

STORAGE NAME: h0215a.grr
DATE: February 28, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 215

RELATING TO: Environmental Permitting

SPONSOR(S): Rep. Lynn

STATUTE(S) AFFECTED: Section 403.815, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
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I. SUMMARY:

Current law provides that the Department of Environmental Protection (DEP) and the Water Management Districts (WMD) review permit applications within specified time frames. Additionally, applicants for a permit to construct or expand a sewage-treatment facility must provide notice in a newspaper of general circulation in the area affected.

HB 215 requires the DEP and WMDs to develop checklists of permit requirements and to provide such checklists to permit applicants. The bill requires the DEP and the WMDs to review all permit applications within specified time frames and establishes the responsibilities of the DEP and the WMDs and the permit applicant. The bill further provides for refunds of permit application fees if the DEP or a WMD fails to meet the specified time frames for review.

The bill also establishes additional notice requirements for applicants seeking certain permits relating to sewage-treatment facilities. Specifically, such applicants must provide notice by certified mail to the owners of real property adjacent to the property subject to the permit.

The bill's fiscal impact is indeterminate. There may be costs to the DEP and the WMDs associated with lost revenues from permit fees if they fail to meet the specified time frames and have to refund the fees.

Amendment #1 provided that the Department of Community Affairs (DCA), in addition to the DEP and WMDs, shall be required to develop checklists of permit requirements, refund permit application fees under certain circumstances, and review all permit applications within specified time frames unless those time frames are waived by the applicant. This amendment removed from the bill the provision allowing a permit applicant to request an administrative hearing if the applicant believes any request for additional information is not authorized by law or rule.

The bill provides an effective date of October 1, 1997.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Permit Processing Time Frames

Currently, the DEP and the WMDs are subject to s. 120.60(1), F.S., when they process any "application for a license" which includes an application for any of the permits issued by the DEP or the WMDs. Section 120.60(1), F.S., establishes time frames within which such applications must be reviewed and processed. Specifically, this section requires agencies within 30 days after receiving an application to examine it, notify the applicant of any apparent errors or omissions, and request any additional information the agency is permitted by law to require. Section 120.60(1), F.S., further requires that every application for license be approved or denied within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. This section also provides for issuance of licenses by default if an application is not approved or denied within the 90-day period. The 90-day period is tolled by the initiation of an administrative hearing under ss. 120.569 and 120.57, F.S.

Likewise, s. 403.0876, F.S., governs the processing of applications for permits by the DEP under Chapter 403, F.S., and provides for the same 30-day initial review and 90-day approval or denial period. Unlike s. 120.60(1), F.S., however, this section authorizes an applicant to request a s. 120.569 or s. 120.57, F.S., hearing if the applicant believes any departmental request for additional information is not authorized by law or department rule. Additionally, this section places limits on the DEP's review time of additional information by requiring that within 30 days after receipt of such additional information, the DEP has to review it and may request only that information needed to clarify such additional information. Sections 403.0876(2)(b) and (c), F.S., establish exemptions from the default provisions of s. 120.60, F.S., for permits for an underground injection well and operation permits for a major source of air pollution, respectively. These sections state that failure of the DEP to approve or deny a permit within the 90-day time period shall not result in the automatic approval or denial of the permit, and authorize the applicant to instead petition for a writ of mandamus to compel the department to act. Additionally, s. 403.0876(3), F.S., provides for the department to establish a special unit for permit coordination and processing to provide expeditious processing of department permits which the district offices are unable to process expeditiously and to provide accelerated processing of certain permits or renewals for economic and operating stability. This section does place certain conditions on which permit applicants can request the special unit to process their application.

There is no provision in current law for the return of permit application fees if the DEP or a WMD fails to meet the 30-day and 90-day processing time frames.

There also is no time frame for final agency action on proprietary applications (i.e., applications on sovereign submerged lands). In accordance with ss. 253.77 and 373.427, F.S., failure to meet the time frames of s. 120.60(1), F.S., for an application for both a proprietary authorization and either: an individual or standard general environmental resource permit (ERP), or a short form or standard form dredge-and-fill permit, does not result in approval by default of the proprietary authorization.

Checklists for Permit Applications

In the case of the DEP's ERP/sovereign submerged lands program, requirements to apply for a permit are contained in an application booklet which includes lists of items required to process both the regulatory permit and the proprietary authorization. In addition, the application requirements for the regulatory permit and the criteria for evaluating the application are contained in Applicant's Handbook/Basis of Review of the Suwannee River, St. John's River, Southwest Florida, and South Florida Water Management Districts. These handbooks were developed through a joint effort of the DEP and the WMDs and have been adopted for use in the DEP's ERP program. There are similar application booklets for the dredge-and-fill permit/sovereign submerged lands program (limited to applications in the Northwest Florida WMD and applications grandfathered under s. 373.414(11)-(16), F.S.). Several years ago the DEP staff attempted to develop a new dredge-and-fill application handbook in a format that identified each general type of dredge-and-fill application and listed, in a checklist format, the specific informational requirements associated with each type of project. According to DEP staff, due to the difficulty of trying to cover all the different types of permit applicants, permit application types, and the various environmental settings, the effort yielded an application booklet that was four times larger than the existing booklet. Due to its size and the lack of funds available for duplicating and distributing the booklet, it was never utilized. In the ERP and the dredge-and-fill permit programs administered by the DEP (these programs are contained in Operating Agreements executed by the agencies), the DEP staff has prepared standardized checklists of questions that are commonly asked of permit applicants during the initial 30-day review period.

Public Notice Requirements

According to s. 403.815, F.S., the DEP requires the applicant for a permit to construct or expand a sewage-treatment facility to publish notice in a newspaper of general circulation in the area affected. This notice shall be published within 14 days after the application is filed with the department. Additionally, the notice of proposed agency action shall be published at least 14 days prior to final agency action.

B. EFFECT OF PROPOSED CHANGES:

HB 215 would require the DEP and the WMDs to develop checklists for permit requirements and require that these checklists be provided to each person who requests a permit application. The bill requires that the DEP or the WMD shall, within 30 days of receipt of a permit application, review the application and request submittal of all additional information the DEP or the WMDs are permitted by law to require. Permits sought under federally-delegated or federally-approved permitting programs that have independent permitting time clock provisions and Chapter 403, F.S. permits processed pursuant to s. 403.0876, F.S., are exempt from the above-mentioned provision.

HB 215 adds the additional language found in s. 403.0876, F.S., regarding an applicant's right to challenge a request for additional information and the limitation on the DEP and WMDs review time of additional information and subsequent requests for further information. The effect of this provision is to make these rights and limitations

applicable to the review process of all permits, including those outside of Chapter 403, F.S.; i.e., all the permits processed pursuant to s. 120.60, F.S. HB 215 allows permit applicants to request a s. 120.57, F.S., hearing if they believe any request for additional information is not authorized by law or rule. The bill requires the DEP or the WMDs, within 30 days of receipt of additional information, to review it and request only that information needed to clarify such additional information or to answer any new questions raised by or directly related to the additional information. Furthermore, the bill requires the DEP or WMDs to proceed to process a permit application at the applicant's request, if the applicant believes a request for additional information is not authorized by law or rule. One possible effect of this provision is increased s. 120.57, F.S., challenges by permit applicants in response to the requests for additional information. The bill requires permits to be approved or denied within 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. If the DEP or the WMDs fail to meet these time frames, they will be required to refund the permit application fee. The effect of this provision may be reduced revenues from permit fees. Furthermore, permits issued pursuant to s. 403.0872(11)(a), F.S., under the Air Program, do not have associated permit application fees. Instead, applicants are charged "emission fees" based on the output of the facility; therefore, the refund provision in this bill would not apply to air permits.

Also, this bill amends s. 403.815, F.S., to require that an applicant for a permit to construct, modify, expand, or operate a sewage-treatment facility must provide notice by certified mail to the owners of real property adjacent to the property subject to the permit, in addition to the public notice already required by s. 403.815(1), F.S. Defines "owner of real property" and "real property adjacent to the property subject to the permit." Provides that the provisions of this subsection shall not apply to those facilities constructed pursuant to Chapters 180, 125 and 166, F.S. (i.e., exempts counties and municipalities).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill requires DEP and the WMDs to develop checklists for permits, with certain exceptions. The bill may lessen the authority of DEP or the WMDs to adjudicate disputes by allowing a permit applicant to request a hearing pursuant to s. 120.57, F.S., if the applicant believes the request for additional information is not authorized by law or rule.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Division of Administrative Hearings may have more requests for hearings pursuant to s. 120.57, F.S., if permit applicants challenge any DEP

or WMD request for additional information. Additionally, applicants seeking permits relating to sewage-treatment facilities must provide notice by certified mail to the owners of real property adjacent to the property subject to the permit. This provision does not apply to counties and municipalities.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA

- (2) what is the cost of such responsibility at the new level/agency?

NA

- (3) how is the new agency accountable to the people governed?

NA

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

The bill requires DEP and the WMDs to refund the permit fees if they fail to meet the specified time frames for permit review.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

NA

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Applicants for a permit relating to sewage-treatment facilities must provide notice by certified mail to owners of real property adjacent to the property subject to the permit. Permit applicants will incur the associated costs.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill increases the allowable options of permit applicants within the permitting process. If the permit applicant believes a DEP or WMD request for additional information is not authorized by law or rule, the applicant has the option of requesting a hearing pursuant to s. 120.57, F.S. Furthermore, the bill requires the DEP or the WMDs to proceed to process a permit application at the applicant's request, if the applicant believes a request for additional information is not authorized by law or rule.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA

(2) Who makes the decisions?

NA

(3) Are private alternatives permitted?

NA

(4) Are families required to participate in a program?

NA

(5) Are families penalized for not participating in a program?

NA

b. Does the bill directly affect the legal rights and obligations between family members?

NA

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION ANALYSIS:

Please see Effect of Proposed Changes section above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The DEP staff noted that recurring costs will be those associated with printing and distributing the permit requirement checklists, but indicated that these costs are indeterminate at this time.

Also, there may be reduced revenues from permit application fees if the DEP or a WMD does not meet the specified time frames for review of an application and has to refund the fees to the applicant. The amount is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.1. and 2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There may be costs to the private sector associated with the additional public notice requirements for applicants seeking certain permits for sewage-treatment facilities.

2. Direct Private Sector Benefits:

Permit applicants may receive a refund of the permit application fee if the DEP or a WMD fails to meet the required permit review time frames.

Also, owners of real property adjacent to property subject to certain permits relating to sewage-treatment facilities will benefit by receiving notice of such permit activities via certified mail.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The DEP staff noted that there would be some costs associated with rule development to implement these provisions, but indicated that these costs could be absorbed by existing budget and staff. However, they feel that diverting staff to these efforts will slow the permit streamlining and rule reduction efforts.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

The DEP staff believe that the bill was not clear as to whether the required checklists could simply be the information already provided in the permit application forms and information booklets, or whether they have to develop separate checklists to attach to an application form. If the latter is required, then the DEP staff is concerned that this will create an increased workload for agency staff in the short term, and they feel it is duplicative of existing information and contrary to paperwork reduction efforts. They are also concerned that the checklist requirement may result in the creation of lengthy lists that attempt to address all possible scenarios associated with a particular type of permit. The DEP staff is concerned that such checklists might intimidate some permit applicants.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Rules and Regulations adopted one amendment to the original bill.

Amendment #1 by Representative Lynn provided that the Department of Environmental Protection, the Department of Community Affairs, and the water management districts shall develop checklists of permit requirements and provide such checklists to permit applicants. The amendment required the departments and water management districts to timely review

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all permit applications, with certain exceptions, and provided that the specified time frames may be waived by the permit applicant. The amendment provided for the refund of a permit application fee under certain circumstances and removed the provision allowing a permit applicant to request an administrative hearing if the applicant believes any request for additional information is not authorized by law or rule.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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Angela Price

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