

STORAGE NAME: h1627.nrep.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 1627
RELATING TO: Environmental Control
SPONSOR(S): Representative(s) Ryan
TIED BILL(S):

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

- (1) HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
-

I. SUMMARY:

HB 1627 creates the "Florida Performance-Based Environmental Permitting Act" to require that the Department of Environmental Protection (DEP) consider and review the compliance history of applicants seeking renewal or modification of an existing permit, or seeking a permit for a new facility. Permit applicants are provided with compliance incentives in the way of extended permits and short-form permit renewal applications.

A point system is established for violations of environmental regulations, and incidents range from felony convictions for environmental crimes to violations of air emission standards, water quality criteria, illegal dredging or filling, or illegal operation of a permitted facility. The higher the points, the more difficult it is for the applicant to receive permit approval. The DEP is required to perform supplemental application reviews when an applicant has been awarded 15 points. Exceeding the point threshold triggers an increase in permit fees over and above current statutory limits. The permit applicant is responsible for providing "reasonable assurance" of compliance to the DEP.

HB 1627 does provide the DEP with some rule-making authority, and has an indeterminate fiscal impact. The bill proposes to take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

HB 1627 does not support less government because it creates a new program within the DEP and provides for increased permit fees in certain circumstances. Further, the bill provides that every permit applicant must supply the DEP with information concerning any criminal convictions for violations of environmental regulations by permit applicants for which points may be assessed under the bill.

HB 1627 also requires that the permit applicant must prove "reasonable assurance" in any challenge to an agency action. Lastly, the bill provides that the DEP is not prohibited from considering the compliance history of persons applying for other department permits not specifically covered in the Act.

B. PRESENT SITUATION:

Section 403.087, Florida Statutes, provides the general authority for the DEP to issue permits for stationary installations that are reasonably expected to be sources of air or water pollution. The agency is provided with the authority to permit the operation, maintenance, construction, expansion or modifications of these facilities. Permits may be issued for no longer than ten years, and operation permits issued after July 1, 1992 for major sources of air pollution have a fixed term of no more than five years. The DEP is provided with rule-making authority to adopt, amend, or repeal rules related to the issuance, denial, modification or revocation of permits issued under this section.

Section 403.087, F.S., also provides that the renewal of operation permits for wastewater treatment facilities other than those regulated under the National Pollutant Discharge Elimination System (NPDES) Program must be issued for a term of up to ten years, and must be issued for the same cost and under the same conditions as a five-year permit, if the applicant can meet certain conditions. Also, the DEP is required to issue permits for the construction, operation, maintenance, expansion, or modification of installations expected to be sources of pollution only when the agency determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution in accordance with standards or rules adopted by the agency.

Subsection (6) of s. 403.087, F.S., contains the fee structure for permits issued by the agency that fall under the provisions of this bill, including but not limited to: hazardous waste construction or operating permits, injection well construction permits, solid waste construction or operating permits, domestic waste construction or operating permits, wetlands resource management permits, and drinking water distribution system permits.

C. EFFECT OF PROPOSED CHANGES:

HB 1627 proposes the following:

- Creates the “Florida Performance-Based Environmental Permitting Act”.
- Provides legislative findings and public purpose of the Act.
- Repeals current law relating to permit renewals for operating domestic wastewater treatment facilities.
- Provides conditions under which the DEP will issue permits for the construction, operation, maintenance, expansion or modification of source pollution installations, and requires an applicant’s “reasonable assurance” of compliance with environmental regulations.
- Establishes the “Performance-Based Environmental Permit Program” to require that the DEP consider the compliance history of permit applicants and their related entities.
- Creates a point schedule for environmental compliance violations, and provides a period of time for which points will remain in effect.
- Provides that the burden of proving “reasonable assurance” falls to the permit applicant when challenging proposed agency actions.
- Provides for supplemental review of applications and permits fees that may exceed the statutory threshold.
- Authorizes the DEP to issue permits and administrative orders containing schedules for applicants to come into compliance.
- Provides conditions under which the DEP may determine to take action to issue a permit, require an independent compliance audit, issue a short-term permit, or deny a permit.
- Establishes criteria to be considered by the DEP in determining if compliance programs developed by applicants are appropriate.
- Authorizes the DEP to consider the compliance history of persons applying for permits other than permits covered under the provisions of the bill.
- Establishes compliance incentives and eligibility requirements for permit applicants.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that the act will be known and cited as the “Florida Performance-Based Environmental Permitting Act”.

Section 2. Establishes legislative findings. States public purpose of the act to be the enhancement and protection of the state’s natural resources by providing compliance incentives to the regulated community, and to provide the DEP with clear authority to consider the compliance history of permit applicants and their related entities.

Section 3. Repeals subsection (3) of s. 403.087, F.S., providing for operating permit renewals for domestic wastewater treatment facilities, and renumbers subsequent sections. Amends subsection (5) to provide that the DEP will issue permits to construct, operate, maintain, expand, or modify permits for source pollution installations only when the applicant has provided the department with “reasonable assurance” that the proposed activity will not violate environmental regulations of the state, a water management district, or a local government agency acting under delegated authority.

Section 4. Creates s. 403.0874, F.S., to provide for the “Performance-Based Environmental Permit Program”. Provides definitions. Provides that permit applicants will submit specific information to the DEP, including information concerning criminal convictions for environmental violations, and conditions under which information must be submitted.

Provides the DEP with rule-making authority to establish forms to be used by permit applicants to report required information. Provides conditions under which the DEP must review compliance

history for applicants seeking permit modifications, and conditions under which the DEP must review compliance history for applicants seeking new permits.

Creates a point system for points to be assigned for violations of environmental regulations including, but not limited to, convictions for felony criminal convictions, misdemeanor convictions, and violations for air standards emission, water quality criteria, illegal dredge and fill, and illegal disposal of solid waste. Provides that each point will remain in effect for a period of 5 years from the date of the underlying incident, and provides that points in effect on the date an application is submitted will remain in effect until final agency action is taken, even if more than 5 years have passed.

Requires that the DEP will consider all violations committed during a relevant review period. Provides that the permit applicant has the initial burden of proving the establishment of "reasonable assurance" when challenging proposed agency action. Establishes conditions under which the DEP must perform a supplement review of a permit application. Provides that notwithstanding any other provision of law, permit fees for applicants exceeding the threshold point system shall be required to submit increased permit fees, over and above those established in statutory law. Authorizes the DEP to perform certain actions after performing a supplement permit application review, including conditions under which a permit may be denied.

Creates compliance incentives such as extended permits or short-form permit applications. Provides eligibility criteria for compliance incentives. Provides that crimes and violations under this section will include only those based on incidents occurring on or after July 1, 2001, and authorizes DEP to use Rule 62-4.070, F.A.C., to consider a permit applicant's violation of a DEP rule, or a statute, when determining reasonable assurance, even for applications submitted on or after July 1, 2001.

Section 5. Repeals subsection (8) of s. 403.707, F.S., relating to the DEP's authority to deny permits for past violations of environmental regulations.

Sections 6-8. Contain cross-reference corrections.

Section 9. Reenacts various sections of statute to incorporate amendments to s. 403.087, F.S.

Section 10. Provides that the bill will take effect on July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

Although the fiscal impacts of HB 1627 on state and local governments are indeterminate, the bill authorizes increased permit fees for supplement review of permit applications to be set by rule of the DEP. Also, since permit applicants are required to prove "reasonable assurance" of compliance any time a proposed agency action is challenged, they may see increased administrative costs. Ultimately, the costs of compliance will drive the impact of this bill on the private sector.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1627 does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1627 does not reduce the authority that municipalities or counties have to raise revenues.

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

HB 1627 does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The DEP is provided with rule-making authority to develop forms to be used by permit applicants.

STORAGE NAME: h1627.nrep.doc

DATE: April 3, 2001

PAGE: 6

C. OTHER COMMENTS:

HB 1627 contains provisions that require permit applicants to report not only information concerning criminal convictions for violations of environmental regulations, but also information concerning convictions for related entities who have operated a facility within a five-year time frame preceding the application period, or for related entities if the permit applicant has not operated or constructed a facility within a five-year period.

HB 1627 also provides the DEP with the authority to consider the compliance history of permit applicants, or related entities, that applied for permits other than those covered under the provisions of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

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