

STORAGE NAME: h0215b.grr
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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 215 - Analysis of the Proposed Remove Everything Amendment

RELATING TO: Expedited Permitting / Growth Management

SPONSOR(S): Reps. Lynn and Argenziano

STATUTE(S) AFFECTED: s. 403.973, F.S., and s. 380.06, F.S.

COMPANION BILL(S): SB 1154

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

(1) GOVERNMENTAL RULES AND REGULATIONS

(2)

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I. SUMMARY:

Presently, the Governor's Office of Trade, Tourism, and Economic Development (OTTED) may designate certain qualified projects for expedited permit review. Such projects must create at least 100 jobs, or create 50 jobs within an enterprise zone or specified rural counties. OTTED may also certify, on a case-by-case basis, certain projects creating a minimum of 25 jobs. Regional permit action teams are established through a memoranda of agreement between OTTED and various state and regional agencies. Each memorandum of agreement outlines the process for final agency action on permit applications within 90 days, unless the applicant agrees to a longer time frame. The memorandum of agreement may also provide for a waiver of fees and procedures, a consolidated hearing, and guidelines to be used when working with state, regional and local permitting authorities.

The proposed remove everything amendment increases the current population threshold for rural counties participating in the expedited permitting process and authorizes OTTED to certify certain projects creating a minimum of 10 jobs. Further, such qualified projects will receive a 90 day decision clock, a waiver of the comprehensive plan amendment twice-a-year limitation, a waiver of interstate highway concurrency with approved mitigation, certain Developments of Regional Impact (DRI) threshold and substantial deviation increases, a consolidated hearing, interagency meetings, and a single project description and checklist.

The proposed amendment also provides for increased participation by local governments by allowing counties and municipalities to participate in the preapplication meeting and to execute an optional memorandum of agreement specifying which local permits and processes may be expedited. The local time clock may or may not correspond with the state agency 90 day time clock.

Finally, OPPAGA is directed to study the expedited permitting program and make recommendations on how this program may be made more efficient and effective to the Governor and Legislature by October 1, 1998.

This act shall take effect on October 1, 1997.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Current Expedited Permitting Process

Section 403.973, F.S. (1996 Supp.) currently provides for the option of an expedited permitting process for certain qualified projects. This section authorizes the Governor's Office of Tourism, Trade, and Economic Development (OTTED) to direct the creation of regional permit action teams for expedited review of permits for economic development projects creating at least 100 jobs, or creating 50 jobs within an enterprise zone, in a county with a population less than 50,000, or in a contiguous county with a population less than 100,000. Additionally, on a case-by-case basis and at the request of a county or municipal government, OTTED may allow a business not meeting the minimum job creation threshold but creating a minimum of 25 jobs to use the expedited permit process.

These regional permit action teams are established through a memoranda of agreement between OTTED and the respective heads of the Department of Environmental Protection (DEP), the Department of Community Affairs (DCA), the Department of Transportation (DOT), the Department of Agriculture & Consumer Services, the Game and Freshwater Fish Commission, the appropriate regional planning council, and any appropriate water management district (WMD).

Each memorandum of agreement determines the process for final agency action on permit applications within 90 days after the receipt of a completed application, unless the applicant agrees to a longer time period or unless unforeseen circumstances preclude final agency action within the 90 day time frame. A memorandum of agreement may include a waiver of fees, procedures, or time limitations for permit review. A memorandum of agreement may also provide for the consolidation of separate hearings or other proceedings.

The memoranda of agreement includes the guidelines to be used when working with state, regional, and local permitting authorities. These guidelines may include the following: (1) a central contact point for filing permit applications and obtaining information on permit requirements; (2) the names of the individuals within each agency who will process the permit for that agency; (3) an agreement that challenges may be brought pursuant to the summary hearing provisions contained in s. 120.574, F.S.; (4) a mandatory preapplication review process designed to reduce conflicts by providing applicants with the agency requirements and the steps the applicant can take to ensure expeditious permit application review; and (5) additional incentives to encourage an applicant to propose an environmentally beneficial project.

OTTED is responsible for certifying a business as eligible for the expedited permit review process. Enterprise Florida, the Rural Economic Development Initiative, or any county or municipal government may recommend a project for expedited permit review. OTTED, the Rural Economic Development Initiative, and the regional permit action teams, provides technical assistance in preparing permits for rural counties and give additional assistance as necessary.

The Local Government Comprehensive Planning and Land Development Regulation Act

Part II of Chapter 163, F.S., (1996 Supp.), is designated as the "Local Government Comprehensive Planning and Land Development Regulation Act". This Act requires local governments to adopt a comprehensive plan subject to DCA review and approval. This Act outlines the required elements of local comprehensive plans, provides for citizen participation in the local comprehensive planning process, requires local governments to follow specified procedures for adopting comprehensive plans and amendments, and requires local governments to update their comprehensive plans at regular intervals.

Local Comprehensive Plan Amendments

Presently, s. 163.3187, F.S. (1996 Supp.), provides that amendments to comprehensive plans may not be made more than two times during any calendar year, with certain exceptions. Such exceptions include: (1) emergency situations which may result in substantial injury or harm to the population; (2) comprehensive plan amendments directly related to a proposed DRI which are proposed during the project's approval process; (3) certain small scale development amendments involving the use of 10 or fewer acres; and (4) comprehensive plan amendments for the location of a state correctional facility.

Section 163.3184, F.S. (1996 Supp.), outlines the comprehensive plan amendment process. Currently, a local government transmits an amendment to DCA, DEP, DOT, WMD, and the regional planning council. If DCA initiates review, it requests comments from the other agencies, and provides an Objections, Recommendation, and Comments (ORC) report. A local government may adopt the plan amendment within 60 days after receipt of the ORC report.

Within 10 working days after the plan amendment is adopted, copies of the adopted plan amendment are then submitted to DCA and other applicable agencies. Once DCA makes it's determination known, the affected party has 21 days in which to challenge the decision pursuant to s. 120.57, F.S., or the plan amendment is enacted on the effective date. Affected persons are defined in s. 163.3184, F.S. (1996 Supp.), and include 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 any adjoining local government that can demonstrate that the 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 such person, other than an adjoining local government, must submit oral or written comments, recommendations, or objections to the local government during the prescribed time frame.

Developments of Regional Impact

The Developments of Regional Impact (DRI) review process was created by the Environmental Land and Water Management Act of 1972. Section 380.06(1), F.S. (1996 Supp.) defines a DRI as "any development which, because of its character, magnitude,

or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county.” Additionally, s. 380.0651, F.S. (1996 Supp.), sets forth statewide guidelines and standards for determining which developments are required to undergo DRI review. These guidelines are used in conjunction with the percentage thresholds in s. 380.06(2), F.S. (1995).

B. EFFECT OF PROPOSED CHANGES:

Expedited Permitting Process and Local Comprehensive Plan Amendments

The proposed remove-everything amendment expands the scope of s. 403.973, F.S. (1996 Supp.), to include comprehensive plan amendments in addition to permit applications in the expedited review process. The proposed amendment defines “permit applications” to mean state permits and licenses and, at the option of a participating local government, local development permits or orders.

The proposed amendment increases the maximum population criteria for counties available to participate in the expedited permitting process to “a population of less than 75,000”. According to OTTED, this provision makes the expedited review process an option for Highlands and Putnam counties, in addition to the 31 counties who presently qualify. The proposed amendment allows OTTED, on a case-by-case basis and at the request of a county or municipal government, to certify a project not meeting the minimum job creation thresholds but creating a minimum of 10 jobs for expedited review. Additionally, with regard to a project considered under this provisions, OTTED shall consider the following economic impact factors: (1) the proposed wage and skill levels relative to those existing in the area in which the project may be located; (2) the project’s potential to diversify and strengthen the area’s economy; (3) the amount of capital investment; and (4) the number of jobs that will be made available for persons served by the WAGES program.

The proposed amendment provides that notwithstanding any other provisions of law, local comprehensive plan amendments for projects certified for expedited review are exempt from the twice-a-year limits provision in s. 163.3187, F.S. (1996 Supp.), and such qualified projects are not subject to interstate highway level of service standards adopted by DOT for concurrency purposes. However, the memorandum of agreement must include a process by which the applicant will be assessed a fair share of the cost of mitigating the project’s significant traffic impacts. According to DOT staff, this provision is very similar to Fla. Admin. Code Rule 9J-2.045, which outlines how DCA will evaluate transportation facility issues in reviewing DRI applications.

Memoranda of Agreement

OTTED, in cooperation with local governments and participating state agencies, shall create a standard form memorandum of agreement for each qualified project. A local government shall then hold a duly noticed public workshop to review and explain to the public the expedited permitting process as well as the terms and conditions of the standard form memorandum of agreement. In order to execute a memorandum of agreement for a qualified project, a local government shall hold a duly noticed public hearing and the memorandum shall identify the necessary local government procedures and time limits that will be modified in order to allow for the local government to render a

decision on the project within 90 days, and the memorandum must also state that this expedited permitting and review process does not modify or alter existing local government nonprocedural standards for permit applications, unless expressly authorized by law. The memoranda of agreement should accommodate participation by other local governments, as circumstances warrant. Under the proposed amendment, the regional permit teams shall also include any voluntarily participating counties or municipalities.

The proposed amendment also provides that a local government has the option of having any appeals of its final approval for a project made pursuant to the summary hearing provisions of s. 120.574, F.S., pursuant to s. 403.973 (13), F.S., or pursuant to other appellate processes available to the local government. Section 403.973(13), F.S., is created within this proposed amendment and provides that challenges to state agency action in the expedited permitting process are subject to the summary hearing provisions of s. 120.574, F.S., except that the administrative law judge's decision shall be in the form of a recommended order and shall not constitute final agency action. When only one state agency is challenged, that agency shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings contesting the actions of more than one state agency, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order.

Each memorandum of agreement shall include a process for final agency action on permit applications as well as local comprehensive plan amendment approvals within 90 days after the receipt of a completed application, unless the applicant agrees to a longer time period. Permit applications governed by federally delegated or approved permitting programs are currently exempt from the 90 day time frame. The proposed amendment states that the agency responsible for processing such permits shall do so as expeditiously as possible. OTTED is also directed to inform the Legislature by October 1, 1997, and every October thereafter, as to which agencies have not entered into or implemented an agreement, and identify any barriers to the success of the expedited permitting program. Furthermore, the Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to study the implementation of this program and make recommendations to the Governor and the Legislature by October 1, 1998, on how this program may be made more efficient and effective.

The proposed amendment strengthens the current hearing provision by requiring a memorandum of agreement to provide for proceedings and hearings otherwise held separately to be combined into one proceeding or held jointly at one location, to the extent feasible.

The current memorandum of agreement guidelines utilized in the coordination of state, regional, and local permitting authorities are amended to provide the applicant with the name of the individual(s) within each agency who are responsible for processing the permit application for that agency and a central contact point for filing permit applications and gathering information on permit requirements. Additionally, the guidelines contained in the memorandum of agreement may include a single coordinated project description form and checklist, a process for the adoption and review of any comprehensive plan amendment needed by a certified project within 90 days after the submission of the application for the comprehensive plan amendment.

However, the memorandum of agreement may not prevent affected persons (as defined above) from appealing or participating in the expedited permitting process and any review or appeals of decisions made under this section.

Developments of Regional Impact

The proposed amendment also alters s. 380.06, F.S. (1996 Supp.), regarding Developments of Regional Impact (DRIs). The amendments provides that projects certified under the expedited permitting process which create at least 100 jobs and meet OTTED's criteria as to their impact on an area's economy, employment, and prevailing wage and skill levels that are at or below 100 percent of the numerical thresholds for industrial plants, industrial parks, distribution, warehousing or wholesaling facilities, office development or multiuse projects other than residential are not required to undergo DRI review.

The proposed amendment also revises subsection (19) of section 380.06, F.S. (1996 Supp.), regarding substantial deviations to previously approved developments. The proposed amendment provides that for projects certified under the expedited permitting process in s. 403.973, F.S. (1996 Supp.), the current standard deviation numerical standards listed below shall be increased by 100 percent:

- 1) Industrial Development - an increase in industrial development area by 5 percent or 32 acres, whichever is greater;
- 2) Office Development - an increase in land area by 5 percent or 6 acres, whichever is greater, or an increase of gross floor area by 5 percent or 60,000 gross square feet, whichever is greater;
- 3) Commercial Development - an increase in commercial development by 6 acres or by 50,000 square feet of gross floor area or of parking spaces provided for customers for 300 cars or a 5 percent increase in any of these, whichever is greater;
- 4) Multiuse Development (excluding residential uses) - where the sum of increases equals/exceeds criteria by 100 percent; and
- 5) A 15 percent increase in the number of external vehicle trips above the original DRI projection.

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?

NA

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

OTTED may experience an increase in the number of projects which apply for the expedited permitting process. OTTED is also directed to create a standard form memorandum of agreement for each qualified project, as well as annually inform the Legislature of any agencies which have not entered into or implemented a memorandum of agreement.

Local governments will have the option of signing a memorandum of agreement for qualified projects and shall be required to hold a duly noticed workshop to inform the public of the expedited permit review process and must also hold a duly noticed public hearing in order to execute a memorandum of agreement.

Additionally, OPPAGA is directed to study the implementation of the expedited permit review program and make recommendations on how this program may be made more efficient and effective to the Governor and the Legislature by October 1, 1998.

- (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?

No.

- 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?

NA

4. Individual Freedom:

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

Yes. The proposed amendment allows certain projects to apply for the expedited permit review process administered by OTTED.

- 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:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local governments must duly notice a workshop and any hearing in which they execute a memorandum of agreement and would bear the associated costs. Such notice would most likely be in a newspaper of general circulation in the area affected.

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:

None.

2. Direct Private Sector Benefits:

The consolidated hearing option may allow a permit applicant to reduce the economic costs associated with several hearings and challenges. Additionally, certain permit applicants may experience a cost savings by completing only one comprehensive permit application under the expedited review process.

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

The amended expedited permit process is believed to have a positive effect upon competition, private enterprise, and the employment markets, in particular.

D. FISCAL COMMENTS:

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 authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

STORAGE NAME: h0215b.grr

DATE: March 24, 1997

PAGE 12

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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