

STORAGE NAME: h4087.ca

DATE: March 17, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 4087

RELATING TO: Hillsborough County Environmental Protection Commission

SPONSOR(S): Representatives Murman & others

COMPANION BILL(S): None

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

- (1) COMMUNITY AFFAIRS
 - (2) ENVIRONMENTAL PROTECTION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill codifies all prior special acts relating to the Environmental Protection Commission (EPC) of Hillsborough County.

The bill makes the following substantive changes to the current charter.

The bill expands the EPC's authority to include wetlands protection.

The bill changes the role of the hearing officer to include the authority to make final decisions, previously rendered by the Commission, in certain administrative appeals and to affix monetary amounts for costs and damages.

The bill provides for allocation of the burden of proof relating to permits, citations, and orders. The bill also provides for procedural determinations in accordance with Rules of Civil Procedure.

The bill adds language relating to the "Brownfields Redevelopment Act," and the "Pollutant Discharge Prevention and Control Act."

The bill provides additional powers and duties to the EPC.

The bill provides additional powers and duties to the EPC's Environmental Director and lists them in one section.

The bill clarifies additional requirements for performance audits and auditors qualifications.

The bill makes reviser changes and deletes obsolete language.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The 1997 Legislature amended chapter 189, Florida Statutes, to provide for codification of special districts' charters (including fire control districts), either by December 1, 2001, or when any act relating to such district is introduced to the Legislature, whichever occurs first. In addition, section 189.429, Florida Statutes, requires that no changes be made to a district's charter as it exists on October 1, 1997, in the codifying legislation. However, in the 1997 interim, some districts expressed the need to request substantive changes to their charters but because of the number of amendments (special acts) to their charters, they do not have time to codify.

As a result, the Chair of the Committee on Community Affairs issued a Memorandum on October 3, 1997, explaining the policy of the Committee for charter codifications for the 1998 Legislative Session. In part the Memorandum states:

1. Although two bills are preferable (one to codify and one to accomplish the substantive change), the House Committee on Community Affairs will accept one bill (containing the codification and substantive change).
2. The substantive change, if included in the codifying local bill, **must be advertised** clearly and concisely, i.e., "a substantive change to the charter is being sought affecting membership of the Board," or whatever change(s) is applicable.
3. If a substantive change is needed to a District's charter this Session, but codification is too large a task to accomplish at the same time, the Committee will hear bills for any substantive changes that a legislative delegation deems necessary.
4. The Committee will accept voluntary charter codifications from any district for the 1998 Legislative Session. A schedule for submitting the codifying charter is attached and is based on the number of special acts a district currently enjoys. The attached proposed schedule of submittals is based on an extended deadline of 2004, which must be accomplished legislatively. The Committee will have a bill to address this issue during the 1998 Legislative Session. Keep in mind, if they choose to do so, a district may submit its codification earlier than the proposed schedule indicates.

EPC's Current Charter

The Environmental Protection Commission was created for the purpose of controlling and regulating pollution of air, water, soil, property and noise. The EPC is to control and regulate activities in order to protect and preserve public health, safety, and welfare. The EPC's governing board is composed of the Board of County Commissioners of Hillsborough County. The duties of the Commission include, but not limited to, the following: require permits, make continuing studies relating to control programs, implement and enforce the charter's provision, adopt rules, issue subpoenas, designate hearing officers, hire an environmental director, and implement judicial proceedings.

STORAGE NAME: h4087.ca

DATE: March 17, 1998

PAGE 3

The EPC's Environmental Director has the authority to make inspections of properties, investigate pollution, issue citations, issue emergency orders, and institute administrative proceedings. Violators of the EPC rules and regulations may be punished by civil and criminal penalties and be liable for damages arising from their actions. There is also a pollution recovery fund which is funded by moneys recovered and is used to restore polluted areas. The EPC is required to have a performance audit every four years.

In addition, any party aggrieved by an action or decision of the environmental director may file an appeal with the commission. The hearing officer will set a hearing and submit reports and recommendations to the commission. If no exceptions are made by the parties, the commission takes appropriate action. If exceptions are filed, there is a hearing and the commission renders a written decision.

Since 1985, the EPC has adopted a wetland rule which provides the criteria for the approval and mitigation of impacts to wetlands.

Hillsborough County Charter

The Hillsborough County Home Rule Charter took effect May 1985. The charter provides for local self-determination and grants all powers of a chartered county under Section I, Article VIII, Florida Constitution, 1968, as amended. One of the features of the Hillsborough County charter as described in "Home Rule Charter for Hillsborough County Florida, Approved by Hillsborough County Voters, September, 1983," is:

Special laws enacted by the Florida Legislature may be effective in Hillsborough County without approval by County electors if they relate to the following: civil service, aviation, the port, sports, transportation, hospitals, planning, **environment**, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts. [Emphasis added.]

The Hillsborough County Charter in section 9.10 provides that the EPC is the single local environmental protection commission for the county and its municipalities.

"Brownfield's Redevelopment Act" & "Pollutant Discharge Prevention and Control Act"

Chapter 376, Florida Statutes, was created in order to rehabilitate existing commercial and industrial sites which may be contaminated. The purpose of the rehabilitation is to reduce public health and environmental hazards and to increase the efficient use of the land. A "brownfield site" is a site which is generally abandoned, idled, or underused industrial or commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination. Any person is eligible to participate in the brownfield rehabilitations program as long as the person has not caused or contributed to a contamination brownfield site. The Act also provides liability protection from rehabilitation costs in specific situations.

Section 376.308, Florida Statutes, provides liability for any discharges or polluting conditions caused by any person or facility. The section also provides for defenses to charges of liability such as an act of god, government, and an omission of an act by a third party. Joint and several liability is imposed when more than one defendant caused the pollution unless damage is divisible.

STORAGE NAME: h4087.ca

DATE: March 17, 1998

PAGE 4

Water Management Districts

Chapter 373, Florida Statutes, is the "Florida Water Resources Act of 1972." The Act was created in order to ensure that water resources are managed in a way to ensure their sustainability. The act also creates a streamlined approach to wetlands regulation and permitting and creates an unified statewide methodology for determining the landward extent of wetlands. The chapter provides that the Department of Environmental Protection and water management districts have the authority to regulate. Currently, there are five water management districts which are granted powers in planning and water resource development. Included in these powers, is the authority to adopt rules establishing a general permit system for projects which have a minimal adverse impact on water resources of the district. Environmental resource permit programs may be delegated to counties, municipalities, and local pollution control programs upon approval by the Department and appropriate water management district.

B. EFFECT OF PROPOSED CHANGES:

The bill codifies all prior special acts relating to the Environmental Protection Commission (EPC) of Hillsborough County.

The bill makes the following substantive changes to the current charter.

The bill expands the EPC's authority to include wetlands protection. This provision explicitly states that the EPC has authority to regulate wetlands in the county.

The bill changes the role of the hearing officer to include the authority to make final decisions in certain administrative appeals and to affix monetary amounts for costs and damages. In an appeal, the hearing officer makes the final decision rather than the commission. The bill also provides for procedural determinations in accordance with Rules of Civil Procedures.

The bill provides for allocation of the burden of proof relating to permits, citations, and orders. The environmental director has the burden of proof when a citation or order is appealed. The appellant has the burden of proof when a permit is appealed.

The bill adds language relating to the "Brownfields Redevelopment Act", and the "Pollutant Discharge Prevention and Control Act."

The bill provides additional powers and duties to the EPC. Some of the additional duties include the authority to regulate wetlands, to contract, to sue and be sued, accept delegation from other agencies, provide an annual budget, and create advisory opinions.

The bill also provides quorum for the EPC. The bill also requires records of meetings and that its meetings are public. In addition, the jurisdiction of the EPC includes all of Hillsborough County, including its municipalities.

The bill provides additional powers and duties to the Environmental Director. Some of those duties include managing the business of the commission, issue permits, and hire and fire employees. The bill also places all powers and duties into a single section.

The bill clarifies additional requirements for performance audits and auditors qualifications. Auditor applicants must include a statement of qualifications and performance data and a statement that the firm or individual has met the continuing professional education requirements of the DBPR. In addition, the audit must make an assessment of financial impact of recommendations in the final audit report.

The bill makes reviser changes and deletes obsolete language.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapters 84-446, 87-495, 94-405, and 96-513, Laws of Florida.

D. 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 explicitly grants authority to the EPC to control and regulate pollution in wetlands.

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

2. Lower Taxes:

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

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

- Section 1: States the intention that this act supersedes and codifies all prior special acts relating to the Environmental Protection Commission of Hillsborough County (EPC); and provides that there are reviser changes, deletion of obsolete language, improvement in clarity, and inconsistencies removed.
- Section 2: Provides the short title of "Environmental Protection Act of Hillsborough County."
- Section 3: Declares the intent of the Legislature is to establish a commission in order to provide and maintain purity of the environment, freedom from containments, and freedom from unreasonably interfering noise.
- Section 4: Provides definitions to be used.
- Section 5: Creates the EPC as the single local environmental protection agency for Hillsborough County; provides that the EPC shall be composed of the members of the Board of County Commissioners of Hillsborough County; provides quorum and open meetings; provides recording of all meetings and requires the Commission to make copies upon request; and provides jurisdiction to the EPC.
- Section 6: Provides the duties and powers of the EPC; those powers and duties include, but are not limited to: authority to adopt and enforce necessary rules, establish and charge fees, require permits, issue subpoenas, sue and be sued, make contracts, accept delegation of other regulatory agencies authority, and any other necessary activity.
- Section 7: Provides the appointment and qualifications of an Environmental Director; provides for non-civil service position; and provides for compensation.
- Section 8: Provides the duties of the Environmental Director.
- Section 9: Provides that the Director may require any person engaging in any activity or operation which may be a source of air, water, or noise pollution to file reports.
- Section 10: Provides that permits may be required by the Commission's rules prior to the construction, alteration, expansion or operation of any installation or plant which may create air, water or noise pollution; and provides that construction under the permit means acceptance of all permit conditions.
- Section 11: Provides that the Director may require any person who may be responsible for air, water or noise pollution to provide sampling and testing; and the Director may require that tests be carried out under the Director's supervision.
- Section 12: Provides the prohibition of open burning; and provides exemptions from prohibition.

Section 13: Grants authority to the Director to issue citations to those violating the act; provides citation requirements and procedures; grants the Director to issue a cease or suspend operation order; and provides for an administrative hearing upon request within 20 days after service of the citation or the citation becomes unappealable.

Section 14: Grants the Director the authority to issue an emergency immediate cessation order; and requires the person to immediately comply with the order or become subject to a violation.

Section 15: Provides for appeal procedures from actions or decisions by the Director; provides for appeal hearings; places the burden of proof on the Director when a citation or order is appealed; places the burden of proof on the appellant when appealing a permit; provides for the hearing officer to issue a preliminary decision; allows any party to file exceptions to the preliminary decision within ten days; provides that if there are no exceptions, the decision is final; provides that if there are exceptions, the hearing officer must make a final decision on each exception; provides that the hearing officer can not take any conflicting action; allows either party to seek judicial review of the final administrative decision.

Section 16: Grants powers and duties to the Hearing Officer.

Section 17: Prohibits nuisances; and provides that each day the nuisance violation exists constitutes a separate offense.

Section 18: Provides that it is unlawful to cause or take action which may create air, water, or noise pollution, or violate or fail to comply with orders of the Director or Commission; provides that the violation is punishable by a civil penalty not exceeding \$5000 for the first offense and each additional offense; provides that each day in which a violation occurs constitutes a separate offense; provides consequences of failing to pay fine; provides that a violation may also be a misdemeanor within section 775.08, Florida Statutes; and states that the intention of the penalties is to ensure immediate and continued compliance with the act.

Section 19: Provides judicial and administrative remedies for violations of the act; and provides that every order of the Commission is legally enforceable and reviewable in accordance with the Administrative Procedure Act.

Section 20: Provides liability for damages to air, soil, wetlands and waters; provides liability for costs incurred by the EPC in tracing the damages; provides joint and several liability for damages caused by more than one persons; and provides that the EPC cannot bring an action on behalf of any private party.

Section 21: Provides the applicability of section 376.82, Florida Statutes, relating to the "Brownfields Redevelopment Act" and section 376.308, relating to the "Pollutant Discharge Prevention and Control Act."

Section 22: Creates a pollution recovery fund to be used to restore polluted areas; provides that it be funded by recovered monies by the EPC.

Section 23: Requires the Board of County Commissioners to annually appropriate sufficient funds to the EPC.

Section 24: Provides for a performance audit every four years; provides for procedures of audit; provides for procedures in hiring auditor; provides requirements for contract; and provides for appropriation of funds for audit.

Section 25: Allows prior performance audit to satisfy audit provision as long as specific requirements are met.

Section 26: Provides for liberal construction of the charter; and provides that no provision shall be construed to conflict or superseded any statutory provision or rules relating to or promulgated by the Florida Department of Health and the Florida Department of Environmental Protection.

Section 27: Provides for the automatic transfer of the Commission, in case of a consolidation between Hillsborough County and the City of Tampa, to the legislative branch of the consolidated government.

Section 28: Provides for the recodification of the charter when necessary.

Section 29: Provides severability clause.

Section 30: Repeals chapters 84-446, 87-495, 94-405, and 96-513, Laws of Florida; provides that the repeal does not affect any cause of action, rules, contracts, agreements, existing prior to the effective date of the repeal.

Section 31: Provides an effective date as upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 6, 1998

WHERE? Tampa, Florida; The Times

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

It is difficult to determine whether EPC currently has the authority to regulate wetlands. Although the EPC's definition of "water pollution" includes "any waters," the authority to regulate wetlands was specifically granted to DEP and water management districts in 1993 by the Legislature. In reviewing changes made to EPC's current charter, it does not appear that the EPC's charter was amended to be consistent with provisions relating to wetlands regulation in chapter 373, Florida Statutes. In addition, it is unclear whether this bill's definition of "wetlands" is more expansive than what is currently provided under the unified statewide methodology for determining the landward extent of wetlands.

Adding "wetlands" to the special acts of the EPC may supersede chapter 373, Florida Statutes. That chapter mandates a streamlined approach to wetland permitting and regulation. It also grants authority to DEP and water management districts to carry out the provisions of the chapter. This may increase the likelihood of double permitting. If EPC has express authority to regulate wetlands, it may require additional permits in addition to permits which are currently required by the Southwest Florida Management District or Department of Environmental Protection. Double permitting increases not only costs associated with a project, but also makes the permitting process more cumbersome.

The EPC's attorney states that the EPC has continually had the authority to regulate wetlands since 1973. The definition of water pollution was specifically amended in order to include wetlands following a decision against the EPC regarding wetlands regulation. See attached letter.

Even though the provision of Article III, section 11(a)(4), Florida Constitution, prohibits special acts which provide "punishment for crime," the existing special acts currently provide certain violations are misdemeanors. However, this provision in the existing special acts is not prohibited since it declares a thing to be a violation and provides, by valid general law, a punishment for failure to comply.

Staff contacted DEP and at the time of publication of this document, DEP was not available for comment.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Laura L. Jacobs

Joan Highsmith-Smith