

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill expands the list of federally permitted and licensed activities which are subject to state consistency review requirements. The bill also exempts certain federally permitted and licensed coastal zone management activities from those requirements.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Federal Consistency

In 1972, Congress enacted the Coastal Zone Management Act (CZMA). The CZMA sought to preserve, protect, develop, and where possible, to restore and enhance the resources of the nation's coastal zones. It also encouraged coastal states to develop and implement comprehensive management programs which balance the need for coastal resource protection with the need for economic growth and development within the coastal zone. If the coastal state's management program is approved by the National Oceanographic and Atmospheric Administration (NOAA) of the Department of Commerce, the CZMA grants the coastal state authority to review federal activities within and adjacent to the coastal zone to ensure consistency.¹

The Florida Coastal Management Program (FCMP), the State of Florida's federally approved management program, was approved by NOAA in 1981. The FCMP consists of a network of 23 Florida Statutes administered by eleven state agencies and four of the five water management districts designed to ensure the wise use and protection of the state's water, cultural, historic, and biological resources; to minimize the state's vulnerability to coastal hazards; to ensure compliance with the state's growth management laws; to protect the state's transportation system, and to protect the state's proprietary interest as the owner of sovereign submerged lands.²

The State of Florida's coastal zone includes the area encompassed by the state's 67 counties and its territorial seas. Therefore, federal actions which occur throughout the state are reviewed by the state for consistency with the FCMP. However, the state has limited its federal consistency review of federally licensed and permitted activities to the federal licenses or permits specified in Section 380.23(3)(c) requested for activities located in or seaward of one of the state's 35 coastal counties.³

Federal CZMA regulations require states to list the federal activities that will be routinely reviewed. The federal regulations also authorize a state to review unlisted activities if it receives prior approval to do so from the Secretary of the U.S. Department for Commerce. Florida's coastal management statute (s. 380.23) lists the federal activities that the state will review, but does not specifically authorize the state's review of unlisted activities.

Florida law authorizes the Department of Environmental Protection (DEP) to adopt rules to establish procedures for conducting consistency review. The rules also include addressing the data and information needed to complete consistency review.⁴

In a recent appeal of the state's objection to proposed oil and gas development in the Big Cypress National Preserve, the Secretary of the U.S. Department of Commerce determined that the list of activities in s. 380.23 did not provide an adequate basis for the state's review of the drilling proposal. The Secretary found that because the s. 380.23 references to applicable

¹ Federal Consistency Intergovernmental Coordination and Review, <http://www.dep.state.fl.us/cmp/federal/index.htm>

² Id.

³ Id.

⁴ s. 380.23 (4), F.S.

federal laws did not specifically list the permit needed for the drilling activity (by U.S. Code citation) as one of the reviewable activities, the state could only review the drilling proposal under the unlisted activity procedure established by the CZMA regulations. Because s. 380.23 does not authorize the state to review unlisted activities and the state did not obtain approval from the Secretary of Commerce before reviewing the drilling proposal, the state's objection to drilling in the Big Cypress National Preserve was dismissed. The lack of U.S.C. citations in s. 380.23 and the statute's restriction on the use of the federal unlisted activity procedure limits the state's ability to review oil and gas development on federal public lands, as well as the construction and operation of pipelines and power plants regulated by the federal government.⁵

The National Environmental Policy Act (NEPA) requires federal agencies to prepare detailed environmental analyses (such as environmental impact statements and environmental assessments) to support the federal agency's review of large, complex activities. The NEPA documents also support the state's *consistency* review of the same activities under the CZMA.⁶

EFFECT OF PROPOSED CHANGES

The bill changes Florida's list of federal activities for review to include certain licensed or permitted activities that affect the land, water and natural resources of the state, including permits and licenses required under:

- Mining Law of 1872
- Mineral Lands Leasing Act
- Mineral Leasing Act for Acquired Lands
- Federal Land Policy and Management Act
- Mining in the Parks Act
- Outer Continental Shelf (OCS) Lands Act, for pipelines, geological and geophysical activities or rights-of-way
- Indian Mineral Development Act
- Deepwater Port Act of 1974

The bill exempts from consistency review permits and licenses required under:

- Public Utility Regulatory Processes Act
- Energy Policy Act
- Atomic Energy Act
- Re-licensing of existing power plants, only if operation of the plant did not require state licensure.

Rulemaking Authority

The bill changes the DEP's authority to adopt rules prescribing data and information *needed* for review to *necessary* for review. Consistency reviews that require documentation under the National Environmental Policy Act (NEPA) are changed to classify such documents as *necessary* for all OCS activities and other activities, uses, and projects deemed significant by the DEP. This requirement applies only to NEPA documents prepared for the specific activity and use of the project.

C. SECTION DIRECTORY:

Section 1: Amends s. 380.23 (3), F.S., to add certain federally licensed or permitted activities to the consistency review list and to provide for exceptions.

Section 2: Provides an effective date.

⁵ <http://www.dep.state.fl.us/cmp/federal/index.htm>

⁶ Id.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: The DEP notes that synchronization of timeframes for state review of federal activities under two laws (NEPA and CZMA) will save agency staff time and eliminate the need for multiple state reviews.⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DEP notes that synchronization of timeframes for state review of federal activities under two laws (NEPA and CZMA) would reduce consultant and other costs associated with the compilation of data and information required for the federal and state reviews of proposed activities.⁸

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill changes the DEP's authority to adopt rules prescribing data and information *needed* for review to *necessary* for review. Consistency reviews that require documentation under the National Environmental Policy Act (NEPA) are changed to classify such documents as *necessary* for all OCS activities and other activities, uses, and projects deemed significant by the DEP. This requirement applies only to NEPA documents prepared for the specific activity and use of the project.

⁷ D.E.P. Bill Analysis, HB 1623

⁸ Id.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES