

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: CS/CS/SB 2062

INTRODUCER: Environmental Preservation Committee, General Government Appropriations Committee, and Senator Clary

SUBJECT: Environmental Protection

DATE: April 18, 2006

REVISED: 04/22/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	DeLoach	Hayes	GA	Fav/CS
2.	Molloy	Kiger	EP	Fav/CS
3.			WM	
4.			RC	
5.				
6.				

I. Summary:

The committee substitute for the committee substitute authorizes the implementation of a phased Environmental Resource Permitting program (ERP) within the geographic area of the Northwest Florida Water Management District (NFWFMD) by requiring the Department of Environmental Protection (DEP) and the NFWFMD to jointly develop rules to regulate stormwater management systems and the management and storage of surface waters. The DEP must adopt stormwater management rules no later than January 1, 2007, and must adopt rules for the management and storage of surface waters no later than January 1, 2008. The NFWFMD is authorized to implement the rules without adoption pursuant to s. 120.54, F.S., and specific rule criteria are provided.

The DEP and the NFWFMD are directed to pursue streamlining of the state and federal wetlands permitting program, and to implement, to the maximum extent possible, streamlined permitting measures. The DEP and the NFWFMD also are directed to enter into an operating agreement establishing the NFWFMD's responsibilities in implementing the ERP program, and to encourage the delegation of permitting responsibilities at the local level. If the northwest Florida ERP program is not funded or staffed in any fiscal year, the program is suspended for that year and permitting requirements will revert to those in place on April 1, 2006, until such time as funding and staffing levels are restored.

The committee substitute for the committee substitute provides for a \$2.9 million appropriation from the General Revenue Fund to implement the northwest Florida ERP program in fiscal year 2006-2007.

The committee substitute for the committee substitute substantially amends s. 373.4145, F.S., and repeals s. 373.4145(1), (2), (3), and (4), F.S.

II. Present Situation:

The Environmental Resource Permitting program was created during the merger of the former Department of Natural Resources and the former Department of Environmental Regulation into the DEP, when the Legislature enacted ch. 93-213, Laws of Florida. The Legislature intended that the DEP and the water management districts consolidate all permits for activities involving dredging and filling, management and storage of surface waters (MSSW), including stormwater control, and the alteration of mangroves into a single type of permit called an “environmental resource permit”. The goal of the ERP program was to prevent new construction from adversely impacting the flow and storage of surface waters thereby protecting existing homes and structures, reducing stormwater pollution, and protecting wetlands.

The ERP program is implemented by four of the five water management districts in the state through operating agreements with the DEP. However, in the NFWFMD, the DEP administers an interim environmental permitting program called the Wetlands Resource Permitting program, which is limited to wetland permitting rules in effect since 1984. This is because unlike the other four districts, the NFWFMD’s ad valorem tax revenues are not sufficient to fund an ERP program. The district’s ad valorem millage rate is constitutionally capped at .05 mills, while the rest of the state’s water management districts’ ad valorem millage rate is constitutionally capped at 1 mill.¹

Interim Permitting Program

Under the existing authority in s. 373.4145, F.S., the DEP administers dredge and fill and stormwater programs for all non-agricultural projects under rules adopted prior to creation of the ERP program. The dredge and fill program regulates activities in most natural waterbodies and connected wetlands using boundaries determined by the 1994 unified statewide wetland delineation methodology, but does not provide for the regulation of isolated wetlands.

The NFWFMD administers a limited MSSW program for non-agricultural facilities, primarily for the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands.

In the 2005 Regular Session, the Legislature enacted. Ch. 2005-273, Laws of Florida, to provide for the extension of the NFWFMD’s interim permitting program through July 1, 2010

Section 403.813, F.S.

Subsection (2) of s. 403.813, F.S., provides a list of projects and activities that are exempt from permits required under chapters 403 or 373, F.S.. In 2002, the Legislature enacted ch. 2002-253, Laws of Florida, to create paragraph (t) of subsection 2, which establishes a permit exemption for the repair, stabilization, or paving of existing county maintained roads and the repair or

¹ See Art. VII, s. 9 (b), State Constitution.

replacement of bridges that are part of the roadway, within the NFWMD and the Suwannee River Water Management District. The exemption is authorized under the following conditions:

- The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002.
- The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road.
 - It may include providing safety shoulders, clearing vegetation, and work necessary to repair, stabilize, pave or repave the road if construction is by generally accepted engineering standards.
- The construction activity does not expand the existing vehicular width of the bridge in excess of that reasonably necessary to properly connect the bridge and the road being repaired.
 - No debris from the original bridge can remain in state waters, including wetlands.
- The project must incorporate roadside swales or other effective stormwater treatment measures.
- No more dredging or filling of wetlands or state waters is performed than that which is reasonably necessary to repair the road, or replace the bridge, in accordance with generally accepted engineering standards.
- Notice of intent to use the exemption is provided to DEP if the work is performed within either water management district.

The DEP was directed to initiate rulemaking no later than 30 days after the enactment of the law creating the exemption to adopt a statewide no fee general permit for the repair, stabilization, or paving of existing roads, and the repair or replacement of bridges that are part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The exemption provided in paragraph (t) is to be superseded and replaced by the statewide general permit.

III. Effect of Proposed Changes:

Section 1 requires that the department and the district, taking into consideration the differing physical and natural characteristics of the area, jointly develop the following:

- A rule to regulate the construction, operation, alteration, maintenance, abandonment, and remove of stormwater management systems.
 - The rule must be adopted by DEP no later than January 1, 2007.
 - The rule may be implemented by the NFWMD without adoption pursuant to s. 120.54, F.S.
 - The intent is to improve water quality and flood protection by applying comparable measures and criteria adopted by the state's four other water management districts so long as the measures and criteria are appropriate for the physical and natural character of northwest Florida.
- A rule to regulate the management and storage of surface waters.
 - The rule must be adopted by DEP no later than January 1, 2008.
 - The rule may be implemented by the NFWMD without adoption pursuant to s. 120.54, F.S.

- The intent is to preserve property interests while providing for the improved management and storage of surface waters.
- Permitting thresholds and requirements must recognize the historically rural nature, current development trends, and abundant natural resources of the NFWFMD.
- The adopted rules must:
 - Incorporate agricultural permit exemptions contained in s. 373.406, F.S.
 - Incorporate general permit exemptions contained in s. 403.813(2), F.S.
 - Incorporate the general permit for minor activities for single family residences contained in Chapter 62-341.475(1)(f), of the Florida Administrative Code (F.A.C.).
 - Exempt the construction or private use of a single-family dwelling unit, duplex, triplex or quadraplex from notice and permitting requirements under certain conditions.
 - Incorporate the exemptions and general permits under Part IV of chapter 373, F.S., and incorporate the exemption for repair, stabilization, or paving of county maintained roads existing on or before January 1, 2002, and the repair or replacement of bridges that are part of the roadway, using the exemption criteria provided in s. 403.813 (2) (t), F.S., notwithstanding the fact that s. 403.813(2)(t)7., F.S., requires adoption of a statewide general permit and repeal of the exemption upon adoption of the general permit.
 - Exempt the alteration of wholly owned, artificially created surface waters entirely created from uplands that do not connect to waters of the state from the management and storage of surface water rule criteria, except for surface waters created for the purpose of providing mitigation.
- Directs the DEP and the NFWFMD to enter into an operating agreement that delegates permitting responsibilities to the NFWFMD and encourages the delegation of permitting responsibilities to local governments and local pollution control programs.
- Grandfathers in dredge and fill activities authorized in permits issued under ss. 403.91-403.909, 1984 Supplement to the 1983 statutes, as amended.
- Requires that the following activities be governed according to s. 373.4145, F.S. (1994):
 - The operation and routine custodial maintenance of activities legally in existence before the effective date of the rules to be adopted to regulate stormwater and surface water management, so long as existing permit conditions and requirements continue to be met.
 - Activities approved under a permit issued pursuant to s. 373.4145, F.S. (1994).
 - The review of activities proposed in applications received and completed before the effective date of rules to be adopted to regulate stormwater and surface water management.
 - The modification of plans, terms and conditions of a permit issued pursuant to s. 373.4145, F.S. (1994), which lessens the environmental impact of the activity. However, the modification may not extend the construction time limit beyond 2 years.
- Deletes provisions authorizing the DEP to implement a statewide programmatic permit within the NFWFMD if such permit authority is granted to the DEP by the U.S. Army Corps of Engineers.

- Corrects references to rules transferred from Chapter 17, F.A.C., Department of Environmental Regulation, to Chapter 62, F.A.C., Department of Environmental Protection.
- Repeals provisions authorizing the DEP to implement management and storage of surface water rules of the NFWMD, in effect prior to July 1, 1994, upon the adoption of rules required under the act.
- Repeals requirements for the use of certain methodology in determining the landward extent of surface waters of the state within the geographical jurisdiction of the NFWMD upon the adoption of rules required under the act.
- Regulations governing development activity in northwest Florida revert back to those in effect on April 1, 2006 if the Legislature fails to fund and staff the northwest Florida ERP program any fiscal year.
- Deletes language repealing subsections (1), (2), (3) and (4) of s. 373.4145, F.S., effective July 1, 2006.

Section 2 appropriates \$2,418,816 in recurring funds and \$525,000 in nonrecurring funds from the General Revenue fund in the Department of Environmental Protection as a transfer to the Northwest Florida Water Management District for fiscal year 2006-2007, to implement the northwest Florida ERP program.

Section 3 provides that the act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The committee substitute for the committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional costs to the private sector will vary depending on an individual project's requirements to address impacts to isolated wetlands and to provide additional stormwater treatment to address water quantity.

C. Government Sector Impact:

The committee substitute for the committee substitute appropriates a total of \$2,943,846 from the General Revenue Fund for the 2006-2007 fiscal year to the district to implement the stormwater provisions of this act.

The district estimates an additional need of \$1,664,492 (\$1,389,492 recurring and \$275,000 nonrecurring) in fiscal year 2007-2008 to implement the management and storage of surface waters provisions of this act. This is due to the limited ad valorem tax resources available to the district.

VI. Technical Deficiencies:

The committee substitute for the committee substitute references the General Revenue fund "in" the Department of Environmental Protection.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
