

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

- A. HOUSE PRINCIPLES ANALYSIS: Provide limited government—the bill creates a program to expedite the processing of wetland resource and environmental resource permits for certain businesses.
- B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida, through the DEP, has several programs that regulate most land (upland, wetland, and other surface water) alterations throughout the state. One such program is the Environmental Resource Permit (ERP) program. The ERP program includes new activities in uplands that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters. The ERP program is in effect throughout the State, excluding the Northwest Florida Water Management, which has just implemented rules for stormwater permitting only effective October 1, 2007. In 2006, a phased approach for implementation of environmental resource permitting in Northwest Florida was enacted. The law requires the DEP and the District to jointly develop rules “taking into consideration the differing physical and natural characteristics of the area” for stormwater management by January 1, 2007, and for the Management and Storage of Surface Waters, by January 1, 2008. The new rules for ERP permitting are contained in Chapter 62-346, F.A.C., which has been adopted with an implementation date of October 1, 2007. Rules for the Management and Storage of Surface Waters (wetlands) will be effective by January 1, 2008. When the Rules are completed the entire state will be subject to the ERP program.

Environmental Resource Permit applications are processed by either the Department or one of the state's water management districts, in accordance with the division of responsibilities specified in operating agreements between the Department and the water management districts. 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
- 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 applications, mostly commercial and residential development.

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 seven instances.

1. Section 373.4141(3), 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.
2. Section 373.4592, F.S. – various references to expediting the Everglades, Lake Okeechobee, Caloosahatchee and St. Lucie River permits and activities.
3. Section 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.
4. Various provisions in Chapter 403 dealing with power plant sitings as they relate to ERP's portion of the review.
5. Section 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.
6. Section 337.0261, F.S. – expedited permitting for aggregate mining.
7. Section 380.0655, F.S. – expedited permitting for marinas with 10% or more of the slips open to the public.

Effect of Proposed Changes

The bill creates s. 380.0657, F.S., which requires the DEP and the water management districts to adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S. The proposed bill requires DEP to either approve or deny a permit application within 30 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.

Pursuant to s. 288.106(o), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the office in consultation with Enterprise Florida, Inc.:

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.
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.

The office, in consultation with Enterprise Florida, Inc., shall develop a list of such target industries annually and submit such list as part of the final agency legislative budget request submitted pursuant to s. 216.023(1), F.S. A target industry business may not include any industry engaged in retail activities; any electrical utility company; any phosphate or other solid minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.¹

In order to receive an expedited permit pursuant to the 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 by resolution of the county or city commission.

C. SECTION DIRECTORY:

Section 1. Creates the "Mike McHugh Act"

Section 2. Creates s. 380.0657, F.S., requiring the DEP and the water management districts to expedite wetland and environmental resource permits for economic development projects that meet the target industry definition.

Section 3. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The fiscal impact of the bill is indeterminate due to the uncertainty of the number of permits affected by the expedited permitting process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

The fiscal impact of the bill is indeterminate due to the uncertainty of the number of permits affected by the expedited permitting process.

¹ Section 288.106(6), F.S.

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:

To be eligible for incentives a business must be designated as a target industry business by a county or municipality. The number of businesses designated by a county or municipality to receive incentives under this bill could vary substantially. Currently, counties and municipalities do not designate target industry businesses, making it difficult to estimate the number of projects that this bill may affect. The bill requires a permit covered by this section to be issued within 30 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; thus, the bill may significantly increase the workload on certain DEP staff and water management district staff depending on the number of eligible permit applicants. Due to the uncertainty of the number of permits affected, the increase in workload and fiscal impact on the DEP is indeterminate.

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, F.S. 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, F.S. which this bill amends. However, the bill may be able to be implemented without rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Southwest Florida Water Management District:

It is unclear whether the proposed Bill would complement or conflict with past OTTED (Office of Tourism Trade and Economic Development) Legislation, under which we all now function. This was promulgated in 1996. OTTED Legislation dictated a very detailed process to be followed. How would this improve that past Legislation?

We already provide fast-tracking for any government entity that requests it. The general guidelines state that we conduct field visits, pre-applications, and assign the project to the same individuals. We attempt to avoid RAs and communicate via emails and phone calls. We assign the more experienced staff to these types of projects that have exceptional communication skills. The government entity agrees to use a conservative design, have a government representative attend every meeting involving their consultant, and avoid parcels that will result

in wetland impacts and or floodplain impacts. The fast-tracking is primarily for ERP since the timing is so critical for the financing vs. WUP.

The following comments were provided by the South Florida Water Management District:

Expedited permitting is already addressed in s. 403.973, F.S. This section does not specifically address industries defined in s. 288.106, F.S. However, s. 403.973, F.S. does address businesses creating at least 100 jobs, or 50 jobs in an enterprise zone. It would be preferable to amend s. 403.973, F.S. to specifically include businesses defined under s. 288.106, F.S. then to create a new section in Chapter 380, Florida Statutes.

Section 403.973, F.S. sets forth details such as how challenges to state agency action in the expedited permitting process shall proceed. Details of that nature are not found in HB 147.

HB 147 provides that permits shall be approved or denied within 30 days after the receipt the project is complete. This may create a problem with Governing Board meetings. The scheduled meetings may not always fall within the 30 day timeframe. Or, if a project is complete the day before a Governing Board meeting, it would have to be presented to the Board the next day or the 30 day time frame would be missed. This is unworkable administratively.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A