

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a program to expedite environmental resource and wetland resource permits for certain businesses.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Environmental Protection (DEP) regulates actions that impact Florida's surface waters through several programs, one of which is the Environmental Resource Permit (ERP) program¹. The ERP Program regulates activities involving the alteration of surface water flows. This includes upland construction that generates stormwater runoff, as well as dredging and filling in wetlands and other surface waters. The ERP Program is in effect throughout the State except for the portion of the Panhandle covered by the Northwest Florida Water Management District. This exception from the ERP program is currently being phased out as required by s. 373.4145, F.S.

In lieu of an ERP program within the NFWWMD, the DEP and the NFWWMD operate a Wetland Resource Permit program. The Wetland Resource Permit program regulates any dredging, filling, or construction in, on, or over waters and wetlands that are connected, either naturally or artificially, to other bays, bayous, streams, rivers, lakes, estuaries, natural lakes that are not wholly owned by one person other than the State, or the Gulf of Mexico. This program is split such that the DEP regulates stormwater² and dredge and fill activities³, while the NFWWMD operates a management and storage of surface water permit program⁴ and regulates silviculture activities affecting water resources⁵. Upon completion of rules being developed pursuant to s. 373.4145, F.S., the DEP and the NFWWMD will implement an ERP program in place of the current Wetland Resource Permit program⁶.

ERP applications are processed by either the DEP or one of the state's water management districts. Operating agreements between the DEP and the participating water management districts spell out each agency's area of responsibility. Under these agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining (except borrow pits that do not involve on-site material grading or sorting);
- Power plants, transmission and communication cables and lines, and natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a WMD has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line

¹ Rule 62-330, F.A.C.

² Rule 62-25, F.A.C.

³ Rule 62-312, F.A.C.

⁴ Rule 40A-4, F.A.C.

⁵ Rule 40A-44, F.A.C.

⁶ Proposed Rule 62-346, F.A.C.

- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs.)

The water management districts review and take action on all other ERP applications⁷.

Currently, s. 373.4141, F.S., provides that a permit under Part IV of Chapter 373, F.S., including ERP and wetland resource permits, shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application. Currently, ERP and wetland resource permits may be expedited in at least five instances.

First, s. 288.109, F.S., requires ERP and wetland resource permits issued through the One Stop Permitting System to be acted upon within 60 days, instead of 90 days, after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

Second, s. 380.0661, F.S., requires the DEP and the water management districts to expedite the processing of ERP and wetland resource permits for marina projects that reserve at least 10 percent of available boat slips for public use. The DEP works to expedite the issuance of such permits once they have received a complete application. However, the statute does not specify a time period the expedited permits are to be issued within; therefore, the degree to which a permit is expedited is left to the DEP's discretion. The DEP has not adopted rules to implement this section.

Third, s. 403.0752, F.S., creates the Ecosystem Management Agreement program. The program allows the DEP to offer expedited permitting as an incentive under an ecosystem management agreement. This would include ERP and wetland resource permits, though the statute does not specify the degree to which a permit must be expedited.

Fourth, s. 403.973, F.S., creates an expedited permitting program for certain economic development projects. To be eligible, an applicant business must be creating either: 100 jobs, 50 jobs if the business is located in an enterprise zone or in a county of a certain population, or on a case-by-case basis at the request of a county or municipal government. The program includes ERP and wetland resource permits, though it does not specify the degree to which a permit must be expedited.

Lastly, s. 373.4141, F.S., requires applications for permits associated with affordable housing, including ERP and wetland resource permits, to be expedited to a greater degree than other projects.

Effect of Proposed Changes

The bill creates s. 380.0657, F.S., requiring the DEP and the water management districts to expedite ERP and wetland resource permits for "target industry" businesses, as defined in s. 288.106(1)(o), F.S., and identified by a municipality or county. Each year, pursuant to s. 288.106(1)(o), F.S., Enterprise Florida, in coordination with the Office of Tourism, Trade, and Economic Development, publishes a list within their agency legislative budget request of target industries. The inventory lists types of industries, such as chemical manufacturing or telecommunications, not specific businesses. The list is compiled using the following six criteria listed in statute⁸:

1. Future growth.--Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to Florida's growing access to international markets or to replacing imports.

⁷ DEP's ERP Website, <http://www.dep.state.fl.us/water/wetlands/docs/overview.pdf> (last visited March 14, 2007).

⁸ Section 288.106(1)(o), F.S.

2. Stability.--The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not necessarily subject to decline during an economic downturn.
3. High wage.--The industry should pay relatively high wages compared to statewide or area averages.
4. Market and resource independent.--The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis. Special consideration should be given to the development of strong industrial clusters which include defense and homeland security businesses.
5. Industrial base diversification and strengthening.--The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
6. Economic benefits.--The industry should have strong positive impacts on or benefits to the state and regional economies.

In order to receive an expedited permit pursuant to this bill, a business would have to be within a target industry listed by Enterprise Florida and be designated as a target industry business by a county or municipality.

C. SECTION DIRECTORY:

Section 1. Creates s. 380.0657, F.S., requiring the Department of Environmental Protection and the water management districts to expedite certain permits for economic development projects meeting certain standards.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Although the bill increases the workload of certain DEP permitting staff, the bill does not specify the degree to which a permit must be expedited; therefore the increase in workload may be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Although the bill increases the workload of certain water management district permitting staff, the bill does not specify the degree to which a permit must be expedited; therefore the increase in workload may be minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain businesses would be eligible for expedited permits under this section, creating possible savings for the private sector.

D. FISCAL COMMENTS:

The DEP states it cannot determine, analyze, or prepare for the fiscal impact of expediting ERP and wetland resource permits for "target industry" businesses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Sections 373.043 and 373.044, F.S., grant rulemaking authority to DEP and the WMDs, respectively, to implement the provisions of Chapter 373, which includes ERP and wetland resource permitting. However, according to the Joint Administrative Procedures Committee, that grant of rule-making authority does not appear to extend to Chapter 380, which this bill amends.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Currently, pursuant to s. 120.60, F.S., the DEP must act on a final permit application within 90 days. The bill does not specify a reduced amount of time in which an expedited permit must be acted upon. This leaves the degree to which a permit is expedited to the DEP's discretion. In addition, the bill does not provide for the manner in which a county or municipality must designate a business as a target industry business, or how this information is to be communicated to the DEP during the permitting process. Lastly, the bill does not provide rule-making authority. However, the bill may be able to be implemented without rules.

Other Comments

The DEP states that the growing number of expedited permits affects its ability to process non-expedited permits at the DEP's current staffing levels.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A