HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1531 Environmental Permitting
SPONSOR(S): Stansel
TIED BILLS: **IDEN./SIM. BILLS:** SB 2422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation (Sub)		McKinnon	Lotspeich
2) Natural Resources			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

HB 1531 revises requirements regarding the revocation of permits issued by the Department of Environmental Protection (DEP) if DEP finds that permit holder acted **intentionally** under certain circumstances. The bill provides for future denial of operation or construction permits under certain circumstances. The bill may encourage non-compliance with environmental regulations that could result in increased costs for DEP's compliance/enforcement staff.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Limitations on Revocation of Permits

Currently, DEP is authorized to revoke permits pursuant to Section 403.087(7), F.S., if the permittee:
(a) Has submitted false or inaccurate information in his or her application;
(b) Has violated law, DEP orders, rules, or regulations, or permit conditions;
(c) Has failed to submit operational reports or other information required by DEP rule or regulation; or
(d) Has refused lawful inspection.

Currently, s. 403.087(2), F.S., authorizes DEP to adopt rules for the issuance, denial, modification and revocation of permits. Rule 62-4.070(5), F.A.C. authorizes the DEP "take into consideration a permit applicant's violation of any DEP rules at any installation when determining whether the applicant has provided reasonable assurances that department standards will be met."

Section 120.60(5), F.S., requires the DEP to provide notice and an opportunity for hearing prior to the revocation of any license. In practice, DEP rarely revokes permits except in those cases where the permit would not have been granted but for the false information submitted on the application, or where the permittee has committed multiple violations which either demonstrate an unwillingness or inability to comply, or where the violations are expected to lead to significant harm to the environment or public health if the permittee is allowed to continue to operate. Nonetheless, the clear authority for DEP to revoke permits in specific cases creates a powerful motivation for permittees to provide truthful information and to avoid violations whenever possible.

Denial of Permits Based on Non-compliance

Currently, it is unclear what authority DEP has in denying a permit based on an applicant's history of non-compliance.

Effects of the Proposed Changes

Limitations on Revocation of Permits

HB 1531 requires that a violation be "intentional" for DEP to revoke a permit from a permittee. The bill makes it more difficult for DEP to revoke a permit, even in those rare cases where a permittee has committed numerous violations of rules or permit conditions, or where a permittee has submitted false information on an application. Furthermore, the bill provides that except for the intentional filing of false or

inaccurate information, DEP must discover the intentional act, give notice to the intentional violator, and the intentional violator must refuse to correct the act.

Although "intentionally" can have different meanings in different contexts, the term generally requires that the person knowingly and willfully committed the act, and also that they knew or should have known that the act was wrong. This is a difficult standard to prove, and is generally not an element of environmental violations. Currently, DEP is not required to prove that a violation was "intentional" in order to compel compliance or remediation.

Denial of Permits Based on Non-compliance

The bill provides that DEP can deny permits based on certain actions of the permit applicant if the following are **all proved**:

1. The applicant committed a crime regarding the willful and knowing violation of an environmental statute or rule;
2. The violation caused significant and actual harm to humans;
3. The applicant failed to satisfy an adjudicated final judgment or final order;
4. The applicant has shown an inability or unwillingness to comply with statutes and rules; *and*
5. The applicant has not implemented an environmental management system, or training, education or personal modifications.

C. SECTION DIRECTORY:

Section 1. Amends s. 403.087(7), F.S., to restrict the department's authority to revoke permits.

Section 2. Creates s. 403.121(13), F.S., which authorizes the DEP deny a permit application to a person based upon a bad compliance history.

Section 3. Provides that the law will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may encourage non-compliance with environmental regulations that could result in increased DEP response costs and possibly increased costs for compliance/enforcement staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may encourage non-compliance with environmental regulations that could result in increased response costs by local government environmental agencies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For those businesses with a history of non-compliance, this bill could reduce the likelihood that the department might revoke or deny a permit. This could mean fewer costs to defend a proposed revocation or denial, as well as potentially increased profits through non-compliance. Those businesses which seek to maintain compliance with environmental regulations could be put at a competitive disadvantage with businesses which may take advantage of the DEP's more limited authority to deny or revoke permits to increase non-compliance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 48 after statutory or, strike ~~regulator~~ and insert <u>regulatory</u>.

There is the possibility that several of the DEPs federally delegated programs could be jeopardized if the revocation amendments become law. In most cases, EPA requires that Florida's programs be equivalent to and consistent with the federal program in order to maintain delegation. In the cases of the hazardous waste program, air program, and NPDES program, EPA has regulations defining the appropriate causes for termination of a permit. These regulations vary slightly but generally allow EPA to terminate permits in the cases of noncompliance or misrepresentation. In the case of each of these programs, the delegation was based partly on the current provisions in s. 403.087, F.S, which are equivalent to and consistent with the federal program. If the proposed amendments become law, Florida's programs would become less stringent than their federal equivalent, and the continued authorization from EPA to operate the delegated programs would be in doubt. If the authority to revoke permits is essentially eliminated, it may change the way some permittees balance the potential conflict between profit and compliance.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES