement in ecological value:

(a) The extent to which target hydrologic regimes can be achieved and maintained.

(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.

(c) The proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired through governmental or nonprofit land acquisition programs for environmental

conservation; and the extent to which the mitigation bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.

(d) The quality and quantity of wetland or upland restoration, enhancement, preservation, or creation.

(e) The ecological and hydrological relationship between wetlands and uplands in the mitigation bank.

(f) The extent to which the mitigation bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats that are unique for that mitigation service area.

(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.

(h) The extent to which lands to be preserved would be adversely affected if they were not preserved.

(i) Any special designation or classification of the affected waters and lands.

Section 31. Section 604.50, Florida Statutes, is amended to read:

604.50 Nonresidential farm buildings and farm fences.—

(1) Notwithstanding any other law to the contrary, any nonresidential farm building or farm fence is exempt from the Florida Building Code and any county or municipal ~~building~~ code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.

(2) As used in ~~For purposes of~~ this section, the term:

(a) "Nonresidential farm building" means any temporary or

464514

permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(9)(c) or that is used primarily for agricultural purposes~~, is located on a farm that is not used as a residential dwelling, and~~ is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

(b) ~~The term~~ "Farm" has the same meaning ~~is~~ as provided ~~defined~~ in s. 823.14.

Section 32. Installation of fuel tank upgrades to secondary containment systems shall be completed by the deadlines specified in rule 62-761.510, Florida Administrative Code, Table UST. However, and notwithstanding any agreements to the contrary, any fuel service station that changed ownership interest through a bona fide sale of the property between January 1, 2009 and December 31, 2009 shall not be required to complete the upgrades described in rule 62-761.510, Florida Administrative Code, Table UST, until December 31, 2012.

Section 33. This act shall take effect July 1, 2011.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to environmental permitting; amending s.120.569, F.S.; providing that a nonapplicant who

petitions to challenge an agency's issuance of a license, permit, or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; creating s. 125.0112, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy by a local government is a valid and permitted land use; providing an exception; requiring expedited review of such facilities; providing that such facilities are eligible for the alternative state review process; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 161.032, F.S.; requiring that the Department of Environmental Protection review an application for certain permits under the Beach and Shore Preservation Act and request additional information within a specified time; requiring that the department proceed to process the application if the applicant believes that a request for additional information is not authorized by law or rule; extending the period for an applicant to timely submit additional information, notwithstanding certain provisions of the Administrative Procedure Act;


464514

amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit under certain conditions; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 166.0447, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy is a valid and permitted land use within the unincorporated area of a municipality; providing an exception; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount; amending s. 258.397, F.S.; providing an exemption from a showing of extreme hardship for municipal applicants proposing certain projects; providing an exception for the creation of public waterfront promenades; amending s. 373.026, F.S.; requiring the Department of Environmental Protection to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; requiring that a request by the department or a water management district that an applicant provide additional information be accompanied by the signature of specified officials of the department or district;

reducing the time within which the department or district must approve or deny a permit application; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; requiring that the department report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring that certain counties or municipalities apply by a specified date to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district may not regulate activities that are subject to the delegation; clarifying the authority of local governments to adopt pollution control programs under certain conditions; amending s. 376.30715, F.S.; providing that the transfer of a contaminated site from an owner to a child or corporate entity does not disqualify the site from the innocent victim petroleum storage system restoration financial assistance program; authorizing certain applicants to reapply for financial assistance; amending s. 403.061, F.S.; requiring the Department of Environmental Protection to establish reasonable zones of mixing for discharges into specified waters; providing that certain discharges do not create liability for site cleanup;


464514

providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; creating s. 403.0874, F.S.; providing a short title; providing legislative findings and intent with respect to the consideration of the compliance history of a permit applicant; providing for applicability; defining the term "regulated activity"; specifying the period of compliance history to be considered is issuing or renewing a permit; providing criteria to be considered by the Department of Environmental Protection; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authorizing the department to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring the department to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties; amending ss.161.041 and 373.413, F.S.; specifying that s. 403.0874, F.S.; authorizing expedited permitting, applies to provisions governing beaches and shores and surface water management and storage; amending s. 403.087, F.S.; revising conditions under which the department is authorized to revoke a permit; amending s. 403.1838, F.S.; revising the term "financially disadvantaged small community"; amending s. 403.703,

F.S.; revising the term "solid waste" to exclude sludge from a waste treatment works that is not discarded; amending s. 403.707, F.S.; revising provisions relating to disposal by persons of solid waste resulting from their own activities on their property; clarifying what constitutes "addressed by a groundwater monitoring plan" with regard to certain effects on groundwater and surface waters; authorizing the disposal of solid waste over a zone of discharge; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; extending the duration of all permits issued to solid waste management facilities; providing applicability; providing that certain disposal of solid waste does not create liability for site cleanup; amending s. 403.814, F.S.; providing for issuance of general permits for the construction, alteration, and maintenance of certain surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 380.06, F.S.; exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from provisions governing developments of regional impact; providing certain exceptions; amending ss. 380.0657 and 403.973, F.S.; authorizing expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively

will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review and certification of a business as eligible for expedited permitting by the Secretary of Environmental Protection rather than by the Office of Tourism, Trade, and Economic Development; amending s. 163.3180, F.S.; providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities; specifying project criteria; amending s. 373.4137, F.S., relating to transportation projects; revising legislative findings with respect to the options for mitigation; revising certain requirements for determining the habitat impacts of transportation projects; requiring water management districts to purchase credits from public or private mitigation banks under certain conditions; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan; amending s. 373.41492, F.S.; imposing a mitigation fee for mining activities within the Miami-Dade County Lake Belt Area; authorizing the use of proceeds from the water treatment plant upgrade fee to pay for specified mitigation projects; requiring proceeds from the water treatment plant upgrade fee to be transferred by the Department of Revenue to the


464514

South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund for a specified period of time; providing, after that period, for the proceeds of the water treatment plant upgrade fee to return to being transferred by the Department of Revenue to a trust fund established by Miami-Dade County for specified purposes; conforming a term; amending s. 526.203, F.S.; authorizing the sale of unblended fuels for certain uses; amending s. 373.414, F.S.; revising rules of the Department of Environmental Protection relating to the uniform mitigation assessment method for activities in surface waters and wetlands; directing the Department of Environmental Protection to make additional changes to conform; providing for reassessment of mitigation banks under certain conditions; amending s. 373.4136, F.S.; clarifying the use of the uniform mitigation assessment method for mitigation credits for the establishment and operation of mitigation banks; amending s. 604.50, F.S.; clarifying and expanding farm-related structures exempt from building codes; providing for fuel tank system deadlines and exemption; providing an effective date. providing an effective date.

320138

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment to Amendment (464514) (with title amendment)

Delete lines 362 - 388
and insert:

Section 11. Subsection (3) of section 373.441, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (7) and (8), respectively, and new subsections (4), (5), and (6) are added to that section, to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) The department may delegate the environmental resource permitting program to local governments. The department shall approve delegation to a local government if:

1. The local government has provided reasonable assurance that the delegation would further the goal of providing an efficient, effective, and streamlined permitting system;

2. The local government has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program;

3. The protection of environmental resources will be maintained; and

4. The local government meets the requirements set forth by department rule. The department may delegate a portion of the environmental resource permit program to local governments, including those wherein the stormwater management system regulations or the wetland or other surface water resource regulations are retained by the department or the district, and the other portion is delegated to the local government. ~~Delegation of authority shall be approved if the local government meets the requirements set forth in rule 62-344, Florida Administrative Code. This section does not require a local government to seek delegation of the environmental resource permit program.~~

(4) If the department approves and delegates the environmental resource permit, the local government has the authority to issue environmental resource permits that provide the equivalent level of protection as the environmental resource program under this part. Local governments may also apply stricter standards in addition to the applicable environmental

320138

resource permit program rules.

(5) The environmental resource permit program may be delegated to a local government under either of the following two options:

(a) The local government agrees to implement the state environmental resource permit program pursuant to this part, applicable agency rules, and chapter 120.

(b) The local government incorporates the relevant portions of the department's or water management district's environmental resource permit program rules into the local rules or ordinances. The local program must be substantially equivalent to the existing state environmental resource permitting program.

1. The local government program may incorporate stricter substantive provisions of the state environmental resource program or the substantially equivalent provisions.

2. The local government program is not required to include or incorporate any less strict substantive state standards, such as exemptions or general permits, in order to obtain delegation of the environmental resource program.

3. The local government program shall use administrative and procedural requirements that are the same as or substantially equivalent to the provisions of ss. 120.52, 120.53, 120.533, 120.565, 120.57, 120.62, 120.66, 120.69, 373.114(1), and 373.413(3), and any notice or other procedural requirements that apply to activities reviewed under this part.

(6) If the department and water management district delegates authority to a local government pursuant to this section, it may not regulate the activities delegated.

320138

71 ================ T I T L E A M E N D M E N T ================
72 And the title is amended as follows:
73 Delete lines 1647 - 1655
74 and insert:
75 amending s. 373.441, F.S.; authorizing the department
76 and water management districts to delegate certain
77 pollution control programs to local governments;
78 providing criteria; amending s. 376.30715, F.S.;

813598

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment to Amendment (464514)

Delete lines 542 - 551
and insert:
noise. The department is authorized to establish reasonable zones of mixing for discharges into waters. For existing installations as defined by Rule 62-520.200(10), F.A.C., effective July 12, 2009, zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Exceedances of primary and secondary ground water standards that occur within a zone of discharge shall not create

813598

liability pursuant to this Chapter or Chapter 376 for site clean-up, nor shall exceedances of soil cleanup target levels be a basis for enforcement or site clean-up.

436922

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/11/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment to Amendment (464514) (with title amendment)

Delete lines 626 - 687
and insert:
Section 19. Paragraph (1)(f) of section 403.7045, Florida Statutes, is amended to read:
403.7045 Application of act and integration with other acts. —
(1) The following wastes or activities shall not be regulated pursuant to this act:
(f) Industrial byproducts, if:

436922

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined under s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not considered to be solid waste as defined in s. 403.703(32).

Section 20. Subsections (2) and (3) of section 403.707, Florida Statutes, are amended to read:

403.707 Permits.—

(2) Except as provided in s. 403.722(6), a permit under this section is not required for the following:~~, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders:~~

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal

436922

of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if the environmental effects of such disposal on groundwater and surface waters are:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department. <u>If the facility has a permit or certification authorizing disposal activity, new areas where solid waste is disposed of that are being monitored by an existing or modified ground water monitoring plan are not required to be specifically authorized by permit or certification.</u>

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 1694 - 1697

436922

and insert:

disadvantaged small community"; amending s. 403.7045, F.S.; to exclude sludge from an industrial waste treatment works from the definition of "solid waste"; amending s. 403.707, F.S.;revising

By Senator Evers

2-00555A-11 20111404__

A bill to be entitled

An act relating to environmental permitting; amending s. 120.569, F.S.; authorizing the provision of certain notices under the Administrative Procedure Act via a link to a publicly available Internet website; providing that a nonapplicant who petitions to challenge an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 120.60, F.S.; requiring that an agency process a permit application notwithstanding an outstanding request for additional information from the applicant; revising the period for an agency to approve or deny an application for a license; creating s. 125.0112, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy by a local government is a valid and permitted land use; requiring expedited review of such facilities; providing that such facilities are eligible for the alternative state review process; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 161.032, F.S.; requiring that the Department of Environmental Protection review an

application for certain permits under the Beach and Shore Preservation Act and request additional information within a specified time; requiring that the department proceed to process the application if the applicant believes that a request for additional information is not authorized by law or rule; extending the period for an applicant to timely submit additional information, notwithstanding certain provisions of the Administrative Procedure Act; amending s. 163.3184, F.S.; redefining the term "affected person" for purposes of the adoption process for a comprehensive plan or plan amendments to include persons who can show that their substantial interest will be affected by the plan or amendment; amending s. 163.3215, F.S.; redefining the term "aggrieved or adversely affected party" for purposes of standing to enforce local comprehensive plans; deleting a requirement that the adverse interest exceed in degree the general interest shared by all persons; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 166.0447, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy is a valid and permitted land use within the

unincorporated area of a municipality; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount; amending s. 373.026, F.S.; requiring the Department of Environmental Protection to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; requiring that a request by the department or a water management district that an applicant provide additional information be accompanied by the signature of specified officials of the department or district; reducing the time within which the department or district must approve or deny a permit application; providing that an application for a permit that is required by a local government and that is not approved within a specified period is deemed approved by default; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; requiring that the department report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring that certain counties or municipalities apply by a specified date

to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district may not regulate activities that are subject to the delegation; amending s. 403.061, F.S., relating to the use of online self-certification; conforming provisions to changes made by the act; creating s. 403.0874, F.S.; providing a short title; providing legislative findings and intent with respect to the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered is issuing or renewing a permit; providing criteria to be considered by the Department of Environmental Protection; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authorizing the department to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring the department to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties; amending ss. 161.041 and 373.413, F.S.; specifying that s. 403.0874, F.S., authorizing expedited permitting, applies to provisions governing beaches and shores and surface water management and storage; amending s. 403.087,

F.S.; revising conditions under which the department is authorized to revoke a permit; amending s. 403.412, F.S.; eliminating a provision limiting a requirement for demonstrating injury in order to seek relief under the Environmental Protection Act; amending s. 403.814, F.S.; providing for issuance of general permits for the construction, alteration, and maintenance of certain surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 380.06, F.S.; exempting a proposed phosphate mine or a proposed addition or expansion of an existing phosphate mine from provisions governing developments of regional impact; providing certain exceptions; amending ss. 380.0657 and 403.973, F.S.; authorizing expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review and certification of a business as eligible for expedited permitting by the Secretary of Environmental Protection rather than by the Office of Tourism, Trade, and Economic Development; amending s. 163.3180, F.S.; providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities;

specifying project criteria; amending s. 373.4137, F.S., relating to transportation projects; revising legislative findings with respect to the options for mitigation; revising certain requirements for determining the habitat impacts of transportation projects; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 120.569, Florida Statutes, is amended, and paragraph (p) is added to subsection (2) of that section, to read:

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), ~~then,~~ unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless

waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits that ~~which~~ apply. Notwithstanding any other provision of law, notice 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), may be provided via a link to a publicly available Internet website.

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 2. Subsection (1) of section 120.60, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.60 Licensing.—

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by

law to require. If the applicant believes that the 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. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency's request for additional information is not authorized by law or rule, the agency, at the applicant's request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 60 ~~90~~ days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 60-day ~~90-day~~ time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 60-day ~~90-day~~ or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an

examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.

Section 3. Section 125.0112, Florida Statutes, is created to read:

125.0112 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, shall be considered by a local government to be a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan. If the local comprehensive plan does not specifically allow for the construction of a biofuel processing facility or renewable energy facility, the local government shall establish a specific review process that may include expediting local review of any necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. Local expedited review of a proposed biofuel processing facility or a renewable energy facility does not obligate a local government to approve such proposed use. A comprehensive plan amendment necessary to accommodate a biofuel processing facility or renewable energy facility shall, if

approved by the local government, be eligible for the alternative state review process in s. 163.32465. The construction and operation of a facility and related improvements on a portion of a property under this section does not affect the remainder of the property's classification as agricultural under s. 193.461.

Section 4. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or a federal agency. A county may attach such a disclaimer to the issuance of a development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding

what other state or federal permits may apply.

Section 5. Section 161.032, Florida Statutes, is created to read:

161.032 Application review; request for additional information.—

(1) Within 30 days after receipt of an application for a permit under this part, the department shall review the application and shall request submission of any additional information the department is permitted by law to require. If the applicant believes that a request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review such additional information and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes that the request for such additional information by the department is not authorized by law or rule, the department, at the applicant's request, shall proceed to process the permit application.

(2) Notwithstanding s. 120.60, an applicant for a permit under this part has 90 days after the date of a timely request for additional information to submit such information. If an applicant requires more than 90 days in order to respond to a request for additional information, the applicant must notify the agency processing the permit application in writing of the circumstances, at which time the application shall be held in active status for no more than one additional period of up to 90 days. Additional extensions may be granted for good cause shown

by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the timely requested information by the applicable deadline shall result in denial of the application without prejudice.

Section 6. Paragraph (a) of subsection (1) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review and who can demonstrate that their substantial interest will be affected by the plan or plan amendment; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Section 7. Subsection (2) of section 163.3215, Florida

Statutes, is amended to read:

163.3215 Standing to enforce local comprehensive plans through development orders.—

(2) As used in this section, the term "aggrieved or adversely affected party" means any person or local government that can demonstrate that their substantial interest will be affected by a development order ~~will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources~~. ~~The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.~~ The term includes the owner, developer, or applicant for a development order.

Section 8. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a

municipality does not in any way create any right on the part of an applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or federal agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 9. Section 166.0447, Florida Statutes, is created to read:

166.0447 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, are each a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan and for purposes of any local zoning regulation within an unincorporated area of a municipality. Such comprehensive land use plans and local zoning regulations may not require the owner or operator of a biofuel processing facility or a renewable energy generating facility to obtain any comprehensive plan amendment, rezoning, special exemption, use permit, waiver, or variance, or to pay any special fee in excess of $1,000 to operate in an area zoned for

or categorized as industrial, agricultural, or silvicultural use. This section does not exempt biofuel processing facilities and renewable energy generating facilities from complying with building code requirements. The construction and operation of a facility and related improvements on a portion of a property pursuant to this section does not affect the remainder of that property's classification as agricultural pursuant to s. 193.461.

Section 10. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for activities currently requiring individual review

which could be expedited through the use of professional certification.

Section 11. Section 373.4141, Florida Statutes, is amended to read:

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. In order to ensure the proper scope and necessity for the information requested, a second request for additional information, if any, must be signed by the supervisor of the project manager. A third request for additional information, if any, must be signed by the division director who oversees the program area. A fourth request for additional information, if any, must be signed by the assistant secretary of the department or the assistant

executive director of the district. Any additional request for information must be signed by the secretary of the department or the executive director of the district.

(2)(a) A permit shall be approved or denied within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(b) A permit required by a local government for an activity that also requires a state permit under this part shall be approved or denied within 60 days after receipt of the original application. An application for a local permit which is not approved or denied within 60 days is deemed approved by default.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

Section 12. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers,

pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of~~

~~wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this~~

~~section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) Nothing in this section shall be construed to preclude the department from pursuing a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

Section 13. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, and new subsections (3) and (4) are added to that section, to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county having a population of 75,000 or more or a municipality that has local pollution control programs serving populations of more than 50,000 must apply for delegation of authority on or before June 1, 2012. A county, municipality, or local pollution control programs that fails to apply for delegation of authority may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.

(4) Upon delegation to a qualified local government, the department and water management district may not regulate the

activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

Section 14. Subsection (41) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(41) Expand the use of online self-certification for appropriate exemptions and general permits issued by the department or the water management districts if such expansion is economically feasible. ~~Notwithstanding any other provision of law,~~ A local government may not specify the method or form for documenting that a project qualifies for an exemption or meets the requirements for a permit under chapter 161, chapter 253, chapter 373, or this chapter. This limitation of local government authority extends to Internet-based department programs that provide for self-certification.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 15. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based permitting program.—

(1) SHORT TITLE.—This section may be cited as the "Florida Incentive-based Permitting Act."

(2) FINDINGS AND INTENT.—The Legislature finds and declares that the department should consider compliance history when deciding whether to issue, renew, amend, or modify a permit by evaluating an applicant's site-specific and program-specific relevant aggregate compliance history. Persons having a history of complying with applicable permits or state environmental laws and rules are eligible for permitting benefits, including, but not limited to, expedited permit application reviews, longer-duration permit periods, decreased announced compliance inspections, and other similar regulatory and compliance incentives to encourage and reward such persons for their environmental performance.

(3) APPLICABILITY.—

(a) This section applies to all persons and regulated activities that are subject to the permitting requirements of chapter 161, chapter 373, or this chapter, and all other applicable state or federal laws that govern activities for the purpose of protecting the environment or the public health from pollution or contamination.

(b) Notwithstanding paragraph (a), this section does not apply to certain permit actions or environmental permitting laws such as:

1. Environmental permitting or authorization laws that regulate activities for the purpose of zoning, growth management, or land use; or

2. Any federal law or program delegated or assumed by the state to the extent that implementation of this section, or any part of this section, would jeopardize the ability of the state to retain such delegation or assumption.

(c) As used in this section, the term "regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chapter 161, chapter 373, or this chapter.

(4) COMPLIANCE HISTORY.—The compliance history period shall be the 5 years before the date any permit or renewal application is received by the department. Any person is entitled to the incentives under paragraph (5)(a) if:

(a)1. The applicant has conducted the regulated activity at the same site for which the permit or renewal is sought for at least 4 of the 5 years prior to the date the permit application is received by the department; or

2. The applicant has conducted the same regulated activity at a different site within the state for at least 4 of the 5 years prior to the date the permit or renewal application is received by the department; and

(b) In the 5 years before the date the permit or renewal application is received by the department or water management district, the applicant has not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to human health or the environment.

(5) COMPLIANCE INCENTIVES.—

(a) An applicant shall request all applicable incentives at the time of application submittal. Unless otherwise prohibited by state or federal law, rule, or regulation, and if the applicant meets all other applicable criteria for the issuance of a permit or authorization, an applicant is entitled to the following incentives:

1. Expedited reviews on permit actions, including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any request for additional information regarding a permit application shall be issued no later than 15 days after the application is filed, and final agency action shall be taken no later than 45 days after the application is deemed complete;

2. Priority review of permit application;

3. Reduced number of routine compliance inspections;

4. No more than two requests for additional information under s. 120.60; and

5. Longer permit period durations.

(b) The department shall identify and make available additional incentives to persons who demonstrate during a 10-year compliance history period the implementation of activities or practices that resulted in:

1. Reductions in actual or permitted discharges or emissions;

2. Reductions in the impacts of regulated activities on public lands or natural resources;

3. Implementation of voluntary environmental performance programs, such as environmental management systems; and

4. In the 10 years before the date the renewal application is received by the department, the applicant having not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to the human health or the environment.

(c) Any person meeting one of the criteria in subparagraph (b)1.-3., and the criteria in subparagraph (b)4., is entitled to the following incentives:

1. Automatic permit renewals if there are no substantial deviations or modifications in permitted activities or changed circumstances; and

2. Reduced or waived application fees.

(6) RULEMAKING.—The department shall implement rulemaking within 6 months after the effective date of this act. Such rulemaking may identify additional incentives and programs not expressly enumerated under this section, so long as each incentive is consistent with the Legislature's purpose and intent of this section. Any rule adopted by the department to administer this section shall be deemed an invalid exercise of delegated legislative authority if the department cannot demonstrate how such rules will produce the compliance incentives set forth in subsection (5). The department's rules adopted under this section are binding on the water management

districts and any local government that has been delegated or assumed a regulatory program to which this section applies.

Section 16. Subsection (5) is added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

(5) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to all permits issued under this chapter.

Section 17. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(6) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to permits issued under this section.

Section 18. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(7) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder knowingly:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for such permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions which directly relate to such permit and has refused to correct or cure such violations when requested to do so;

(c) ~~Has~~ Failed to submit operational reports or other

information required by department rule which directly relate to such permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 19. Subsection (5) of section 403.412, Florida Statutes, is amended to read:

403.412 Environmental Protection Act.—

(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state. As used in this section and as it relates to citizens, the term "intervene" means to join an ongoing s. 120.569 or s. 120.57 proceeding; this section does not authorize a citizen to institute, initiate, petition for, or request a proceeding under s. 120.569 or s. 120.57. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under s. 120.569 or s. 120.57. A citizen's substantial interests will be considered to be determined or affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to

be protected by this chapter. ~~No demonstration of special injury different in kind from the general public at large is required.~~ A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by this chapter.

Section 20. Subsections (12) and (13) are added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit may be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 40 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The surface water management system design plans and calculations are signed and sealed by a professional engineer licensed under chapter 471;

(b) The system will not be located in surface waters or wetlands, as delineated in s. 373.421(1);

(c) The system will not cause adverse water quantity impacts to receiving waters and adjacent lands, as provided by department or district rule;

(d) The system will not cause adverse flooding to onsite or off-site property, as provided by department or district rule;

(e) The system will not cause adverse impacts to existing surface water storage and conveyance capabilities, as provided by department or district rule;

(f) The system will not adversely affect the quality of

receiving waters such that the standards applicable to waters as defined in s. 403.031(13), including any special standards for Outstanding Florida Waters, will be violated, as provided by department or district rule;

(g) The system will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, as provided by department or district rule;

(h) The system will not cause adverse impacts to a work of the district established pursuant to s. 373.086, as provided by department or district rule;

(i) The system will not be part of a larger plan of development or sale;

(j) The system will comply with all applicable requirements of the National Pollutant Discharge Elimination System, as implemented by department or district rule; and

(k) Within 10 days after the commencement of construction of the surface water management system, the professional engineer who is responsible for the design provides written notice of the commencement of construction to the department or district.

(13) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and

(f) The project is not part of a larger common plan of development or sale.

Section 21. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any proposed phosphate mine and any proposed addition to, expansion of, or change to an existing phosphate mine is exempt from the provisions of this section. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights is not subject to further review or approval as a development of regional impact or notice of proposed change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer.

If a use is exempt from review as a development of regional

impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 22. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility, receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 23. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (15), (17), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional

permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the office and~~ the respective heads of the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary

shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified

project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(15) The secretary ~~office~~, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the secretary ~~office~~, the agencies shall provide to the secretary ~~office~~ a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(17) The secretary ~~office~~ shall be responsible for certifying a business as eligible for undergoing expedited review under this section. Enterprise Florida, Inc., a county or municipal government, or the Rural Economic Development Initiative may recommend to the secretary ~~Office of Tourism, Trade, and Economic Development~~ that a project meeting the minimum job creation threshold undergo expedited review.

(18) The secretary ~~office~~, working with the Rural Economic Development Initiative and the regional permit action team

~~agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 24. Subsection (10) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(10)(a) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service

standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(b) There shall be a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with the local comprehensive plan as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may, if developed as proposed, include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The limited exemption applies if the project meets all of the following criteria:

1. The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150 percent within the first 5 years of the project's development.

2. The project, upon completion, would result in the creation of at least 50 full-time jobs.

3. The project is compatible with existing and planned adjacent land uses.

4. The project is consistent with local and regional economic development goals or plans.

5. The project is proximate to regionally significant road and rail transportation facilities.

6. The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average.

Section 25. Subsections (1) and (2), paragraph (c) of subsection (3), and subsection (4) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the water management districts, including the use of mitigation banks and any other mitigation options that satisfy state and federal requirements, including, but not limited to, 33 U.S.C. s. 332.3(b) ~~established~~

~~pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending

September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the department or the participating transportation authorities' obligation will be satisfied, the water management district will have continuing responsibility for the mitigation project, and the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Prior to March 1 of each year, each water management

district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall also consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days prior to

approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or ~~and~~ the appropriate water management district ~~that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process~~. ~~The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project.~~

Section 26. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1514
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Latvala
SUBJECT:	Permitting of Consumptive Uses of Water
DATE:	March 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.			AG	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The Committee Substitute (CS) requires water management districts (WMD) to issue 20-year consumptive use permits (CUP). It eliminates an applicant's requirement to provide reasonable assurances to a WMD in order to receive 20-year CUP. It also eliminates the requirement that permit holders submit a 10-year compliance report for their CUPs. The CS requires WMD governing boards to modify existing permits, if requested by the permit holder, to comply with the new requirements. The CS specifies how WMDs should evaluate CUP applications in mandatory reuse zones but exempts agricultural uses from this requirement. The CS creates a new type of permit called a "sustainable water use permit" for public water utilities. The CS adds an additional criterion to the list of factors a WMD governing board must consider when funding a water supply development project. Finally, the CS requires the WMDs, in consultation with the Department of Environmental Protection (DEP), to examine options to better coordinate CUPs with water supply planning and report findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives.

This CS substantially amends s. 373.236, 373.250, 373.2234, 373.243 and 373.707 and creates s. 373.255, Florida Statutes. It also creates an unnumbered section of law.

II. Present Situation:

Permitting of Consumptive Uses of Water

The Water Resources Act of 1972 (Act) provides for a two-tiered administrative structure governing water quality and consumption.[1] The Department of Natural Resources (now the DEP) was given general supervisory authority to coordinate statewide efforts for water management.[2] In addition, the Act created six WMDs along hydrological boundaries.[3] Each WMD has broad regulatory authority for managing water resources and has ad valorem taxing authority to raise revenue for water management purposes.[4] One of the most important aspects of the Act was the establishment of minimum flows and levels for the state's surface waters and groundwaters.[5] The goal of establishing such levels is to ensure there will be enough water to satisfy consumptive use and public purposes, such as swimming, boating and environmental protection. By establishing minimum flows and levels for non-consumptive use, water managers, theoretically, will be able to establish how much water is available for consumptive use.

The WMDs administer the CUP program pursuant to Part II, ch. 373, F.S. The program includes permitting, compliance and enforcement. Any entity or person who wants to use water for certain types of activities, except those exempted by statute or rule, is required to obtain a CUP. These permits are issued for finite durations and, upon expiration, must be renewed. No entity or type of use is given priority over another. However, when two or more applications are pending for a quantity of water that is not available to satisfy both permits, the DEP or governing board grants the permit to the applicant whose activities best serve the public interest. In this instance, preference is also given to applications for renewal over initial applications.[6]

Currently, the DEP and the WMDs may issue a CUP for a period of 20 years if requested, provided there is sufficient data that provides reasonable assurance that the conditions of the permit will be met during the duration of the permit. A CUP may be issued for period of up to 50 years if the related construction bonds for waterworks and waste disposal facilities require a longer period. In addition, the DEP and a WMD may require compliance reporting every 10 years as a condition of the permit.[7] CUPs for the development of alternative water supplies must be granted for periods of at least 20 years and require compliance reporting. Both the Southwest Florida and South Florida WMDs allocate enough water in their respective CUPs to satisfy the expected usage at the end of the CUP's duration. For example, an applicant requests a 100,000 gallon per day CUP for 20 years. The applicant expects 15 percent usage increase over the duration of the CUP. The Southwest Florida and South Florida WMDs will allocate 115,000 gallons per day on day one of the CUP to account for the increased demand 20 years later.

---

[1] The act was based on the first four chapters of *A Model Water Code*. Frank E. Maloney, et al., *A Model Water Code with Commentary* (Univ. of Fla. Press 1972).
[2] Section 373.026(7), F.S.
[3] In 1977, the Florida Legislature dissolved the Ridge and Lower Gulf Coast WMD and divided its territory between the South Florida and Southwest Florida WMDs. *See* ch.77-104, s. 113, Laws of Fla.
[4] Fla. CONST. art. VII, s. 9.
[5] Maloney, *supra* note 1. *See also* s. 373.042(1), F.S.
[6] *See* s. 373.223, F.S.
[7] Chapter 2010-205, s. 55, Laws of Fla.

Section 373.219, F.S., gives the WMDs the authority to define the requirements for issuance of these permits. Such requirements, however, must follow a set of conditions enumerated in s. 373.223(1), F.S. These conditions state a three-prong test applicants must meet for the water use to be accepted:

- Is the use a reasonable-beneficial use as defined in statute;
- Will the use interfere with any presently existing legal use of water; and
- Is the use consistent with the public interest?

Pursuant to their rulemaking authority, each WMD has adopted rules that detail when and what type of permit, individual or general, an applicant may need.[8]
Generally, WMDs require a CUP when:

- The planned withdraw exceeds 100,000 gallons per day, or
- The outside diameter of the groundwater well is six inches or larger, or
- The outside diameter of the withdrawal pipe from a surface water is four inches or larger, or
- The total withdrawal capacity of the system is one million gallons per day or larger.

Some exceptions to these general guidelines exist and are generally based on the individual hydrologic conditions of certain areas within the district. Traditional exemptions for this permitting program include, single family homes or duplexes, fire fighting water wells, salt water use and reclaimed water use.

Reuse of Reclaimed Water

The promotion of reuse of reclaimed water is established in ss. 403.064 and 373.250, F.S., as a formal state objective. The DEP and WMDs maintain the largest and most comprehensive inventory of permitted reuse systems in the country. The inventory allows the state to monitor progress on reclaimed water efforts and further promote and expand its uses in Florida. In addition, the inventory provides municipalities and utilities interested in developing reuse programs access to other communities and utilities that have already implemented reuse programs.[9] Reuse of reclaimed water is used to supplement use of potable water sources for public use purposes. Those purposes may include:[10]

- Public access areas and landscape irrigation,
- Agricultural irrigation,
- Groundwater recharge and indirect potable reuse,
- Industrial,
- Toilet flushing,
- Fire protection, and
- Wetlands.

[8] See the following Florida Administrative Code rules for each district's criteria: 40A-2 (Northwest Florida); 40B-2 (Suwannee River); 40C-2 (St. Johns River); 40D-2 (Southwest Florida); and 40E-2 (South Florida).
[9] Florida Dep't of Environmental Protection, *2009 Water Reuse Inventory*, available at http://dep.state.fl.us/water/reuse/docs/inventory/2009_reuse-report.pdf (last visited Mar. 28, 2011).
[10] *Id.* at 5.

Wastewater facilities having permitted capacities of 0.1 million gallons per day (mgd) or greater provide annual reports to the DEP for inclusion in the reuse inventory.[11] In 2009, there were a total of 548 wastewater facilities with a combined permitted capacity of 2,497 mgd and a total actual flow of 1,555 mgd. Not all facilities have reuse programs; however, the total permitted capacity of reuse is 1,559 mgd. In 2009, 673 mgd of reclaimed water was reused.[12] The reclaimed water was used to irrigate 276,471 residences, 533 golf course, 873 parks and 306 schools.[13] As may be expected, reuse in the St. Johns River, Southwest Florida and South Florida WMDs accounted for nearly 90 percent of all reuse in 2009.[14] These three WMDs are the only ones where mandatory reuse zones have been created by local governments.[15]

Mandatory Reuse Zones

Mandatory reuse zones are established by local governments and prohibit the use of other water sources when reclaimed water is available. Regulating reuse is not as simple as traditional sources of water. The WMDs contend that reuse falls under the regulatory authority of Part II, ch. 373, F.S., which governs permitting of consumptive uses of water. On the other hand, utilities contend that reuse is a product they created and therefore have sole discretionary control over it.[16] Because of this, potential conflicts of regulatory authority arise in mandatory reuse zones. To address this situation, the St. Johns River WMD and a local government have developed ordinance language that allows for reuse in these zones unless the WMD authorizes another water source.[17] However, better coordination is needed between the WMDs, local governments and public water utilities.

Alternative Water Supply Development

Passed during the 2005 Legislative Session, SB 444 added major revisions to Part I, ch. 373, F.S. It marked the first time in Florida that alternative water resource development, and the money for such, was implemented. The amendments provided numerous changes to Florida water protection and alternative water supply development programs. The primary goal of SB 444 was to create a $100 million annual funding program entitled the "Water Protection and Sustainability Program" to assist in the implementation of many existing water protection and development programs.[18] In addition, funding was provided for a new alternative water supply development program. Section 373.707(8)(f), F.S., requires the WMD governing boards to prioritize financial assistance for development of alternative water supplies. The governing boards may establish factors to determine funding but must give significant weight to nine criteria contained in this subsection.

---

[11] See rule 62-610, F.A.C.
[12] *See supra* note 9, at 3.
[13] *See supra* note 9, at 2.
[14] *See supra* note 9, at 7.
[15] Florida Dep't of Environmental Protection, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings*, available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Mar. 28, 2011).
[16] *Id.* at 3.
[17] *Id.* at 4.
[18] *See* ch. 2005-291, s. 3, Laws of Fla. Also, state funding has not been provided for alternative water supply development for the past two fiscal years.

III. Effect of Proposed Changes:

Section 1 amends s. 373.236, F.S., to require the WMDs to issue 20-year CUPs. Reasonable assurance from the applicant that the conditions of the permit will be meet over the life of the CUP is no longer required. Applicants may request a shorter duration. It removes the requirement that WMDs inform agriculture of the availability of 20-years CUPs. The changes made to this section of the CS make this requirement obsolete. Additionally, the CS eliminates the requirement that permit holders submit 10-year compliance reports to the DEP or the governing board of a WMD. The CS allows CUP holders to request permit modification to bring them into compliance with these changes.

Section 2 amends s. 373.250, F.S., to add a new section related to mandatory reuse zones. The CS requires the WMDs to recognize mandatory reuse zones established by local governments. When evaluating a CUP application for use in a mandatory reuse zone, a WMD must consider the following:

- If reclaimed water is available and technically and environmentally feasible for the proposed use, a WMD shall presume it is economically feasible as well. The applicant has the burden of proof to show otherwise;
- Applicants in these zones are required to consider the feasibility of reclaimed water for nonpotable uses. This requirement extends to all regulated water uses, except for those that are exempt from permitting; and
- In a mandatory reuse zone, reclaimed water use is given priority over all other water sources for nonpotable use. Using reclaimed water is required if it is technically, environmentally and economically feasible.

The CS does not limit the ability of a reuse utility, local government or special district from prohibiting using potable water for nonpotable uses when reclaimed water can meet the demand. The CS exempts agricultural uses on agricultural lands from the provisions of this section; however, it does not affect the authority of a WMD to consider reuse for agricultural permits.

Section 3 creates s. 373.255, F.S., to create a new type of water use permit called a "sustainable water use permit." The CS directs the WMDs to implement this permit program for public water utilities. Specifically the program:

- Provides for a single permitting process authorizing water use from multiple sources;
- Emphasizes alternative water sources;
- Encourages storage of excess surface water flows or water from alternative water supplies in reservoirs, aquifer storage and recovery wellfields or other means of storage for recovery;
- Allows recovery of stored water;
- Allows groundwater usage during droughts; and
- Preserves traditional water sources for future generations.

In its application, a public water utility must identify each source it may draw from and demonstrate, for each source, that the withdrawal meets the three-prong test in s. 373.223(1), F.S., and noted previously in this analysis.

The permit must specify all sources a utility may withdraw from and the conditions under which a withdrawal may occur. However, it may be issued without specifying the quantity of water that may be withdrawn from each source. The CS specifies that these permits are issued for 20 years with reasonable assurances for renewal in the absence of quantifiable changed conditions.

Sections 4 and 5 amend ss. 373.2234 and 373.243, respectively, to provide conforming changes for the changes contained in this CS for issuance of 20-year CUPs.

Section 6 amends s. 373.707, F.S., to add an additional criterion to the list of significant factors a WMD governing board must consider when determining alterative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

Section 7 creates an unnumbered section of law. The CS requires each WMD, in coordination with the DEP, to examine options to better coordinate CUPs with water supply planning by extending and reconciling CUP durations so they expire and can be renewed simultaneously in a given basin. Each WMD must report its findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2012.

Section 8 provides an effective date of July 1, 2011.

Other Potential Implications:

In creating a new type of water use permit outside of the normal permitting process contained in s. 373.229, F.S., the CS puts public water utilities in a unique position. No other category of user may have access to this new permit type. The intent of this is unclear, but it may have the effect of prioritizing permitting for public water utilities simply because they have their own permitting process. Additionally, a permit may be issued to a public water utility without specifying the quantity of water allocated from each source it is permitted to draw from. The WMDs have expressed concern that this ties up the entire allocation for each water source. For example, if a public water utility has a 50 mgd permit and is permitted to draw from groundwater, surface water and a reservoir, it may draw 50 mgd from any of the three sources alone or a combination of the three. Under this scenario the permitting WMD would have to reserve a 50 mgd allocation for the public water utility from each source, or 150 mgd. This effectively ties up 100 mgd more than the permitted allocation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CUPS
Costs for preparing CUP applications will decrease because applicants will no longer have to provide reasonable assurances they can meet the conditions of CUPs for their duration in order to receive 20-year permits. Additionally, compliance reporting costs will be eliminated as the report is no longer required. For applicants in the Southwest or South Florida WMDs, if there is not enough water to adequately satisfy their application requests, they may be required to provide their own water sources, either through development or purchase, or not conduct the activity they requested for the CUP. Developing or buying water allocations is a significant expense but can only be evaluated on a case-by-case basis. Thus, the fiscal impact cannot be determined at this point.

Reuse
Applicants for CUPs in mandatory reuse zones will bear the burden of proving that using reclaimed water is not economically feasible for their purposes. Agricultural operations will not bear this burden as they are exempt.

Sustainable Use Permit
Allowing public water utilities to access their total allocations from any of the sources they are permitted to draw from may have negative impacts on existing and future allocations for current permit holders and future applicants. The costs associated with any potential impacts cannot be determined.

C. Government Sector Impact:

CUPS
Costs for reviewing CUP applications will decrease as reasonable assurance will no longer be included in the application. Additionally, costs for reviewing compliance reports will be eliminated as the report is no longer required.

Reuse
The WMDs expect they can meet the requirements of this section of the CS with existing staff and resources.

Sustainable Use Permit
Although the WMDs currently administer the CUP program for public water utilities, creating a new permit process will require additional expenses and staff time. The WMDs

expect they can meet the requirements of this section of the CS with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Environmental Preservation and Conservation on March 30, 2011:
Agricultural uses for water are exempt from the mandatory reuse zone requirements contained in this CS. The WMDs still have the authority to consider the feasibility of using reclaimed water in any permit for agricultural use of water. The CS modifies one criterion of the sustainable use permit to allow capture and recovery from alternative water supply sources. Lastly, the CS adds an additional criterion to the list of significant factors a WMD governing board must consider when determining alterative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

B. Amendments:

None.

684730

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment

Delete lines 184 - 185
and insert:
(c) Stores excess captured surface water flow or water from an alternative water supply as defined in s. 373.019(20) in off-stream reservoirs, aquifer storage and recovery wellfields, or other means of storage for recovery.

363968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 266 and 267
insert:

Section 6. Paragraph (f) of subsection (8) of section 373.707, Florida Statutes, is amended to read:

373.707 Alternative water supply development.—

(8)

(f) The governing boards shall determine those projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following

363968

factors:

1. Whether the project provides substantial environmental benefits by preventing or limiting adverse water resource impacts.

2. Whether the project reduces competition for water supplies.

3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

5. The quantity of water supplied by the project as compared to its cost.

6. Projects in which the construction and delivery to end users of reuse water is a major component.

7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

8. Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).

9. Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has implemented a high-water recharge protection tax assessment program as provided in s. 193.625.

10. Whether the project provides additional storage capacity of surface water flows to ensure sustainability of the

363968

public water supply.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 26

and insert:

references; amending s. 373.707, F.S.; providing an additional weighting factor that the governing board may consider when determining which alternative water supply projects to select for financial assistance; directing each water management district

287570

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment

Delete lines 148 - 173
and insert:
(4)(a) In evaluating an application for the consumptive use of water, other than for an agricultural use on land that has been classified as agricultural pursuant to s. 193.461, a water management district shall recognize a mandatory reuse zone that is created by the local government or a special district pursuant to applicable law and that requires persons specified by the local government or special district to connect to a reclaimed water system for irrigation and other non-potable

uses, as follows:

1. Where reclaimed water is available and technically and environmentally feasible for the proposed use, the water management district shall presume that reclaimed water is economically feasible in a mandatory reuse zone, and an applicant bears the burden of overcoming the presumption;

2 Any applicant in a mandatory reuse zone seeking authorization for a nonpotable use shall consider the feasibility of using available reclaimed water. This requirement applies to all regulated water uses, regardless of type of permit or authorization, excluding exemptions from permitting; and

3. In a mandatory reuse zone, the use of reclaimed water shall be prioritized over other water sources for nonpotable uses and shall be required if determined to be technically, environmentally, and economically feasible.

(b) This subsection does not limit the ability of a reuse utility, the local government, or a special district to restrict the use of potable water supplied by the potable water distribution system serving its customers for the purposes of irrigation or other nonpotable uses that may be met by reclaimed water. This subsection does not affect the authority of a water management district to consider the feasibility of using reclaimed water in any permit application for the agricultural use of water.

116348

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 142.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 3 - 14

and insert:

water; amending s.

380672

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 174 - 266.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 18 - 26

and insert:

providing applicability; directing each water management district

713016

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment

Delete line 173

and insert:

other nonpotable uses that may be met by reclaimed water. This subsection does not affect the authority of a water management district to consider the feasibility of using reclaimed water in any permit application for the agricultural use of water.

461200

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment

Delete line 149

and insert:

of water, other than for an agricultural use on land that has been classified as agricultural pursuant to s. 193.461, a water management district shall recognize a

By Senator Latvala

16-00531A-11 20111514__

A bill to be entitled

An act relating to permitting of consumptive uses of water; amending s. 373.236, F.S.; requiring consumptive use permits to be issued for a period of 20 years; providing exceptions; deleting legislative findings requiring the Department of Environmental Protection to provide certain information to agricultural applicants; eliminating requirements for permit compliance reports; removing the authority of the department and the water management district governing boards to request permit compliance reports and to modify or revoke consumptive use permits; providing for the modification of existing consumptive use permits under certain conditions; amending s. 373.250, F.S.; providing requirements for water management districts in evaluating applications for the consumptive use of water in mandatory reuse zones; providing applicability; creating s. 373.255, F.S.; requiring water management districts to implement a sustainable water use permit program for public water utilities; providing program criteria; providing permit application and issuance requirements; providing requirements for permit monitoring, compliance, and performance metrics; amending ss. 373.2234 and 373.243, F.S.; conforming cross-references; directing each water management district to consult with the Department of Environmental Protection to examine options for improving the coordination between the consumptive use permitting

process and the water supply planning process by extending and reconciling certain permitting provisions; requiring each water management district to provide a report to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits~~; compliance reports~~.—

(1) Permits shall be granted for a period of 20 years unless an applicant requests that the permit be issued for a shorter period of time~~, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided. The governing board or the department may base the duration of permits on a reasonable system of classification according to source of supply or type of use, or both~~.

~~(2) The Legislature finds that some agricultural landowners remain unaware of their ability to request a 20-year consumptive use permit under subsection (1) for initial permits or for renewals. Therefore, the water management districts shall inform agricultural applicants of this option in the application form.~~

(2)~~(3)~~ The governing board or the department may authorize a permit of duration of up to 50 years in the case of a

municipality or other governmental body or of a public works or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.

~~(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 10 years during the term of a permit. The Suwannee River Water Management District may require a compliance report by the permittee every 5 years through July 1, 2015, and thereafter every 10 years during the term of the permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. This subsection shall not be construed to limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.~~

(3)~~(5)~~ Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years. However, if the permittee issues bonds for the construction of the project, upon request of the permittee prior to the expiration of the permit, that permit shall be extended for such

additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, provided that the governing board determines that the use will continue to meet the conditions for the issuance of the permit. ~~Such a permit is subject to compliance reports under subsection (4).~~

(4)~~(6)(a)~~ The Legislature finds that the need for alternative water supply development projects to meet anticipated public water supply demands of the state is so important that it is essential to encourage participation in and contribution to these projects by private-rural-land owners who characteristically have relatively modest near-term water demands but substantially increasing demands after the 20-year planning period in s. 373.709. Therefore, where such landowners make extraordinary contributions of lands or construction funding to enable the expeditious implementation of such projects, the governing board ~~water management districts~~ and the department may grant permits for such projects for a period of up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities, with the exception of any publicly or privately owned utilities created for or by a private landowner after April 1, 2008, which have entered into an agreement with the private landowner for the purpose of more efficiently pursuing alternative public water supply development projects identified in a district's regional water supply plan and meeting water demands of both the applicant and the landowner.

~~(b) A permit under paragraph (a) may be granted only for that period for which there is sufficient data to provide~~

~~reasonable assurance that the conditions for permit issuance will be met. Such a permit shall require a compliance report by the permittee every 5 years during the term of the permit. The report shall contain sufficient data to maintain reasonable assurance that the conditions for permit issuance applicable at the time of district review of the compliance report are met. After review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. This subsection does not limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.~~

(5) ~~(7)~~ A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of renewable energy, as defined in s. 366.91(2)(d), shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration if requested by the applicant ~~that reflects the longest period for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4)~~.

(6) If requested by an existing consumptive use permit holder, the governing board shall modify the permit to bring it into compliance with this section.

Section 2. Subsections (4), (5), and (6) of section 373.250, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, and a new subsection (4) is added to

that section to read:

373.250 Reuse of reclaimed water.—

(4)(a) In evaluating an application for the consumptive use of water, a water management district shall recognize a mandatory reuse zone created by a local government or special district pursuant to applicable law that requires persons specified by the local government or special district to connect to a reclaimed water system for irrigation and other nonpotable uses, as follows:

1. If reclaimed water is available and technically and environmentally feasible for the proposed use, the water management district shall presume that reclaimed water is economically feasible in a mandatory reuse zone, and the applicant shall bear the burden of overcoming the presumption.

2. Any applicant in a mandatory reuse zone seeking authorization for a nonpotable use shall consider the feasibility of using available reclaimed water. This requirement applies to all regulated water uses, regardless of the type of permit or authorization, excluding exemptions from permitting.

3. In a mandatory reuse zone, the use of reclaimed water shall be prioritized over other water sources for nonpotable uses and shall be required if determined to be technically, environmentally, and economically feasible.

(b) This subsection does not limit the authority of a reuse utility, local government, or special district to restrict the use of potable water, supplied by the potable water distribution system serving its customers, for the purposes of irrigation or other nonpotable uses that may be met by reclaimed water.

Section 3. Section 373.255, Florida Statutes, is created to

read:

373.255 Sustainable water use permit.—

(1) Each water management district shall implement a sustainable water use permit program for public water utilities that:

(a) Provides a single permitting process authorizing the use of water from multiple water sources.

(b) Encourages and facilitates the use of alternative water sources.

(c) Stores excess captured surface water flow in off-stream reservoirs or aquifer storage and recovery wellfields.

(d) Recovers stored water in order to reliably meet public demand.

(e) Provides for use of traditional groundwater as a supplemental source during drought conditions when stored water is reduced, to the extent necessary to meet the public demand for water in a reliable and efficient manner.

(f) Preserves traditional water supply sources for use by future generations.

(2) A public water utility applying for a sustainable water use permit must identify each source from which water is proposed to be withdrawn and demonstrate for each source that the withdrawal is a reasonable-beneficial use as defined in s. 373.019, is consistent with the public interest, and will not interfere with any presently existing legal use of water.

(3) A sustainable water use permit:

(a) Shall specify all sources from which water may be withdrawn and the conditions under which such withdrawals may be made in order to meet the reasonable public water supply demands

of the utility.

(b) May be issued without specifying the quantity of water that is permitted to be withdrawn from any individual source.

(c) Shall be issued for a period of not less than 20 years, with the reasonable expectation of renewal in the absence of readily quantifiable changed conditions.

(4) Monitoring, compliance, and performance metrics for sustainable water use permits shall acknowledge and accommodate the natural variability and inherent uncertainty of the climate, weather, and hydrology of the relevant region while simultaneously enabling public water supply utilities to meet the potable water demands of their customers in a reliable, efficient, and cost-effective manner.

Section 4. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.—The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.709(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant’s proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water

supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by the applicant, for at least a 20-year period ~~and may be subject to the compliance reporting provisions of s. 373.236(4)~~. Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(2) and (3), or be construed to provide that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 5. Subsection (4) of section 373.243, Florida Statutes, is amended to read:

373.243 Revocation of permits.—The governing board or the department may revoke a permit as follows:

(4) For nonuse of the water supply allowed by the permit for a period of 2 years or more, the governing board or the department may revoke the permit permanently and in whole unless the user can prove that his or her nonuse was due to extreme

hardship caused by factors beyond the user's control. For a permit issued pursuant to s. 373.236(5)~~(7)~~, the governing board or the department may revoke the permit only if the nonuse of the water supply allowed by the permit is for a period of 4 years or more.

Section 6. In consultation with the Department of Environmental Protection, each water management district is directed to examine options for improving the coordination between the consumptive use permitting process under part II of chapter 373, Florida Statutes, and the water supply planning process under part VII of chapter 373, Florida Statutes, by extending and reconciling the duration of issued consumptive use permits to provide for the simultaneous expiration and renewal of the permits, at the request of an applicant, on a rolling basin-specific basis. Each water management district shall report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2012. This section does not affect the term of any consumptive use permit issued in accordance with Florida law.

Section 7. This act shall take effect July 1, 2011.

BILL NOT RECEIVED

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL:	CS/CS/SB 1698
INTRODUCER:	Environmental Preservation and Conservation Committee, Health Regulation Committee and Senator Dean
SUBJECT:	Onsite Sewage Treatment
DATE:	April 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.	Uchino	Yeatman	EP	**Fav/CS**
3.			CA	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

This Committee Substitute for Committee Substitute (CS) for SB 1698 repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program (evaluation program), unless the county or municipality opts out and chooses not to participate in an evaluation program by resolution, which must be adopted before January 1, 2012, and filed with the Secretary of State. Counties that have first magnitude springs are prohibited from opting out.

If an evaluation program is adopted by a county or municipality by ordinance, this CS requires:

- A pump out and evaluation of a septic tank to be performed every five years, unless an exception applies.
- Certain persons to perform the pump out and evaluation.
- Notice to be given to septic tank owners at least 60 days before the septic tank is due for an evaluation.

- Penalties for qualified contractors and septic tank owners, who do not comply with the requirements of the evaluation program.
- Certain evaluation and assessment procedures to be followed during the inspection of a septic tank.
- A county or municipality to develop a database and establish a computerized tracking system based on evaluation reports submitted. The system, which may be Internet-based, is required to include certain information and notify homeowners when evaluations are due.
- A county or municipality to notify the Secretary of Environmental Protection upon the adoption of the ordinance establishing the program.
- The Department of Environmental Protection (DEP), within existing resources, to notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such local governments to model and establish low-interest loan programs.

The CS provides that a local ordinance may authorize the assessment of a fee not to exceed $30 to cover the costs of administering the evaluation program.

This CS provides that a grant program will be available January 1, 2013, to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with any required inspection, pump out, repair, or system replacement. The CS also reduces the range of the fee amount that may be assessed by the DOH for an evaluation report.

The CS also:
- Defines "bedroom."
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if, when the title is transferred, new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not "abandoned."
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to $15-30 from $30-150.

This CS substantially amends the following sections of the Florida Statutes: 381.0065, 381.00656, and 381.0066.

This CS creates s. 381.00651, F.S.

II. Present Situation:

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.[1]

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[2]

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.[3] The DOH's Bureau of Onsite Sewage develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (septic tanks) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal systems contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.[4]

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.[5] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (Report).[6] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection.

---

[1] *See* s. 381.006, F.S.
[2] Section 381.0065(2)(j), F.S.
[3] Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, http://www.myfloridaeh.com/ostds/index.html (last visited Apr. 1, 2011).
[4] Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited Apr. 1, 2011).
[5] *See* ch. 2008-152, Laws of Fla.
[6] Florida Dep't of Health, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited Mar. 24, 2011).

The Report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the Report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and by today's standards and may be under-designed. The DOH's statistics indicate that approximately 2 million septic tanks are 20 years or older, which is the average lifespan of a septic tank in Florida.[7] Because repairs of onsite systems were not regulated until 1987, many systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida's pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.[8]

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.[9] Depending on the sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.[10]

Minimum required treatment capacities for systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined from the Table[11] below.

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area in square feet	Minimum Required Treatment Capacity gallons per day
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

For each additional bedroom or each additional 750 square feet of building area, or fraction thereof, treatment capacity shall be increased by 100 gallons.

[7] Dep't of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (last visited Mar. 24, 2011). *See also* Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at http://www.doh.state.fl.us/environment/ostds/New.htm (last visited on Mar. 24, 2011).
[8] *Id.*
[9] Rule 64E-6.001, F.A.C.
[10] *Id.*
[11] Table adapted from Rule 64E-6.012, F.A.C.

Minimum design flows for systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family per dwelling unit the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for 2 bedrooms with 751-1,200 square feet, 200 gallons; for 3 bedrooms with 1,201-2,250 square feet, 300 gallons; and for 4 bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing are to be increased by 100 gallons per dwelling unit.[12]

Chapter 2010-205, Laws of Florida

In 2010, the Legislature enacted CS/CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[13] The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

This law also establishes a grant program under s. 381.00656, F.S., for owners of septic tanks earning less than or equal to133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or system replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grant funds.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect, but no more than $5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

Springs in Florida

Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day.[14] Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

[12] Rule 64E-6.008, F.A.C.
[13] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.
[14] Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Apr. 1, 2011).

III. Effect of Proposed Changes:

The CS for SB 1698 defines "bedroom" because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms. The term "bedroom" is defined as a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

The CS provides that a permit issued and approved by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place. The CS also provides that a system is not considered "abandoned" if the properly functioning system is disconnected from a structure that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

- The reconnection of the system is to the same type and approximate size of the rebuilt structure that existed prior to the disaster;
- The system is not a sanitary nuisance; and
- The system has not been altered without prior authorization.

In addition, a system that serves a property that is foreclosed upon is not an abandoned system.

The CS provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.

The CS provides that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

The CS repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the DOH's attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area. It contains an opt-out provision for local governments provided they

pass separate resolutions by a majority of the local elected body. Counties containing a first magnitude spring are prohibited from opting out.

If a county or municipality adopts an ordinance to implement an evaluation program, the county or municipality must notify the Secretary of State by letter of the adoption of the ordinance. If the county or municipality opts out of having an evaluation program, which must be done by adopting a resolution before January 1, 2012, the resolution opting out of having an evaluation program must be filed with the Secretary of State. However, a county or municipality that opts out of the program may, at a later date, adopt an ordinance imposing an evaluation program. A county or municipality may repeal an ordinance adopting an evaluation program if notification is provided to the Secretary of State by letter of repeal. A local ordinance may not deviate from or exceed the substantive requirements under s. 381.00651, F.S.

This CS requires the owner of an onsite sewage treatment and disposal system within a county's or municipality's jurisdiction that has implemented an evaluation program to have the system pumped out and evaluated at least once every five years to assess the fundamental operational condition of the system and to identify system failures. In addition to a pump out, the inspection procedures require the location of the system to be identified and the apparent structural condition of water tightness of the tank to be assessed and the size of the tank to be estimated. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects and baffles or tees must be checked to ensure that they are intact and secure.[15] Furthermore, the evaluation must note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection.

However, a pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair, or modification of the system within the previous five years, the capacity is indicated on the documentation, and documentation shows the condition of the tank is structurally sound and watertight. Also, the local ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination.

This CS also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons, or alarms. The drainfield evaluation must include an overall assessment of the drainfield and a determination of the approximate size and location of the drainfield, state the condition of the surface vegetation and whether there is any seepage visible or excessively lush vegetation, state whether there is ponding water within the drainfield, and identify the location of any downspout or drain that encroaches or drains into the drainfield

[15] The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at http://www.inspectapedia.com/septic/tanktees.htm (last visited Mar. 28, 2011).

area. If the system contains pumps, siphons, or alarms, the following information must be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether there are a check valve and purge hole;
- Whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, and its operational condition; and
- Whether surface water can infiltrate into the tank and whether the tank was pumped out.

This CS requires evaluations to be performed by a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.; a professional engineer licensed pursuant to ch. 471, F.S., who has experience with wastewater treatment systems; an environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation; or an employee working under the supervision of these individuals. All evaluation forms must be signed by a qualified contractor.

This CS also provides that the local ordinance:

- May not require an owner to repair, modify, or replace a system as a result of an evaluation unless the evaluation identifies a system failure. A "system failure" is defined as a condition existing within a system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system failure is not based on whether a system has a minimum separation distance between the drainfield and wet season water table, or if an obstruction in a sanitary line or effluent screen or filter prevents effluent from flowing into a drain.
- May not require more than the least costly remedial measure to resolve a system failure and the homeowner may choose the remedial measure. Remedial measures must meet the requirements of the code in effect at the time they are permitted and installed.
- Exempt systems that are required to obtain an operating permit or that are inspected by the DOH from the evaluation requirements.
- Require notice be given to the septic tank owner at least 60 days before the septic tank is due for an evaluation and the notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.
- May authorize the assessment of a fee not to exceed $30 against the owner of the septic tank to cover the costs of administering the evaluation program.
- Provide penalties for qualified contractors and septic tank owners who do not comply with the requirements of the program.

The assessment procedure provided for in the CS requires:

- The qualified contractor to document the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner, the county or municipality, and the county health department;
- The local county health department to retain a copy of the evaluation report for a minimum of five years until a subsequent report is filed;

- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, drainfield problems, and water flow problems or maintenance needed; and
- An overall assessment of the fundamental operational condition of the system.

This CS requires a county or municipality that adopts an evaluation program to develop a database and establish a computerized tracking system based on evaluation reports submitted. The data and information collected is to be recorded and updated as evaluations are conducted and reported. The system, which may be Internet-based, is required notify homeowners when evaluations are due and the information tracked by the system must include:

- The addresses or locations of the onsite systems;
- The number of onsite systems within the local jurisdiction;
- The total number and types of system failures; and
- Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the systems.

This CS requires a county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program to notify the Secretary of Environmental Protection upon the adoption of an ordinance establishing the program. The DEP must, upon request and within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and provide guidance to the county or municipality in the application process to receive such funds. The DEP must also, upon request and within existing resources, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs.

This CS requires the DOH to administer a grant program, effective January 1, 2013, to assist low-income owners[16] of onsite sewage treatment and disposal systems with the cost of required inspections, pump outs, repairs, or system replacements.

This CS requires system owners to pay a fee of not less than $10 or more than $15 to be used to fund the evaluation program, including a fee up to $5 to be used toward the grant program under s. 381.00656, F.S.

This CS also reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than $50 to a fee of not less than $15 and from a fee of not more than $150 to a fee of not more than $30.

The CS provides that it will take effect upon becoming a law.

[16] To be eligible for financial assistance, the owner must have a family income of less than or equal to 133 percent of the federal poverty level at the time of the application for assistance.

Other Potential Implications:
If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.[17]

The CS provides no grandfather clause for local governments that have existing evaluation programs. These local governments will either have to comply with the provisions of this CS or adopt resolutions to opt out. It is not clear whether a local government administering a septic tank evaluation program will be able to continue administering its existing evaluation program if it opts out.

The CS prohibits local ordinances from requiring repairs, modifications or system replacements unless a system is found to be failing. System problems that do not rise to the level of a "system failure" cannot be required to be remedied under an ordinance. The septic tank owner will have the option to repair or modify a system with problems but not "failing" as defined by this CS.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 ($1.88 million for FY 2010-2011), are exempt.

There are 18 counties with first magnitude springs within their boundaries that must adopt the evaluation procedures set forth in this CS. The CS requires them to expend funds to establish and administer evaluation programs and gives them authority to charge up to $30 per evaluation. If the up to $30 fee is not sufficient to cover these counties' costs, and the shortfall exceeds $1.88 million, counties will not be bound by the CS unless the Legislature finds the law fulfills an important state interest and passes it with a two-thirds vote of the membership of both chambers. The bill does not contain a finding of an important state interest.

[17] *See supra* note 13.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS allows a county or municipality by ordinance to assess a fee up to $30 to cover the costs of administering the evaluation program. The CS also requires an evaluation report fee of not less than $10 or more than $15.

The CS reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from a fee of not less than $50 to a fee of not less than $15 and from a fee of not more than $150 to a fee of not more than $30.

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems subject to the evaluation program will have to pay to have their systems evaluated every five years, which would include an evaluation report fee of up to $15 and a fee of up to $30 imposed by the county or municipality in addition to the charges assessed by the qualified contractor. The owners will also be responsible for the cost of required repairs, modifications or replacements of the system if it is found to be "failing."

C. Government Sector Impact:

The cost to counties or municipalities adopting an evaluation program is indeterminate as it depends on program requirements adopted by each county or municipality. The DOH will also incur an indeterminate amount of costs associated with implementing the grant program. Counties with first magnitude springs will be required to expend funds to implement the provisions of this CS.

VI. Technical Deficiencies:

The CS leaves intact the grant program and evaluation report fee to be implemented and assessed by the DOH. However, the remainder of the CS takes away the DOH's oversight and enforcement of an evaluation program and gives it to local governments. The CS also provides for a fee to be imposed by the county or municipality to pay for the cost of implementing the evaluation program. Therefore, it may be more consistent to establish the grant program within individual counties and municipalities that adopt an evaluation program. It may also be appropriate to authorize local governments to collect the evaluation report fee, instead of the DOH.

The CS requires the Surgeon General, in consultation with the Revenue Estimating Conference, to submit a revenue neutral fee schedule for implementation of the evaluation program created in this CS. The report was due on January 1, 2011 for a program created in this CS. The date should likely be January 1, 2012.

VII. Related Issues:

Counties with first magnitude springs within their boundaries are prohibited from opting out of the provisions of this CS. Those counties are Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Taylor, Volusia and Wakulla. However, municipalities having first magnitude springs within their boundaries may opt out.

In addition, spring recharge areas for first magnitude springs can and do exist in multiple jurisdictions. Therefore, some counties will be required to implement and administer an evaluation program while their neighboring counties, which also impact their springs, can opt out.

VIII. Additional Information:

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

CS by Environmental Preservation and Conservation on March 30, 2011:
The CS makes the following changes:

- Reinstates the ban on the land spreading of septage after January 1, 2016;
- Requires repairs, modifications and system replacements to meet current codes;
- Exempts systems that require operation permits or annual inspections from the evaluation program provisions;
- Prohibits counties with first magnitude springs within their boundaries from opting out of the evaluation program provisions;
- Changes the DEP's role in aiding the local government application process for funding from providing "direct technical assistance" to "guidance"; and
- Removes a provision that required the DEP to provide advice and technical assistance to local governments on how to provide low-interest loans for repairs to residents with failing systems.

CS by Health Regulation on March 29, 2011:
The CS differs from the bill in that it:

- Replaces the pilot program for the periodic evaluation of onsite sewage treatment and disposal systems with local onsite sewage treatment and disposal system evaluation and assessment programs that are to be adopted by a county or municipality by ordinance, unless the county or municipality opts out of the program by a certain date by adopting a resolution.
- Provides certain requirements of an evaluation program to be implemented by a county or municipality.

- Defines "bedroom" for clarification purposes because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms.
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not "abandoned."
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee not less than $50 to a fee of not less than $15 and from a fee not more than $150 to a fee of not more than $30.

B. Amendments:

None.

370128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 338 - 355.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 65
and insert:
Section 1. Subsections (1), (5), and (6) of section

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

370128

Delete lines 21 - 26

and insert:

evaluated at least once every 5 years; creating s. 381.00651, F.S.; requiring a

602374

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Detert) recommended the following:

Senate Amendment

Delete lines 425 - 427
and insert:
requirements of the code in effect at the time the system's remedial measures are permitted and installed.

191566

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete line 428
and insert:
(d) *Exemptions.*—The local ordinance shall exempt from the

893952

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Jones) recommended the following:

Senate Amendment (with title amendment)

Between lines 528 and 529
insert:
(f) *Counties required to participate.*—Any county identified as having an impaired water body in accordance with s. 403.067(4) or a first magnitude spring within its boundaries is prohibited from opting out of this section.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 54


893952

and insert:

from a county or municipality; prohibiting a county having certain impaired water bodies or a first magnitude spring from opting out of the provisions of the act; amending s. 381.00656,

394106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment to Amendment (893952)

Delete lines 6 - 7
and insert:
as having a first magnitude spring within its boundaries is

963910

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 544 - 545
and insert:
the Department of Environmental Protection shall provide guidance in the application process to receive

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 52 - 53
and insert:
department to provide certain guidance, within

963910

existing resources, upon request

767714

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete lines 551 - 554
and insert:
revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. This subsection

By the Committee on Health Regulation; and Senator Dean

588-03213-11 20111698c1

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; deleting legislative intent; defining the term "bedroom"; providing for any permit issued and approved by the Department of Health for the installation, modification, or repair of an onsite sewage treatment and disposal system to transfer with the title of the property; providing circumstances in which an onsite sewage treatment and disposal system is not considered abandoned; providing for the validity of an onsite sewage treatment and disposal system permit if rules change before final approval of the constructed system; providing that a system modification, replacement, or upgrade is not required unless a bedroom is added to a single-family home; deleting provisions requiring the Department of Health to administer an evaluation and assessment program of onsite sewage treatment and disposal systems and requiring property owners to have such systems evaluated at least once every 5 years; deleting provisions prohibiting the land application of septage and requiring the Department of Environmental Protection to recommend to the Governor and Legislature alternative methods for land application of septage; creating s. 381.00651, F.S.; requiring a county or municipality to adopt under certain circumstances a local ordinance creating a program for the periodic evaluation and assessment of onsite

sewage treatment and disposal systems; requiring the county or municipality to notify the Secretary of State of the ordinance; authorizing a county or municipality, in specified circumstances, to opt out of certain requirements by a specified date; authorizing a county or municipality to adopt or repeal, after a specified date, an ordinance creating an evaluation and assessment program; providing criteria for evaluations, qualified contractors, repair of systems, exemptions, notifications, fees, and penalties; requiring that certain procedures be used for conducting tank and drainfield evaluations; providing for certain procedures in special circumstances; providing for assessment procedures; requiring the county or municipality to develop a system for tracking the evaluations; providing criteria; requiring counties and municipalities to notify the Secretary of Environmental Protection that an evaluation program ordinance is adopted; requiring the department to notify those counties or municipalities of the use of, and access to, certain state and federal program funds; requiring the department to provide certain advice and technical assistance, within existing resources, upon request from a county or municipality; amending s. 381.00656, F.S.; extending the date by which the Department of Health is required to begin administering the grant program for the repair of onsite sewage treatment disposal systems; adding a cross-reference; amending

s. 381.0066, F.S.; conforming a cross-reference; lowering the fees imposed by the department for evaluation reports; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (5), (6), and (7) of section 381.0065, Florida Statues, as amended by chapter 2010-283, Laws of Florida, are amended, present paragraphs (b) through (p) of subsection (2) of that section are redesignated as paragraphs (c) through (q), respectively, a new paragraph (b) is added to that subsection, and paragraphs (w), (x), (y), and (z) are added to subsection (4) of that section, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

~~(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. It is further the intent of the Legislature that the department shall administer an evaluation program to ensure the operational condition of the system and identify any failure with the system.~~

~~(b)~~ It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this

section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(b) "Bedroom" means a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line

established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs

construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(w) Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property. A title is not encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired.

(x) An onsite sewage treatment and disposal system is not considered abandoned if the properly functioning onsite sewage treatment and disposal system is disconnected from a structure

that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

1. The reconnection of the onsite sewage treatment and disposal system is to the same type and approximate size of rebuilt structure that existed prior to the disaster;

2. The onsite sewage treatment and disposal system is not a sanitary nuisance; and

3. The onsite sewage treatment and disposal system has not been altered without prior authorization.

An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not an abandoned system.

(y) If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction, but a change to a rule occurs after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) A modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

~~(5) EVALUATION AND ASSESSMENT.—~~

~~(a) Beginning July 1, 2011, the department shall administer~~

~~an onsite sewage treatment and disposal system evaluation program for the purpose of assessing the fundamental operational condition of systems and identifying any failures within the systems. The department shall adopt rules implementing the program standards, procedures, and requirements, including, but not limited to, a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the department and the system owner. The department shall ensure statewide implementation of the evaluation and assessment program by January 1, 2016.~~

~~(b) Owners of an onsite sewage treatment and disposal system, excluding a system that is required to obtain an operating permit, shall have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any failure within the system.~~

~~(c) All evaluation procedures must be documented and nothing in this subsection limits the amount of detail an evaluator may provide at his or her professional discretion. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement pursuant to the department's procedure.~~

~~(d)1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs,~~

~~replacements or modifications to systems installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule.~~

~~2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modification to systems developed on or after January 1, 1983, shall meet a minimum 24-inch separation from the bottom of the drainfield to the wettest season water table elevation.~~

~~(e) If documentation of a tank pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to department rule, a pump-out of the system is not required.~~

~~(f) Owners are responsible for paying the cost of any required pump-out, repair, or replacement pursuant to department rule, and may not request partial evaluation or the omission of portions of the evaluation.~~

~~(g) Each evaluation or pump-out required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer with wastewater treatment system experience licensed pursuant to chapter 471, or an environmental health professional certified under chapter 381 in the area of onsite sewage treatment and disposal system~~

~~evaluation.~~

~~(h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the department by the evaluator at the time the report is submitted.~~

~~(i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice to owners that their systems must be evaluated by that deadline. The department may include a copy of any homeowner educational materials developed pursuant to this section which provides information on the proper maintenance of onsite sewage treatment and disposal systems.~~

(5) ~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for

violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for

which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels,~~

~~alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.~~

Section 2. Section 381.00651, Florida Statutes, is created to read:

381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—

(1) Effective January 1, 2012, any county or municipality that does not opt out of this section shall develop and adopt by ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area which meets the requirements of this subsection. The county or municipality shall notify the Secretary of State by letter of the adoption of such an ordinance pursuant to this section. By a majority of the local elected body, a county or municipality may opt out of the requirements of this section at any time before January 1, 2012, by adopting a separate resolution. The resolution shall be directed to and filed with the Secretary of State and shall state the intent of the county or municipality not to adopt an onsite sewage treatment and disposal system evaluation and assessment program. A county or municipality may subsequently adopt an ordinance imposing an onsite sewage treatment and disposal system evaluation and assessment program if the program meets the requirements of this subsection. A county or municipality may repeal an ordinance

adopted pursuant to this section if the county or municipality notifies the Secretary of State by letter of the repeal. The local ordinances may not deviate from or exceed the substantive requirements of this subsection. Such adopted ordinance shall provide for the following:

(a) *Evaluations.*—An evaluation of any septic tank within all or part of the county's or municipality's jurisdiction must take place once every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination. The location of the system shall be identified. A tank and drainfield evaluation and a written assessment of the overall condition of the system pursuant to the assessment procedure prescribed in paragraph (2)(d) are required.

(b) *Qualified contractors.*—Each evaluation required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer having wastewater treatment system experience and licensed pursuant to chapter 471, or an environmental health professional certified under this chapter in the area of onsite sewage treatment and disposal system evaluation. Evaluations and pump outs may also be performed by an authorized employee working under the supervision of the individuals listed in this paragraph; however, all evaluation forms must be signed by a qualified contractor.

(c) *Repair of systems.*—A local ordinance may not require a repair, modification, or replacement of a system as a result of

an evaluation unless the evaluation identifies a system failure. For purposes of this subsection, the term "system failure" is defined as a condition existing within an onsite sewage treatment and disposal system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system is not a failure if the system does not have a minimum separation distance between the drainfield and the wet season water table, or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. If a system failure is identified and several remedial options are available to resolve the failure, the local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet the requirements of the code in effect at the time the system was originally permitted and installed, and are not required to meet the current code requirements.

(d) *Exemptions.*—The local ordinance may exempt from the evaluation requirements any system that is required to obtain an operating permit or that is inspected by the department pursuant to the annual permit inspection requirements of chapter 513.

(e) *Notifications.*—The local ordinance must require that notice be given to the septic tank owner at least 60 days before the septic tank is due for an evaluation. The notice may include information on the proper maintenance of onsite sewage treatment

and disposal systems.

(f) *Fees.*—The local ordinance may authorize the assessment of a fee not to exceed $30 paid by the owner of the septic tank in order to cover the costs of administering the evaluation program.

(g) *Penalties.*—The local ordinance must provide penalties for qualified contractors and septic tank owners who do not comply with requirements of the adopted ordinance.

(2) The following procedures shall be used for conducting evaluations:

(a) *Tank evaluation.*—The tank evaluation shall assess the apparent structural condition and water tightness of the tank and shall estimate the size of the tank. The evaluation must include a pump out. However, an ordinance may not require a pump out if there is documentation that a tank pump out or a permitted new installation, repair, or modification of the system has occurred within the previous 5 years, and that identifies the capacity of the tank and indicates that the condition of the tank is structurally sound and watertight. Visual inspection of the tank must be made when the tank is empty to detect cracks, leaks, or other defects. Baffles or tees must be checked to ensure that they are intact and secure. The evaluation shall note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If the tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank shall be refilled before concluding the inspection.

(b) *Drainfield evaluation.*—The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation shall state the condition of surface vegetation, including whether there is any seepage visible or excessively lush vegetation; state whether there is ponding water within the drainfield; and identify the location of any downspout or drain that encroaches or drains into the drainfield area. The evaluation must contain an overall assessment of the drainfield.

(c) *Special circumstances.*—If the system contains pumps, siphons, or alarms, the following information must be provided:

1. An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;

2. Whether the pump is elevated off of the bottom of the chamber and its operational status;

3. Whether there are a check valve and purge hole; whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, and its operational condition; and whether electrical connections appear satisfactory; and

4. Whether surface water can infiltrate into the tank and whether the tank was pumped out.

(d) *Assessment procedure.*—All evaluation procedures used by a qualified contractor shall be documented. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner, the county or municipality, and the county health department. A copy of the evaluation report shall be retained by the local county health department for a

minimum of 5 years until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit or other defect in the tank, manhole, or lid, and any other damaged or missing component; any ponding of the drainfield or uneven distribution of effluent and the extent of such effluent; any downspout or other stormwater or source of water directed onto or toward the system, including recommendations that such sources be redirected away from the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(e) *Tracking system.*—A county or municipality that adopts an evaluation program pursuant to this section shall develop, accumulate, and assimilate its own database and establish a computerized tracking system within its jurisdiction. Such information shall be based upon information obtained from written, signed evaluation reports given to property owners by qualified contractors and filed with the county or municipality and the county health department following an evaluation. The information tracked must include:

1. The addresses or locations of the onsite systems;

2. The number of onsite systems within the local jurisdiction;

3. The total number and types of system failures; and

4. Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of systems.

The computerized tracking system may be Internet-based and shall be used by the county or municipality to notify homeowners when evaluations are due. Data and information shall be recorded and updated as evaluations are conducted and reported to the county or municipality and the county health department.

(3) A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program pursuant to this section shall notify the Secretary of Environmental Protection upon the adoption of an ordinance. The Department of Environmental Protection shall, within existing resources and upon receipt of such notice, notify the county or municipality of the potential use of, and access to, program funds under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act. Upon request by a county or municipality, the Department of Environmental Protection shall provide direct technical assistance in the application process to receive moneys under the Clean Water State Revolving Fund or s. 319 of the Clean Water Act. The Department of Environmental Protection shall also, within existing resources and upon request by a county or municipality, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program, how to model a revolving loan program

after the low-interest loan program of the Clean Water State Revolving Fund, or how to provide low-interest loans to residents for the repair of failing systems. This subsection does not obligate the Department of Environmental Protection to provide any money to fund such programs.

Section 3. Section 381.00656, Florida Statutes, is amended to read:

381.00656 Grant program for repair of onsite sewage treatment disposal systems.—Effective January 1, 2013 ~~2012~~, the department shall administer a grant program to assist owners of onsite sewage treatment and disposal systems identified pursuant to s. 381.0065, s. 381.00651, or the rules adopted thereunder. A grant under the program may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. The department may prioritize applications for an award of grant funds based upon the severity of a system's failure, its relative environmental impact, the income of the family, or any combination thereof. The department shall adopt rules establishing the grant application and award process, including an application form. The department shall seek to make grants in each fiscal year equal to the total amount of grant funds available, with any excess funds used for grant awards in subsequent fiscal years.

Section 4. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems;

fees.—

(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, including repair of a subsurface, mound, filled, or other alternative system or permitting of an abandoned system: a fee of not less than $25, or more than $125.

(b) A 5-year evaluation report submitted pursuant to s. 381.00651 ~~381.0065(5)~~: a fee not less than $10 ~~$15~~, or more than $15 ~~$30~~. At least ~~$1 and no more than~~ $5 collected pursuant to this paragraph shall be used to fund a grant program established under s. 381.00656.

(c) Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than $40, or more than $115.

(d) Biennial Operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than $100.

(e) Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than $150, or more than $300.

(f) Innovative technology: a fee not to exceed $25,000.

(g) Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than $25, or more than $200, per year.

(h) Application for variance: a fee of not less than $150, or more than $300.

(i) Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than $15 ~~$50~~, or more than $30 ~~$150~~.

(j) Aerobic treatment unit or performance-based treatment system maintenance entity permit: a fee of not less than $25, or more than $150, per year.

(k) Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than $25, or more than $100.

(l) Research: An additional $5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3)(j).

(m) Annual operating permit, including annual inspection and any required sampling and laboratory analysis of effluent, for an engineer-designed performance-based system: a fee of not less than $150, or more than $300.

On or before January 1, 2011, the Surgeon General, after consultation with the Revenue Estimating Conference, shall determine a revenue neutral fee schedule for services provided pursuant to s. 381.00651 ~~381.0065(5)~~ within the parameters set in paragraph (b). Such determination is not subject to the provisions of chapter 120. The funds collected pursuant to this

subsection must be deposited in a trust fund administered by the department, to be used for the purposes stated in this section and ss. 381.0065 and 381.00655.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/CS/SB 1290
INTRODUCER:	Committee on Environmental Preservation and Conservation, Committee on Agriculture and Senator Dean
SUBJECT:	Pest Control
DATE:	March 31, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Spalla	AG	**Fav/ CS**
2.	Wiggins	Yeatman	EP	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The committee substitute for committee substitute (CS) revises the Florida Structural Pest Control Act. It authorizes the Department of Agriculture and Consumer Services (DACS) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The CS also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by DACS and establishes a licensing fee and biennial renewal fee.

The CS establishes a limited certification for a commercial wildlife management personnel category within DACS authorizing persons to use nonchemical methods for controlling rodents. The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

The CS increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992. And finally, the CS expands the methods

by which a pest control licensee may contact DACS regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

This CS amends sections 482.051, 482.071, and 482.226 of the Florida Statutes.

This CS creates sections 482.072 and 482.157 of the Florida Statutes.

II. Present Situation:

In 1947, the Legislature enacted a statute known as the Structural Pest Control Act of Florida. It was believed that the persons who were engaged in the Pest Control Industry required a certain amount of regulation for the health, welfare and protection of Florida citizens.[1] In 1959, the Legislature enacted a new Florida Structural Pest Control Act that repealed and superseded the act of 1947.[2] The practice of commercial pest control in Florida continues to be strictly regulated under the provisions of the Structural Pest Control Act, Chapter 482, F.S., and Rule Chapter 5E-14, Florida Administrative Code. These regulations are administered and enforced by DACS' Pest Control Section of the Bureau of Entomology and Pest Control.

Pest control includes one or more of the following activities:

- The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on or under a structure, lawn, or ornamental;
- The identification of or inspection for infestations or infections in, on or under a structure, lawn or ornamental;
- The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on or under a structure, lawn, or ornamental;
- All phases of structural fumigation (includes boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers); and
- The advertisement of, the solicitation of, or the acceptance of remuneration for any work, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.[3]

For structural pest control, the law provides that each pest control business location must be licensed by the DACS and that a Florida certified operator must be in charge of the pest control operations of the business location. Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region.

[1] http://www.apms.org/japm/vol06/v6p14.pdf.
[2] http://www.jstor.org/pss/3492520.
[3] http://www.flaes.org/aes-ent/licenseandcert.html.

Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving telephone calls and soliciting business. Allowing a licensed pest control business to operate a centralized customer service center for multiple business locations owned by the same owner would allow licensees a more efficient means of providing service to customers while still protecting customers through specific requirements for licensure and accountability.

A pest control business licensee may not operate a pest control business without carrying the required insurance coverage and furnishing DACS with a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury: $100,000 each person and $300,000 each occurrence; and property damage: $50,000 each occurrence and $100,000 in the aggregate.[4] These minimum requirements for insurance coverage to conduct pest control business have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Rats and mice, the most common rodent pests in Florida, often enter homes, farm buildings, and warehouses in search of food and shelter. These rodents have adapted to live with man, who has carried them to every corner of the earth. Rats and mice consume or contaminate large quantities of food and damage structures, stored clothing, and documents. They also serve as reservoirs or vectors of numerous diseases, such as Rat-bite fever, Leptospirosis (Weil's Disease), Murine Typhus, Rickettsial pox, Plague, Trichinosis, Typhoid, Dysentery, Salmonellosis, *Hymenolepis* tapeworms, Lymphocytic choriomeningitis, and Hanta virus.

Another species in Florida that may enter a home or building is bats. The statutory definition of "rodents" includes bats, which are not members of the order Rodentia.[5] According to the Florida Fish and Wildlife Conservation Commission (FWC), there are three species of endangered or threatened bats. The Florida bonneted bat, which is listed as threatened, may make a home in the barrel tiled roofs of South Florida. This is a rare occurrence but all bats whether listed as protected or not may not be intentionally killed or wounded. The FWC's nuisance wildlife rule does not allow the intentional taking of bats.[6] If bats are discovered on a property, than the owner needs to contact the FWC to identify the bat. The only legal remedy for removing bats is utilizing an exclusion device. Exclusion devices allow the bats to fly out but not to return so the bats will find another home. Bat exclusion devices may not be utilized during the birthing/rearing season which occurs between August 15th and April 15th. The Florida Bat Conservancy or FWC can provide technical assistance to a homeowner on a safe and legal remedy to remove bat/bats from the premises. The penalty for killing or wounding listed species without a permit is a third degree felony.[7]

In most cases of rodent infestation, the pest animals can be controlled without having to resort to the use of poisons. If rodents do find their way indoors, small populations can be easily eliminated with various nontoxic methods. Rodenticides (rodent poisons) need only be used in

[4] s. 482.071(4), F.S.
[5] s. 482.021(24), F.S.
[6] Rule 68A-9.010 F.A.C.
[7] s. 379.411, F.S.

cases of large or inaccessible infestations. The trapping of rodent pests is often preferable to the use of poisons. Traps prevent rodents from dying in inaccessible places and causing an odor problem. There is no chance of an accidental poisoning or secondary poisoning of nontarget wildlife, pets, or children with the use of traps. Secondary poisoning of pets or wildlife can result from eating poisoned rodents. Traps can be used in situations where poisons are not allowed or recommended, such as in food handling establishments.[8]

Currently, there is no provision for a limited certification for commercial wildlife trapper personnel to use nonchemical methods to control rodents. For several years, the Florida Fish and Wildlife Conservation Commission has issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years, resulting in permitting being discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the DACS asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected. The CS clarifies that certificate holders who practice accepted pest control methods would be immune from liability for violating laws prohibiting cruelty to animals.

For clarity purposes, the CS includes the word "commensal" to describe rodent. According to Pest Management Professionals, "commensal" pets are species of wildlife which have adapted to and become partially dependent on the human-built environment for food, water, and sometimes shelter.[9] Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the DACS an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

III. Effect of Proposed Changes:

Section 1 amends s. 482.051, F.S., to authorize a rule change. In the event of an emergency requiring fumigation, pest control operators may provide emergency notice of the fumigation location to the DACS by facsimile or other form of electronic means.

Section 2 amends s. 482.071, F.S., to increase the minimum insurance requirements for a pest control licensee from $100,000 to $250,000. This change reflects the current levels of insurance offered by liability insurers.

Section 3 creates s. 482.072, F.S., to allow the establishment, inspection and regulation of centralized pest control customer contact centers. This would allow licensed centers to solicit pest control business and to provide service to customers for one or more business locations. It provides for the biennial renewal of the license. It also establishes a licensure fee of at least $600, but not more than $1,000 and renewal fees of at least $600, but not more than $1,000. This section also provides for the expiration of a license not renewed within 60 days of a renewal deadline. A license automatically expires if a licensee changes its customer contact center business location and requires issuance of a new license upon payment of a $250 fee. It

[8] http://edis.ifas.ufl.edu/mg218.
[9] IPM for Commensal Rodents-Curriculum for Bio-Integral Resource Center Pest Management Professionals, Global Environmental Options, March 2005, at http://www.birc.org/Rodent%20Curriculum.pdf.

authorizes the DACS to adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations. It provides for disciplinary action for violations of chapter 482, F.S., or any rule adopted hereunder.

Section 4 creates s. 482.157, F.S., to establish a limited certification category for individual commercial wildlife trapper personnel engaged in the nonchemical control of wildlife to also control rodents, as defined in chapter 482, F.S. It requires an exam and establishes certification fees of at least $150, but not to exceed $300. This section also provides for recertification fees, classes, and late fees. The CS limits the scope of work permitted by certificate holders and clarifies that licensees and certificate holders who practice accepted pest control methods are immune from liability for violating animal cruelty laws. However, licensees and certificate holders are not exempt from the rules, orders or regulations of the FWC.

Section 5 amends s. 482.226, F.S., to increase the minimum insurance requirements for a pest control licensee that performs wood-destroying organism inspections from $50,000 to $500,000. This change reflects the current levels of insurance offered by liability insurers.

Section 6 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Refer to Private Sector and Government Sector Impacts.

B. Private Sector Impact:

Pest control businesses that choose to obtain the license for a customer service center would incur the fees established by the CS. Pest control businesses that do not currently have the proposed minimum insurance requirements will have to increase their insurance coverage and will incur additional costs. Most insurance available today already exceeds the 1992 limits.

Individuals who conduct wildlife management services and wish to obtain limited certification to control rodents will incur the fees associated with the limited certification.

C. Government Sector Impact:

	2011-12	2012-13	2013-14
REVENUES:			
Customer Contact Center:			
License*	6,000	0	6,000
Limited Certification Wildlife:			
Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	0	7,500	7,500
TOTAL	**$ 21,000**	**$15,000**	**$ 21,000**

*Based on 10 licenses issued per year at $600 each, renewing biennially.
**Based on 100 exams the first year, 50 the second and third years, at $150 each.
***Based on 100 renewals at $75 each.

	2011-12	2012-13	2013-14
EXPENDITURES:			
Inspections*	15,860	15,860	15,860
License Issuance**	1,097	499	1,595
TOTAL	**$16,957**	**$16,359**	**$17,455**

*FY 09-10 unit cost per inspection, 20 inspections at $793.
**FY 09-10 unit cost per license, 110 inspections at $9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

DACS will adopt rules relating to the requirements and procedures for recordkeeping and monitoring pest control customer contact center operations. DACS has indicated that the workload and cost to implement the rules can be absorbed by the current staff and will not require any additional funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by the Environmental Preservation and Conservation Committee on March 30, 2011:
The CS/CS removes the option of using glue boards to control rodents. The CS/CS includes the word "commensal" to describe rodents. The CS/CS clarifies that the FWC's rules related to the taking of nuisance wildlife must be followed and does not allow the intentional taking of bats.

CS by the Agriculture Committee on March 21, 2011:
This CS makes technical changes to the bill that does not make any substantive changes.

649592

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete lines 138 - 142
and insert:
(1) The department shall establish a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods, including traps, mechanical or electronic devices, or exclusionary techniques to control commensal rodents.

346744

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Delete line 142
and insert:
control commensal rodents

710404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2011	.	
	.	
	.	
	.	

The Committee on Environmental Preservation and Conservation (Dean) recommended the following:

Senate Amendment

Between lines 176 and 177
insert:
(6) This chapter does not exempt a person from the rules, regulations, or orders of the Fish and Wildlife Conservation Commission.

By the Committee on Agriculture; and Senator Dean

575-02801-11 20111290c1

A bill to be entitled

An act relating to pest control; amending s. 482.051, F.S.; providing rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means; amending s. 482.071, F.S.; increasing the minimum bodily injury and property damage insurance coverage required for pest control businesses; creating s. 482.072, F.S.; providing for licensure by the department of pest control customer contact centers; providing application requirements; providing for fees, licensure renewal, penalties, licensure expiration, and transfer of licenses; creating s. 482.157, F.S.; providing for the certification of commercial wildlife trappers; providing certification requirements, examination requirements, and fees; limiting the scope of work permitted by certificate holders; clarifying that licensees and certificateholders who practice accepted pest control methods are immune from liability for violating laws prohibiting cruelty to animals; amending s. 482.226, F.S.; increasing the minimum financial responsibility requirements for licensees that perform certain inspections; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 482.051, Florida

Statutes, is amended to read:

482.051 Rules.—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(4) That a licensee, before performing general fumigation, notify in writing the department inspector having jurisdiction over the location where the fumigation is to be performed, which notice must be received by the department inspector at least 24 hours in advance of the fumigation and must contain such information as the department requires. However, in an authentic and verifiable emergency, when 24 hours' advance notification is not possible, advance telephone, facsimile, or any other form of acceptable electronic communication ~~or telegraph~~ notice may be given; but such notice must be immediately followed by written confirmation providing the required information.

Section 2. Subsection (4) of section 482.071, Florida Statutes, is amended to read:

482.071 Licenses.—

(4) A licensee may not operate a pest control business without carrying the required insurance coverage. Each person making application for a pest control business license or renewal thereof must furnish to the department a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury and property damage consisting

of:

(a) Bodily injury: $250,000 ~~$100,000~~ each person and $500,000 ~~$300,000~~ each occurrence; and property damage: $250,000 ~~$50,000~~ each occurrence and $500,000 ~~$100,000~~ in the aggregate; or

(b) Combined single-limit coverage: $400,000 in the aggregate.

Section 3. Section 482.072, Florida Statutes, is created to read:

482.072 Pest control customer contact centers.—

(1) The department may issue a license to operate a customer contact center from which to solicit pest control business or provide services to customers for one or more business locations licensed under s. 482.071. A person may not operate a customer contact center for a pest control business which is not licensed by the department.

(2)(a) Before operating a customer contact center, and biennially thereafter, on or before a renewal date set by the department, a pest control business must apply to the department for a license or license renewal for each customer contact center location it operates. An application must be submitted in the format prescribed by the department.

(b) The department shall establish a licensure fee of at least $600, but not more than $1,000, and a renewal fee of at least $600, but not more than $1,000, for a customer contact center license. However, until renewal fee rules are adopted, the initial license and renewal fees are each $600. The department shall establish a grace period, not to exceed 30 days after the renewal date, and shall assess a late fee of $150, in

addition to the renewal fee, for a license that is renewed after the grace period.

(c) A license automatically expires if it is not renewed within 60 days after the renewal date and may be reinstated only upon reapplication and payment of the license renewal fee and late fee.

(d) A license automatically expires if a licensee changes its customer contact center business location. The department shall issue a new license upon payment of a $250 fee, which must be renewed by the renewal date for the former location's license. A new license that is not renewed within 60 days after the renewal date of the license for the former business location automatically expires.

(e) The department may not issue or renew a license to operate a customer contact center unless the pest control business licensees for whom it solicits business are owned in common by a person or business entity recognized by this state.

(f) The department may deny a license or refuse to renew a license if the applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that meets the conditions in s. 482.071(2)(g).

(g) Sections 482.091 and 482.152 do not apply to a person who solicits pest control services or provides customer service in a licensed customer contact center unless the person performs the pest control work as defined in s. 482.021(22)(a)-(d), executes a pest control contract, or accepts remuneration for such work.

(h) Section 482.071(2)(e) does not apply to a license issued under this section.

(3)(a) The department shall adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations to ensure compliance with this chapter and rules adopted hereunder.

(b) Notwithstanding any other provision of this chapter:

1. A customer contact center licensee is subject to disciplinary action under s. 482.161 for a violation of this chapter or a rule adopted hereunder committed by a person who solicits pest control services or provides customer service in a customer contact center.

2. A pest control business licensee may be subject to disciplinary action under s. 482.161 for a violation committed by a person who solicits pest control services or provides customer service in a customer contact center operated by the licensee if the licensee participates in the violation.

Section 4. Section 482.157, Florida Statutes, is created to read:

482.157 Limited certification for commercial wildlife management personnel.—

(1) The department shall establish a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods, including traps, glue boards, mechanical or electronic devices, or exclusionary techniques to control rodents.

(2) The department shall issue a limited certificate to an applicant who:

(a) Submits an application and examination fee, set by

departmental rule, of not more than $300 or less than $150. The department shall provide examination reference materials and offer the examination at least quarterly or as necessary in each county;

(b) Passes the departmental examination; and

(c) Provides proof, including a certificate of insurance, showing that the applicant has met the minimum financial bodily injury and property damage requirements in s. 482.071(4).

(3) An application for recertification must be made annually and be accompanied by a recertification fee of not more than $150 or less than $75, as established by rule. The application also must be accompanied by proof of completion of the required 4 classroom hours of acceptable continuing education and the required proof of insurance. After a grace period not exceeding 30 days after the recertification renewal date, a late fee of $50 shall be assessed in addition to the renewal fee. A certificate automatically expires 180 days after the recertification date if the renewal fee has not been paid. After expiration, a new certificate shall be issued only upon successful reexamination and payment of the examination and late fees.

(4) Certification under this section does not authorize:

(a) The use of pesticides or chemical substances, other than adhesive materials, to control rodents or other nuisance wildlife in, on, or under structures;

(b) Operation of a pest control business; or

(c) Supervision of an uncertified person using nonchemical methods to control rodents.

(5) Persons licensed under this chapter who practice

accepted pest control methods are immune from liability under s. 828.12.

Section 5. Subsection (6) of section 482.226, Florida Statutes, is amended to read:

482.226 Wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.—

(6) Any licensee that performs wood-destroying organism inspections in accordance with subsection (1) must meet minimum financial responsibility in the form of errors and omissions (professional liability) insurance coverage or bond in an amount no less than $500,000 ~~$50,000~~ in the aggregate and $250,000 ~~$25,000~~ per occurrence, or demonstrate that the licensee has equity or net worth of no less than $500,000 ~~$100,000~~ as determined by generally accepted accounting principles substantiated by a certified public accountant's review or certified audit. The licensee must show proof of meeting this requirement at the time of license application or renewal thereof.

Section 6. This act shall take effect July 1, 2011.

RICK SCOTT
GOVERNOR

RECEIVED
2011 FEB -9 PM 3:
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

February 8, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following reappointment under the provisions of Section 373.073, Florida Statutes:

Mr. George A. Roberts
1603 Bay Avenue
Panama City, Florida 32405

as a member of the Governing Board, Northwest Florida Water Management District, subject to confirmation by the Senate. This appointment is effective February 4, 2011, for a term ending March 1, 2014.

Sincerely,

Rick Scott
Governor

RS/jlw

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

2405

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Kurt S. Browning, Secretary of State,
do hereby certify that

George A. Roberts

is duly appointed a member of the

Governing Board,
Northwest Florida
Water Management District

for a term beginning on the
Fourth day of February, A.D., 2011,
until the First day of March, A.D., 2014
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Eighteenth day of February, A.D., 2011.

Secretary of State

DSDE 99 (3/03)