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 Governmental Operations Committee

BILL:	CS/SB 1294
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Saunders
SUBJECT:	Review of the Department of Environmental Protection
DATE:	March 17, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	EP	**Fav/CS**
2.	Rhea	Wilson	GO	**Favorable**
3.			GA	
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 committee substitute allows the Department of Environmental Protection (DEP or department) to be retained and implements various recommendations contained in the Senate Environmental Preservation and Conservation Committee's Agency Sunset Report. Also, the committee substitute deletes some obsolete provisions and amends some provisions to allow the department to more efficiently perform its duties. 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.
- 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 DEP and must show proof of registration prior to purchasing any dry-cleaning solvents.
- Provides that the use of perchloroethylene (PERC) 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 permit. This conforms to the federal Clean Air Act.
- Provides that the Environmental Resource Permit fees are to be adjusted every 5 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 DEP 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.
- 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 the fall.

The committee substitute substantially amends and reenacts s. 20.255, F.S.

The committee substitute substantially amends ss. 373.228, 376.75, 403.031, 403.0872, 373.109, 403.087, 403.861, and 373.503, F.S.

The committee substitute repeals s. 378.011, F.S., and ch. 325, F.S., consisting of ss. 325.2055, 325.221, 325.222, and 325.223, F.S.

II. Present Situation:

Sections 11.901-920, F.S., are known as the Florida Government Accountability Act. Under this act, 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.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S. Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submission, the OPPAGA studies, and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees, and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

Also, the House and Senate sunset review committees must propose legislation necessary to carry out the committee's recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The Senate Environmental Preservation and Conservation Committee was the primary Senate sunset review committee for the DEP. The Senate General Government Appropriations Committee assisted in that review.

The DEP 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 DEP also manages the special recreation opportunities for all of Florida's residents and the many visitors to Florida.

In its review, the committee found that many of the DEP'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 DEP 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:

(a) The principal unit of the department is the "division." Each division is headed by a "director."
(b) The principal unit of the division is the bureau. Each bureau is headed by a "chief."
(c) 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 committee substitute allows the DEP to be retained and implements various recommendations contained in the Senate Environmental Preservation and Conservation Committee's Agency Sunset Report. Also, the committee substitute 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. Section 20.255, is amended to amend and reenact the provisions relating to the creation of the DEP. Because the department has been reorganized, this section renames the Office of Legislative and Governmental Affairs to the Office of Legislative Affairs and creates the Office of Intergovernmental Program. 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 committee substitute 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 DEP are not unduly biased.

Section 2. Section 373.228, F.S., is amended to delete the requirement that the landscape irrigation and xeriscape design standards for new construction be reviewed every 5 years. Instead, the design standards will be reviewed again before January 1, 2011, which is 5 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 5 years to determine if changes are needed. The committee, which is currently not active, would reconvene for the purpose of this review.

Section 3. Section 376.75, F.S., relates to dry-cleaning facilities and perchlorethylene (PERC). Currently, s. 376.75, F.S., provides that a $5 per gallon tax is levied on the sale of PERC to a dry-cleaning facility. Any person who sells PERC, uses PERC in dry-cleaning facilities, or uses PERC for purposes other than dry-cleaning must be registered with the Department of Revenue. Every owner, operator, and real property owner is required to jointly register all operating dry-cleaning and wholesale supply facilities with the Department of Environmental Protection. The committee substitute provides that a dry-cleaning facility must be registered with the DEP and must show proof of such registration prior to purchasing any dry-cleaning solvents.

The committee substitute also provides that the use of PERC by a dry-cleaning facility is prohibited in this state after January 1, 2015.

Section 4. Each state has certain responsibilities under the federal Clean Air Act. The U.S. Environmental Protection Agency (EPA) requires each state to submit a state implementation plan. The plan is a collection of the regulations used by the state to reduce air pollution. The EPA must approve these state implementation plans. The committee substitute 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 EPA.

Section 5. 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. The committee substitute amends s. 403.0872, F.S., to conform to the amendments to the federal Clean Air Act and exempt these minor emitters from having to obtain a major source air operation permit.

Section 6. Section 373.109, F.S., is amended to require the DEP to initiate rulemaking no later than July 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 5 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.

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.

Section 7. Under s. 403.087(6), F.S., DEP is required to charge a processing fee in a 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 provides statutory fee caps for various permits issued by the department.

The committee substitute provides that the department shall review the fees authorized under ch. 403, F.S., at least once every 5 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 committee substitute 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 shall be at least $100 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.

Section 8. Section 403.861, F.S., provided for the DEP's powers and duties relating to the "Florida Safe Drinking Water Act". Subsection (7) of s. 403.861, F.S., authorizes the department to issue permits for constructing, altering, extending, or operating a public water system, based upon the size of the system, type of treatment provided by the system, or population served by

the system. This section is amended to allow the department to provide for the issuance of an annual 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.

The committee substitute 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.

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 5 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 5 years to adopt, as necessary, the same inflationary adjustments in this committee substitute.

Section 9. Section 378.011, F.S., is repealed. This section created the Land Use Advisory Committee. The committee fulfilled its responsibilities and completed its report as required under this section by July 1, 1979. As a result, the committee has been inactive since that time.

Section 10. Chapter 325, F.S., consisting of ss. 325.2055, 325.221, 325.222, and 325.223, F.S., is repealed. 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 DEP 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 11. Section 403.08725, F.S., is repealed. Section 403.08725, F.S., 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 12. Section 373.503, F.S., is amended to increase the statutory millage rate cap for the Northwest Florida Water Management District (NWFWMD) 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. NWFWMD, however, is limited to a constitutional millage cap of .05 mills (5 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 committee substitute would increase the statutory millage rate cap for the NWFWMD. However, before this can become effective, a constitutional amendment must be passed by the voters to raise the constitutional millage rate cap.

Section 13. The committee substitute provides that the amendment to s. 373.503(3)(a), F.S., to increase the millage rate for the NWFWMD shall take effect on the effective date of the amendment to the State Constitution proposed in SJR____ or similar legislation which was passed in the 2008 regular session of the Legislature and which is submitted to the electors of the state for their approval or rejection at the general election to be held in November 2008.

Section 14. This committee substitute 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:

ERP fees—Requires the DEP to begin rulemaking no later than July 1, 2008, to increase the fees to reflect changes in the CPI or other similar inflation indicator. Fees must be adjusted every 5 years.

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

Permit Fees—Requires the DEP to review the fees at least once every 5 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

i. Provides that the permit fee for a drinking water distribution system permit shall be at least $100 and may not exceed $1,000.
ii. Provides that the permit fee for a drinking water distribution system permit shall be at least $100 and may not exceed $1,000.
iii. 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.
iv. Provides for a new operation permit fee for public water supply systems of no less than $50 or greater than $7,500.
v. Provides that the drinking water program fees shall be reviewed at least every 5 years and shall be adjusted upward within the statutory fee caps to reflect changes in the CPI or similar inflation indicator.

NWFWMD—Increases the statutory millage rate cap for the NWFWMD from 0.05 mills to .2 mills. This is contingent on the passage of a constitutional amendment in the Fall.

B. Private Sector Impact:

Drycleaners
After January 1, 2015, drycleaners will no longer be able to use PERC as a dry-cleaning solvent. This will have a financial impact on drycleaners who will have to install new equipment to use processes other than those which use PERC. This could be a significant financial impact; however, it cannot be quantified at this time. It is not known how many dry-cleaning facilities would be affected. There are some facilities that no longer use PERC.

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 ERP permits issued by the DEP would increase. The fees now would have a statutory minimum and increased maximum. The fees would be reviewed at least once every 5 years and adjust upward according to changes in the CPI or other similar inflation index.

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

A new wetland jurisdictional determination fee would be charged.

For more detail, see Government Section Impact below.

NWFWMD 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 NWFWMD governing board would have to vote to actually increase the millage rate.

C. Government Sector Impact:

ERP Program
The DEP's ERP program budget for FY 2007-08 was $17,381,051. Of that amount, permit fee revenues amounted to $605,078. The rest of the budget was funded from

$7,119,200 in general revenue funds and $9,309,610 from other trust funds to support program operations. The committee substitute would increase the fee revenues to this program to supplant the general revenue funds supporting the program.

- Exemption verification fee—This is a new fee to be charged when the DEP reviews an applicant's proposed activities to determine if the activity is exempt from the permit requirements. The estimated revenue from this fee is **$499,800.**
- Wetland jurisdictional determination fee—This is a new fee to be charged when the DEP 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.
- 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 additional revenue would be **$266,250.**
- 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 **$6,933,000** in revenue.

Drinking Water Program
The budget for this program for FY 2007-08 was $6,492,353. Of that amount, permit fee revenues amounted to $1,115,536. The rest of the budget was funded from $1,361,092 in general revenue funds and $1,956,536 from other trust funds to support program operations. The committee substitute 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 **$1,389,975** in new revenues for the drinking water program. Also, the committee substitute 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 are:

- **$974,000** — Drinking Water Treatment Plant Construction Permits
- **$2,919,500**—Drinking Water Distribution System Permits

CPI Adjustments—All of the fees are to be reviewed and adjusted upward at least every 5 years using the CPI or a similar inflation indicator.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Offices - Chapter 20, F.S., authorizes "offices" for only three departments, but not for the DEP. 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 DEP the following offices:

1. Office of Chief of Staff;
2. Office of General Counsel;
3. Office of Inspector General;
4. Office of External Affairs;
5. Office of Legislative and Government Affairs;
6. Office of Greenways and Trails.

This bill authorizes the creation of an additional office, the Office of Intergovernmental Programs. With the creation of this new office, the DEP 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 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 DEP 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 5 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 DEP 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 the Fall.

B. Amendments:

None.