

STORAGE NAME: h1515b.ep

DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 1515

RELATING TO: Water pollution operation permits

SPONSOR(S): Representative Constantine

COMPANION BILL(S):

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

(1) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0

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I. SUMMARY:

HB 1515 makes two changes in the process for issuing permits required under s. 403.088, F.S.:

- ▶ It makes discretionary the requirement that a permit specifically incorporate an accompanying administrative order that contains a compliance schedule.
- ▶ It establishes an administrative procedure that allows for interim construction, operation, or maintenance of a facility being constructed pursuant to the Everglades Forever Act (s. 373.4592, F.S.) while a permit for such a facility is under administrative challenge.

The bill provides that the act will take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The U.S. Environmental Protection Agency (EPA) is authorized under the federal Clean Water Act to implement the National Pollutant Discharge Elimination System (NPDES) Program, and may authorize a state to implement all or part of the program. In May 1995, Florida was authorized to implement portions of the program, including regulation of wastewater facilities, the pretreatment and general permit programs, and stormwater regulation associated with a NPDES wastewater facility.

There has been considerable debate as to whether the Stormwater Treatment Areas (STAs) being constructed as part of the Everglades Construction Project require NPDES permits. Generally speaking, facilities that discharge pollutants from any point source into waters of the U.S. must obtain a NPDES permit. EPA has asserted that because the STAs will be discharging "pollutants" to "waters of the U.S." and are essentially "treatment systems," NPDES permits are required.

In April 1998, the department and EPA agreed that a NPDES permit would be issued by the department for STA-1 West. In addition, the department and EPA also agreed that the NPDES permit would be accompanied by an administrative order providing a compliance schedule for meeting water quality standards for phosphorus and dissolved oxygen. However, when the department issued a draft NPDES permit for STA-1 West in July 1998, EPA challenged the permit. EPA objected to incorporation of the administrative order into the permit pursuant to s. 403.088(2)(f), F.S., basing that objection upon a determination that the compliance schedule contained in the order did not comply with federal requirements for compliance schedules. The federal requirements not met by the draft permit and administrative order are that a compliance schedule cannot exceed five years in duration and can only be for water quality parameters adopted or modified in the last five years.

The department and EPA have continued to work together to develop a permit that is consistent with both federal and state requirements. In addition to negotiating permit conditions, they have also wrestled with the issue of which agency should issue the permit. This was initially resolved by deciding that EPA would issue the permit. To some degree, this decision was based upon the fact that federal administrative procedures would allow for interim operation of STA-1 West while any administrative challenge to the permit was being resolved. Current state administrative law procedures do not allow for such interim operation.

On February 26, 1999, the Governor communicated to the EPA Administrator the state's intention to retain jurisdiction for the NPDES permit for STA-1 West. In that letter, the Governor acknowledged the need for "a few tightly worded amendments" to state law to allow the department to issue the NPDES permit and not delay operation of STA-1 West.

B. EFFECT OF PROPOSED CHANGES:

HB 1515 amends s. 403.088, F.S., in two ways. Both provisions are intended to facilitate the state's ability to maintain jurisdiction for permitting facilities that are constructed, operated, and maintained as part of the Everglades Program established in s. 373.4592, F.S.

First, the provision that a permit must require compliance with an accompanying administrative order is made discretionary. This change would apply not only to Everglades Program facilities, but to any other permits issued under s. 403.088, F.S. The department would continue to be able to incorporate administrative orders specifying compliance schedules into NPDES permits if such schedules are consistent with federal requirements. In addition, the department's ability to enforce administrative orders not specifically incorporated into the accompanying permit will not be compromised because such orders are separately enforceable.

Second, it creates an administrative process that is applicable only to facilities that are part of the Everglades Program. If the issuance of an initial permit for any such facility is administratively challenged, an administrative law judge may, upon motion by the permittee, issue an order allowing construction, operation, and maintenance of the facility until the administrative challenge is resolved. If no party oppose issuance of the order, it will be issued without further proceedings. However, if a party to the challenge opposes the order, issuance of the order is contingent upon findings by the

presiding officer that the facility is likely to receive the permit and that the environment will not be irreparably harmed by interim construction, operation, or maintenance. When the order is contested, the presiding officer must conduct summary hearing proceedings, as defined in s.120.574, F.S., beginning no later than 30 days following the permittee's motion. Within 15 days following the conclusion of summary hearing proceedings, the presiding officer must issue an order denying or approving interim construction, operation, or maintenance. Any such order would remain in effect until final agency action is taken on the permit.

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?

HB 1515 creates an administrative process under which Everglades Program facilities can be constructed, operated, or maintained while a permit for the facility is undergoing challenge.

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

See (1).

(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?

Not applicable.

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

Not applicable.

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

Not applicable.

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?

No.

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

Not applicable.

4. Individual Freedom:

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

No.

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?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

No.

- 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?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Section 403.088, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s.403.088(2)(f), F.S., providing that it is discretionary whether a permit requires compliance with an accompanying administrative order containing a compliance schedule; creates s. 403.088(2)(g), F.S., providing an administrative process to allow interim construction, operation, or maintenance of certain facilities while a permit is being challenged.

Section 2: Provides that the act shall take effect upon becoming law

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:

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

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

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 1999, the Committee on Environmental Protection adopted a "strike everything" amendment to HB 1515. The amendment made changes to the procedure for issuing an order for interim construction, operation, or maintenance. Instead of the administrative law judge issuing the order, the amendment provides that the administrative law judge will issue a recommended order to the Secretary of the Department of Environmental Protection, who is then required to issue an order within five days of receipt of the recommended order. The Committee then passed HB 1515 as amended.

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VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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