The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL:	CS/CS/SB 1294
INTRODUCER:	General Government Appropriations Committee, Environmental Preservation & Conservation Committee, and Senator Saunders
SUBJECT:	Department of Environmental Protection
DATE:	April 2, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	**Fav/CS**
2.	Rhea	Wilson	GO	**Favorable**
3.	Kynoch	DeLoach	GA	**Fav/CS**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Florida Government Accountability Act requires the Department of Environmental Protection (department) and its advisory committees to be reviewed by July 1, 2008, to determine if it and its committees should be retained, modified, or abolished. The bill reenacts the department and makes statutory changes recommended in the agency sunset review report. Also, the bill deletes some obsolete provisions and amends some provisions to allow the department to more efficiently perform its duties.

Specifically, the bill:

- Reenacts the provisions which create the department and amends the organizational structure to reflect the changes made by the department's reorganization.
- Allows the Environmental Regulation Commission to employ independent counsel and contract for the services of outside technical consultants.
- Provides for a surcharge on the phosphate severance tax through June 30, 2018, to augment funds appropriated for the rehabilitation, management and closure of the Piney Point and Mulberry sites and for approved reclamation of nonmandatory mined lands.

- Allows the Committee on Landscape Irrigation and Florida-Friendly Design Standards to meet once more before January 1, 2011 to review the landscape irrigation and xeriscape design standards for new construction.
- Requires that a drycleaning facility must be registered with the department and must display a certificate of registration in order to buy any drycleaning solvents.
- Amends the definition of "regulated air pollutant" to conform to changes in the federal Clean Air Act.
- Provides that certain minor sources of air pollutants are exempt from having to receive a Title V permit. This conforms to the federal Clean Air Act.
- Makes technical changes to clarify the department's rulemaking authority regarding the Drinking Water Operator Certification Program and biological sampling techniques to address concerns expressed by the Joint Administrative Procedures Committee.
- Provides that the Environmental Resource Permit (ERP) fees are to be adjusted every five years to reflect changes in the Consumer Price Index. The statutory fees are adjusted to provide a minimum and an increased maximum.
- Provides for the establishment of a fee for verification that an activity is exempt from regulation.
- Provides for a fee for conducting an informal wetland boundary determination.
- Provides for fee adjustments to the drinking water program.
- Establishes a new fee for the operation of a public water supply system.
- Repeals the provisions relating to the Land Use Advisory Committee.
- Repeals ch. 325, relating to motor vehicle refrigerants and emissions. The department has repealed all of its chlorofluorocarbon (CFC) requirements in its rules and has subsequently transferred all of the CFC data to the Environmental Protection Agency (EPA) as part of the federal program.
- Repeals the air operation permit process for citrus juice processing facilities. This was to be an alternate process to the Title V permit.
- Increases the statutory millage cap for the Northwest Florida Water Management District is increased from .05 mills to .2 mills. This change is contingent upon the passage of a constitutional amendment. Allows the district to adjust their millage rate if this statutory provision becomes effective.

The bill substantially amends or reenacts the following sections of the Florida Statutes: 20.255, 211.3103, 373.228, 376.303, 403.031, 403.0623, 403.0872, 373.109, 403.087, 403.861, 403.873, 403.874, and 373.503, F.S.

The bill repeals section 378.011, F.S.; chapter 325, F.S., consisting of sections 325.2055, 325.221, 325.222, and 325.223, F.S.; and 403.08725, F.S.

II. Present Situation:

Under the Florida Government Accountability Act (ss. 11.901-920, F.S.), most state agencies and their respective advisory committees are subject to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. The act requires a review of Department of Environmental Protection and its advisory committees by July 1, 2008.

The department is the lead agency in state government for environmental management and stewardship. The head of the department is a secretary who is appointed by the Governor and confirmed by the Senate. The department's lead mission is to administer and enforce state and federal laws governing pollution control, the protection of public health and Florida's unique natural resources. The department is charged with providing good air to breath, clean and safe water to drink, and maintaining an otherwise healthy environment for the public to live. Also, a healthy environment is essential for providing suitable habitat for the various threatened and endangered species in Florida.

The department also manages various recreation opportunities for all of Florida's residents and the visitors to Florida.

The Senate Environmental Preservation and Conservation Committee is the primary Senate sunset review committee for the department. As a result of its review, the committee issued the Agency Sunset Review of the Department of Environmental Protection Interim Report 2008-210. In its review, the committee found that many of the department's programs cannot be provided more efficiently by another agency. Often, many of the programs have close federal links and several have been delegated to the state to administer on behalf of the federal government. The committee, therefore, recommended that the department be retained along with its various programs and advisory councils and committees, with certain modifications.

Organization of the Executive Branch

Section 20.04, F.S., provides that the executive branch of state government is to be structured so that the department is the principal administrative unit of the executive branch. Departments are headed by secretaries. For their internal structure, all departments, except for the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation must adhere to the following standard terms.

- The principal unit of the department is the "division." Each division is headed by a "director."
- The principal unit of the division is the bureau. Each bureau is headed by a "chief."
- The principal unit of the bureau is the "section." Each section is headed by an "administrator."

If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors." For field operations, departments may establish district or area offices that combine divisions, bureau, section, and subsection functions.

Subsections (4), (5), and (6) of s. 20.04, F.S., expressly permit "program offices" or "offices" as organizational units in the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation, respectively. The Department of Environmental Protection is not among those departments expressly authorized to create "offices."

Under s. 20.04(7), F.S., unless specifically authorized by law, the head of a department may not reallocate duties and functions specifically assigned by law to a specific unit of the department. Those functions assigned generally to a department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the head of a department.

Within the limitations of s. 20.04, F.S., the head of a department may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of a department. New bureaus, sections, and subsections of a department may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment. The department and the Executive Office of the Governor must adopt and apply specific criteria for assessing the appropriateness of all reorganization requests from agencies.

Section 20.03(10), F.S., defines a "commission" to mean:

> . . . unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.052, F.S., provides requirements for advisory bodies, boards and commissions. Under that section, any of these entities may be created only when found to be necessary and beneficial to the furtherance of a public purpose and must be terminated when no longer necessary. The executive agency to which the entity is adjunct must advise the Legislature at the time the entity ceases to be essential to the furtherance of a public purpose. Pursuant to subsection (4) of the section, such an entity may not be created or reestablished unless:

(a) It meets a statutorily defined purpose;
(b) Its powers and responsibilities conform with the definitions for governmental units in s. 20.03;
(c) Its members, unless expressly provided otherwise in the State Constitution, are appointed for 4-year staggered terms; and
(d) Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061.

Under s. 20.052(5)(b), F.S., the private citizen members of a commission that is adjunct to an executive agency must be appointed by the Governor unless otherwise provided by law, must be confirmed by the Senate, and must be subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.

Section 20.255(7), F.S., creates the "Environmental Regulation Commission" adjunct to the Department of Environmental Protection. The commission is composed of seven residents of the state appointed by the Governor, subject to confirmation by the Senate. The Governor appoints

the chair, and the vice chair is elected from among the membership. The Environmental Regulation Commission (ERC) is a standard-setting authority for the department.

Administrative Procedure Act

Chapter 120, F.S., the Administrative Procedure Act, provides the method for agency rulemaking, decision-making, and for hearings related to those activities. Section 120.60(2), F.S., provides that if an applicant seeks a license for an activity that is exempt from licensure, the agency must notify the applicant and return any tendered application fee within 30 days after receipt of the original application.

III. Effect of Proposed Changes:

The bill allows the department to be retained and implements various recommendations contained in the Senate Environmental Preservation and Conservation Committee's Agency Sunset Report. Also, the bill deletes some obsolete provisions and amends some provisions to allow the department to more efficiently carry out its duties. The specific provisions of the bill are as follows:

Section 1 amends s. 20.255, F.S., to amend and reenact the provisions relating to the creation of the department. Because the department seeks reorganization, this section renames the Office of Legislative and Governmental Affairs to the Office of Legislative Affairs and creates the Office of Intergovernmental Programs. The Division of Resource Assessment and Management is renamed as the Division of Environmental Assessment and Restoration.

The Environmental Regulation Commission (ERC) is the standard-setting authority for the department. The bill provides that the ERC is authorized to employ independent counsel and contract for the services of outside technical consultants. The committee's Sunset Review found that to address the questions that have arisen regarding the independent nature of the commission, it was recommended that they have the authority to have an attorney assigned exclusively to them who is not an employee of the department. Further, the committee recommended that the commission have the authority to hire outside consultants on a case-by-case basis to assure that the standards and rules adopted by the commission for use by the department are not unduly biased.

Section 2 amends s. 211.3103, F.S., pertaining to the severance tax on phosphate rock. This section provides that the tax rate for phosphate is calculated annually by multiplying the base rate times the base rate adjustment. The base rate adjustment is calculated on the change in the unadjusted annual producer price index for the prior calendar year in relation to the unadjusted annual producer price index for calendar year 1987. The bill provides that beginning July 1, 2008, there is levied a surcharge per ton severed on the excise tax levied on the severance of phosphate rock. Revenues derived from the surcharge shall be deposited into the Nonmandatory Land Reclamation Trust Fund and shall be exempt from the distribution formula provided in s. 211.3103, F.S. These revenues are also exempt from the general revenue service charge. Revenues derived from the surcharge shall be used to augment funds appropriated for the rehabilitation, management and closure of the Piney Point and Mulberry sites and for approved reclamation of nonmandatory lands in accordance with ch. 378, F.S.

The surcharge is levied as follows.

- $1.00 per ton severed for July 1, 2008, to December 31, 2009.
- $0.70 per ton severed for January 1, 2010, to December 31, 2010.
- $0.55 per ton severed for January 1, 2011, to December 31, 2011.
- $0.18 per ton severed for January 1, 2012, to December 31, 2013.
- $0.17 per ton severed for January 1, 2014, to December 31, 2015.
- $0.16 per ton severed for January 1, 2016, to June 30, 2018.

Beginning July 1, 2018, the surcharge shall no longer be levied.

Section 3 amends s. 373.228, F.S., to delete the requirement that the landscape irrigation and xeriscape design standards for new construction be reviewed every five years. Instead, the design standards will be reviewed again before January 1, 2011, which is five years after the design standards were adopted. The design standards were adopted in December 2006 by a committee that was formed pursuant to this section—the Committee on Landscape Irrigation and Florida-Friendly Design Standards. The law currently requires that these design standards be reviewed every five years to determine if changes are needed. The committee, which is currently not active, would reconvene for the purpose of this review.

Section 4 amends s. 376.303, F.S., to provide that as of March 1, 2009, a drycleaning facility registered with the department must display a current certificate of its registration with the department in order to buy any drycleaning solvents.

Section 5 amends the definition of "regulated air pollutant" found in s. 403.031(19), F.S., to conform to the federal requirements regarding the definition of "regulated air pollutant" to allow Florida's state implementation plan to continue to be approved by the United States Environmental Protection Agency (EPA).

Section 6 amends s. 403.0623, F.S., to allow the department to adopt and enforce rules to establish data quality objectives and specify requirements for training of laboratory and field staff, sample collection methodology, proficiency testing and audits of laboratory and field sampling activities. This change is to address technical concerns that the Joint Administrative Procedures Committee raised.

Section 7 amends s. 403.0872, F.S., to conform to the amendments to the federal Clean Air Act and exempt certain minor emitters from having to obtain a major source air operation permit. Florida has the delegated authority to administer the federal Clean Air Act Title V permitting program on behalf of the EPA. On December 19, 2005, the EPA amended 40 C.F.R., Part 70, which implements the Title V air operation permitting program. The EPA amendments removed certain categories of minor hazardous air pollutant sources from the requirements of having to obtain a Title V major source air operation permit. In Florida, this primarily affects drycleaners.

Section 8 amends s. 373.109, F.S., to require the department to initiate rulemaking no later than December 1, 2008, to increase the application fees for permits authorized under part IV of ch. 373, F.S., (Management and Storage of Surface Waters—ERP permits) to ensure that such

fees are increased to reflect, at a minimum, an upward adjustment in the Consumer Price Index (CPI) or similar inflation indicator since the original fee was established or most recently revised. The department shall, by rule, establish the inflation index to be used. The department is required to review the fees at least every five years and adjust the fees upward, as necessary, to reflect changes in the CPI or other similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustment are appropriate given the current budget and appropriation considerations.

The department shall charge a fee of at least $250 for a noticed general permit or individual permit.

Section 120.60(2), F.S., provides that if an applicant seeks a license for an activity that is exempt from licensure, the agency must notify the applicant and return any tendered application fee within 30 days after receipt of the original application. Notwithstanding the provisions of s. 120.60(2), F.S., the fee for verification that an activity is exempt from regulation under s. 403.813, F.S., or Part IV of ch. 373, F.S., shall be at least $100 or as otherwise established by department rule not to exceed $500.

The department shall charge a fee of at least $100 and not to exceed $500 for conducting informal wetland boundary determinations as a public service to applicants or potential applicants for permits under Part IV of ch. 373, F.S. An informal wetland boundary determination is not an application for a permit and is not subject to the permit review timeframes established in ch. 373, F.S., or ch. 120, F.S., nor does it constitute final agency action.

Effective July 1, 2008, the minimum fee amounts shall be the minimum fees prescribed in this section, and such fee amounts shall remain in effect until the effective date of a fee adopted by rule by the department.

Section 9 amends s. 487.087, F.S., to revise the statutory fee caps for various permits issued by the department. Under s. 403.087(6), F.S., the department is required to charge a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services and related support services.

This section is amended to provide that the department shall review the fees authorized under ch. 403, F.S., at least once every five years and shall adjust the fees upward, as necessary, within the statutory fee ranges to reflect changes in the CPI or similar inflation indicator. The department shall establish by rule the inflation index to be used for this purpose. In the event of deflation, the department shall consult with the Executive Office of the Governor and Legislature to determine whether downward fee adjustments are appropriate given current budget and appropriation considerations.

The bill makes the following specific fee adjustments.

- The permit fee for a drinking water construction or operation permit shall be at least $500 and may not exceed $15,000. Currently, that fee may not exceed $7,500.
- The permit fee for a drinking water distribution system permit, including a general permit, shall be at least $500 and may not exceed $1,000. Currently, this fee may not exceed $500.
- Deletes the obsolete provision relating to a wetland resource management short form permit.

Effective July 1, 2008, the minimum fee amounts shall be the minimum fees prescribed in this section, and such fee amounts shall remain in effect until the effective date of a fee adopted by rule by the department.

Section 10 amends s. 403.861(7), F.S., to allow the department to provide for the issuance of an annual public water system operation license. Also, the department may issue a construction permit for a public water system and receive a fee for this permit. The department may require a fee in an amount sufficient to cover the costs of viewing and acting upon any application for the construction and operation of a public water supply system and the costs of surveillance and other field services associated with any permit issued; however the amount of the fee shall be at least $500 and may not exceed $15,000. Currently, that fee may not exceed $7,500.

This section provides for a new annual operation permit for public water supply systems. Each public water system shall submit annually to the department an operation license fee, separate from and in addition to any permit application fees required for the construction of such systems in an amount established by department rule. The amount of each fee shall be reasonably related to the size of the public water system, type of treatment, population served, amount of source water used, or any combination of these factors, but in no event may the fee be less than $50 or greater than $7,500.

This section is further amended to provide that the department shall initiate rulemaking no later than July 1, 2008, to increase each drinking water permit application fee to ensure that such fees are increased to reflect, at a minimum, any upward adjustment in the CPI or similar inflation indicator, since the original fee was established or most recently revised. The department shall review the drinking water permit application fees at least once every five years and shall adjust the fees upward, as necessary, within the statutory fee caps to reflect changes in the CPI or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and Legislature to determine whether downward fee adjustments are appropriate given the current budget and appropriation considerations. The department shall also review the drinking water operation license fees at least once every five years to adopt, as necessary, the same inflationary adjustments in this bill.

Effective July 1, 2008, the minimum fee amounts shall be the minimum fees prescribed in this section, and such fee amounts shall remain in effect until the effective date of a fee adopted by rule by the department.

Sections 11 and 12 amend ss. 403.873 and 403.874, F.S., to provide for certain continuing education requirements for licensure and reactivation of an inactive license under the Drinking Water Operator Certification Program. These revisions address technical concerns raised by the Joint Administrative Procedures Committee.

Section 13 repeals s. 378.011, F.S., which created the Land Use Advisory Committee. The committee fulfilled its responsibilities and completed its report by July 1, 1979, as required under s. 378.011, F.S. As a result, the committee has been inactive since that time.

Section 14 repeals ch. 325, F.S., consisting of ss. 325.2055, 325.221, 325.222, and 325.223, F.S. Chapter 325, F.S., relates to motor vehicle refrigerants and emissions. In 1990, the Legislature passed ch. 90-290, L.O.F., to require that any person who installs or services motor vehicle air conditioners must use approved refrigerant recycling equipment to prevent the release of chlorofluorocarbons (CFCs) into the atmosphere. The 1990 legislation put Florida's law in compliance with federal regulations in 40 C.F.R., part 82. CFCs are manmade compounds that have the effect of destroying ozone molecules and depleting the ozone layer. The federal government mandated that production and importation of Class I CFC refrigerants, including CFC-12 (Freon), cease in the U.S. after December 31, 1995. This class of refrigerants has been replaced with newer Class III refrigerants that are less harmful to the environment. The newer Class III refrigerants are now exclusively used in new motor vehicles. The older CFC-12 (Freon) is still available for use in older vehicles as a recycled product, but will become unavailable sometime in the future.

The department has repealed all of its CFC requirements in rule 62-281, F.A.C., and has transferred all the CFC data to the EPA for their federal program. The remaining language in rule 62-281, F.A.C., adopts the federal regulations in 40 C.F.R., part 82, by reference. By repealing ss. 325.221, 325.222, and 325.223, F.S., the federal regulations under 40 C.F.R., part 82 become the overriding regulation for motor vehicle refrigerants in Florida.

Section 15 repeals s. 403.08725, F.S., which provides for a separate permitting process for air operation and construction permits for citrus juice processing facilities in lieu of the permits required under s. 403.0872, F.S., for major sources of air pollution under Title V of the federal Clean Air Act. Before the provisions of s. 403.08725, F.S., could apply to the citrus juice processing facilities, the EPA had to approve the use of these provisions. The EPA never approved these provisions as an alternative to the Title V permits and, as a result, the provisions effectively became obsolete as of July 15, 2005.

Section 16 amends s. 373.503, F.S., to increase the statutory millage rate cap for the Northwest Florida Water Management District from 0.05 mills to .2 mills.

In 1976, a constitutional amendment was approved which allowed the state's five water management districts to levy ad valorem taxes for water management purposes. The original amendment proposal would have allowed each water management district to levy no more than one mill of ad valorem taxes on the assessed value of real property within the district's boundaries. However, there was a strong sentiment in the Northwest Florida area to provide only minimal funding. As a result, the constitutional amendment that was passed allowed for up to one mill ($1 per $1,000 of value) to be levied in the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District and the South Florida Water Management District. The Northwest Florida Water Management District, however, is limited to a constitutional millage cap of .05 mills (five cents per $1,000 of value). Section 373.503, F.S., provides the statutory millage caps for the

water management districts within the constitutional cap. The following indicates the current constitutional and statutory millage caps for the five water management districts.

CAPS	NWFWMD	SRWMD	SJRWMD	SWFWMD	SFWMD
Constitutional	0.05	1.00	1.00	1.00	1.00
Statutory	0.05	0.75	0.60	1.00	0.80

For the Northwest Florida Water Management District, the constitutional millage rate cap and the statutory millage rate cap are the same. The bill would increase the statutory millage rate cap for the Northwest Florida Water Management District. However, before this can become effective, a constitutional amendment must be passed by the voters to raise the constitutional millage rate cap.

Section 17 provides that the amendment to s. 373.503(3)(a), F.S., to increase the millage rate for the Northwest Florida Water Management District shall take effect on the effective date of the amendment to the State Constitution included in Proposed Committee Substitute for Senate Joint Resolution 1848 or similar legislation passed in the 2008 regular session of the Legislature and submitted to the electors of the state for their approval or rejection at the general election to be held in November 2008.

Section 18 provides that if the provision increasing the statutory millage rate cap for the Northwest Florida Water Management District becomes effective, the district may adjust their millage rate pursuant to s. 373.503, F.S., notwithstanding the provisions of s. 200.185, F.S., relating to maximum millage rates for FY 2007-2008 and FY 2008-2009.

Section 19 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Environmental Resource Permitting (ERP) Fees

The bill requires the department to begin rulemaking no later than July 1, 2008, to increase the ERP fees to reflect changes in the CPI or other similar inflation indicator. Fees must be adjusted every five years.

ERP Verification Fee

Provides for a fee for verification that an activity is exempt from regulation. The fee shall be at least $100 and cannot exceed $500.

Wetland Boundary Determinations within the ERP Program

Provides for a fee of at least $100 and not to exceed $500 for conducting informal wetland boundary determinations.

ERP Permit Fees

Requires the department to review the fees at least once every five years and adjust the fees upward within the statutory ranges to reflect changes in the CPI or other similar inflation indicator.

Drinking Water Program Fees

- Provides that the permit fee for a drinking water distribution system permit shall be at least $500 and may not exceed $1,000.
- Provides that the permit fee for a drinking water distribution system permit shall be at least $500 and may not exceed $1,000.
- Provides that the fee for constructing, altering, extending, or operating a public water system will be at least $500 and may not exceed $15,000.
- Provides for a new operation permit fee for public water supply systems of no less than $50 or greater than $7,500.
- Provides that the drinking water program fees shall be reviewed at least every five years and shall be adjusted upward within the statutory fee caps to reflect changes in the CPI or similar inflation indicator.

Northwest Florida Water Management District

Increases the statutory millage rate cap for the Northwest Florida Water Management District from 0.05 mills to .2 mills. This is contingent on the passage of a constitutional amendment in Fall 2008.

Severance Tax Surcharge

Beginning July 1, 2008, the bill authorizes a surcharge on the annual tonnage of phosphate rock severed.

The surcharge is levied as follows.

$1.00 per ton severed for July 1, 2008, to December 31, 2009.
$0.70 per ton severed for January 1, 2010, to December 31, 2010.
$0.55 per ton severed for January 1, 2011, to December 31, 2011.
$0.18 per ton severed for January 1, 2012, to December 31, 2013.
$0.17 per ton severed for January 1, 2014, to December 31, 2015.
$0.16 per ton severed for January 1, 2016, to June 30, 2018.

Beginning July 1, 2018, the surcharge shall no longer be levied.

B. Private Sector Impact:

Drycleaners

Drycleaners will have to display a copy of their certificate of registration with the department in order to buy drycleaning solvents.

Air Pollution

The repeal of the alternate process for air operation permits for citrus juice processing facilities would not have an impact on this industry. This program was required to have EPA approval before it could be used. It was never approved by the EPA and therefore became obsolete as of July 15, 2005. These facilities would continue to be regulated under the provisions relating to Title V air operation permits.

The change to delete certain minor sources of air pollution from having to receive Title V permits would benefit primarily the following: drycleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. In Florida, dry-cleaning facilities would benefit most from the change.

Permit Fees

The fees charged for environmental resource program permits issued by the department would increase. The fees now would have a statutory minimum and increased maximum. The fees would be reviewed at least once every five years and adjust upward according to changes in the CPI or other similar inflation index.

A new fee would be charged for the determination work completed by the department to verify that an activity is exempt.

A new wetland jurisdictional determination fee would be charged.

For more detail, see Government Section Impact below.

Northwest Florida Water Management District Millage Rate Increase

No immediate impact. If approved by the voters, the increased statutory millage rate cap would become law. However, the actual millage rate to be applied to and paid by the ratepayers in the district is set by the water management district governing board within the allowable statutory and constitutional cap. Therefore, the Northwest Florida Water Management District governing board would have to vote to actually increase the millage rate.

Severance Tax Surcharge

Beginning July 1, 2008, a one dollar surcharge per ton will be levied on the severance of phosphate rock. This surcharge will decline over a ten-year period as the funding requirements for Mulberry, Piney Point, and other mine reclamation sites decline.

C. Government Sector Impact:

Environmental Resource Permitting (ERP) Program

The department's ERP program budget for Fiscal Year 2007-2008 is $17,381,051. Of that amount, permit fee revenues generated $605,078. The remaining funds that support the program's operations include: $7,119,200 general revenue, $9,309,610 from other trust funds, and $347,162 Grants and Donations Trust Fund. The bill would increase the fee revenues for this program to supplant the general revenue funds supporting the program.

- Exemption verification fee—This is a new fee to be charged when the department reviews an applicant's proposed activities to determine if the activity is exempt from the permit requirements. For Fiscal Year 2008-2009, the estimated revenue from this fee is $499,800.
- Wetland jurisdictional determination fee—This is a new fee to be charged when the department conducts an informal wetland boundary determination as a public service. The determination is not a permit and does not constitute final agency action. This would reimburse the department for the staff time spent on these determinations and would produce approximately $100,000 in new revenues for Fiscal Year 2008-2009.
- General permit—Many ERP permits are issued general permits, but general permits are issued for other activities as well. If a general permit requires certification by a professional engineer or a professional geologist, the fee is $500. The current fee for other general permits is $100. This fee has not been increased since the 1970s. For a general permit fee increase, the estimated revenue for Fiscal Year 2008-2009 would be $159,750.
- Individual permits—These permits require more staff time to review and generally involve significant impacts to water resources. These fees have not been increased since the 1970s. The fee increase is estimated to produce an additional $577,750 for Fiscal Year 2008-2009

Upon completion of rulemaking, the ERP fees established and increased in the bill are estimated to generate between $3,220,550 and $7,401,200 annually. The department estimates a minimum nine to twelve months to complete rulemaking.

Drinking Water Program

The department's drinking water program budget for Fiscal Year 2007-2008 is $6,492,353. Of that amount, permit fee revenues generated $1,115,536. The remaining funds that support the program's operations include: $1,361,092 general revenue, $1,956,536 from other trust funds, and $2,050,189 Grants and Donations Trust Fund.

The bill provides for a new annual operating fee for public water supply systems. A similar fee is currently charged for domestic and industrial wastewater treatment facilities. The new fee is estimated to produce $295,600 in new revenues for the drinking water program during Fiscal Year 2008-2009. Also, the bill provides for adjustments in the drinking water treatment plant construction permits and the drinking water distribution systems permits to provide a statutory minimum and a new statutory maximum cap. The estimated increases from such fee adjustments for the 2008-2009 fiscal year are:

- **$144,000** — Drinking Water Treatment Plant Construction Permits
- **$2,196,900**—Drinking Water Distribution System Permits

Upon completion of rulemaking, the drinking water permit fees established and increased in the bill are estimated to generate $5,283,475 annually. The department estimates a minimum nine to twelve months to complete rulemaking.

Consumer Price Index (CPI) Adjustments

All of the fees are to be reviewed and adjusted upward at least every five years using the CPI or a similar inflation indicator.

Northwest Florida Water Management District

In Fiscal Year 2007-2008, the state provided $5,184,926 in funding to the Northwest Florida Water Management District. Of these funds, $3,840,000 supported the ERP program, $1,044,926 supported operations, and $300,000 supported wetlands related activities. If this measure is adopted by voters and the Legislature increases the statutory cap, the Northwest Florida Water Management District's governing board could vote to set the actual millage rate such that it would no longer require subsidies from the state to support water management activities.

Severance Tax Surcharge

The surcharge per ton severed is levied to provide funding for the Mulberry and Piney Point reclamation sites. The surcharge will generate an estimated $87 million over the next ten years to cover the estimated $47 million required for the closure of Mulberry and

Piney Point and to provide $4 million annually for the estimated $40 million in outstanding mine reclamation projects. The surcharge declines over the ten-year period and closely aligns estimated revenues with funding needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Offices

Chapter 20, F.S., authorizes "offices" for only three departments, but not for the department. All other departments are required by that chapter to use the standard units for departments (divisions, bureaus, sections, etc.). Nevertheless, s. 20.255(2), F.S., creates in the department the following offices:

- Office of Chief of Staff.
- Office of General Counsel.
- Office of Inspector General.
- Office of External Affairs.
- Office of Legislative and Government Affairs.
- Office of Greenways and Trails.

The bill authorizes the creation of an additional office, the Office of Intergovernmental Programs. With the creation of this new office, the department will have three "offices" that are responsible for communication among governmental entities and others (External Affairs, Legislative Affairs, and Intergovernmental Affairs).

Further, current law provides for an Office of Greenways and Trails, which appears to be more of a program than a function. It is unclear why this program is not a division, bureau or section instead of an "office."

Commissions

Section 20.255(7), F.S., creates the "Environmental Regulation Commission" adjunct to the Department of Environmental Protection. The commission meets the definition of a "commission" pursuant to s. 20.03(10), F.S., as well as the requirements of s. 20.052, F.S., relating to the manner in which commissioners are appointed. Section 403.804, F.S., provides that the commission, pursuant to s. 403.805(1), F.S., exercise the standard-setting authority of the department under this chapter; part II of chapter 376; and ss. 373.309(1)(e), 373.414(4) and (10), 373.4145(1)(a), 372.421(1), and 373.4592(4)(d)4. and e., F.S. The commission is not authorized, however, to establish department policies, priorities, plans, or directives.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Government Appropriations on April 2, 2008:

Specifically, the committee substitute:

- Reenacts the provisions which create the department and amends the organizational structure to reflect the changes made by the department's reorganization.
- Allows the Environmental Regulation Commission to employ independent counsel and contract for the services of outside technical consultants.
- Provides for a surcharge on the phosphate severance tax through June 30, 2018, to augment funds appropriated for the rehabilitation, management and closure of the Piney Point and Mulberry sites and for approved reclamation of nonmandatory mined lands.
- Allows the Committee on Landscape Irrigation and Florida-Friendly Design Standards to meet once more before January 1, 2011 to review the landscape irrigation and xeriscape design standards for new construction.
- Requires that a drycleaning facility must be registered with the department and must display a certificate of registration in order to buy any drycleaning solvents.
- Amends the definition of "regulated air pollutant" to conform to changes in the federal Clean Air Act.
- Provides that certain minor sources of air pollutants are exempt from having to receive a Title V permit. This conforms to the federal Clean Air Act.
- Makes technical changes to clarify the department's rulemaking authority regarding the Drinking Water Operator Certification Program and biological sampling techniques to address concerns expressed by the Joint Administrative Procedures Committee.
- Provides that the Environmental Resource Permit (ERP) fees are to be adjusted every five years to reflect changes in the Consumer Price Index. The statutory fees are adjusted to provide a minimum and an increased maximum.
- Provides for the establishment of a fee for verification that an activity is exempt from regulation.
- Provides for a fee for conducting an informal wetland boundary determination.
- Provides for fee adjustments to the drinking water program.
- Establishes a new fee for the operation of a public water supply system.
- Repeals the provisions relating to the Land Use Advisory Committee.
- Repeals ch. 325, relating to motor vehicle refrigerants and emissions. The department has repealed all of its chlorofluorocarbon (CFC) requirements in its rules and has subsequently transferred all of the CFC data to the Environmental Protection Agency (EPA) as part of the federal program.
- Repeals the air operation permit process for citrus juice processing facilities. This was to be an alternate process to the Title V permit.

- Increases the statutory millage cap for the Northwest Florida Water Management District is increased from .05 mills to .2 mills. This change is contingent upon the passage of a constitutional amendment. Allows the district to adjust their millage rate if this statutory provision becomes effective.

CS by Environmental Preservation and Conservation on March 13, 2008:

The committee substitute:

- Reenacts the provisions which create the department and amends the organizational structure to reflect the changes made by the department's reorganization.
- Allows the Environmental Regulation Commission to employ independent counsel and contract for the services of outside technical consultants.
- Allows the Committee on Landscape Irrigation and Florida-Friendly Design Standards to meet once more before January 1, 2011 to review the landscape irrigation and xeriscape design standards for new construction.
- Requires that a dry-cleaning facility must be registered with the department and must show proof of registration prior to purchasing any dry-cleaning solvents.
- Provides that the use of PERC by drycleaners is prohibited in this state after January 1, 2015.
- Amends the definition of "regulated air pollutant" to conform to changes in the federal Clean Air Act.
- Provides that certain minor sources of air pollutants are exempt from having to receive a Title V, federal Clean Air Act permit. This conforms to the federal Clean Air Act.
- Provides that the Environmental Resource Permit fees are to be adjusted every five years to reflect changes in the Consumer Price Index. The statutory fees are adjusted to provide a minimum and an increased maximum.
- Provides for the establishment of a fee for verification that an activity is exempt from regulation.
- Provides for a fee for conducting an informal wetland boundary determination as a public service.
- Provides for fee adjustments to the drinking water program.
- Establishes a new fee for the operation of a public water supply system.
- Repeals the provisions relating to the Land Use Advisory Committee.
- Repeals ch. 325, relating to motor vehicle refrigerants and emissions. The department has repealed all of its CFC requirements in its rules and has subsequently transferred all of the CFC data to the EPA as part of the federal program.
- Repeals the air operation permit process for citrus juice processing facilities. This was to be an alternate process to the Title V permit.
- The statutory millage cap for the Northwest Florida Water Management District is increased from .05 mills to .2 mills. This change is contingent upon the passage of a constitutional amendment in November 2008.

B. Amendments:

None.