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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/14/2009	.	
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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment to Amendment (448050) (with title amendment)

Between lines 205 and 206
insert:

Section 3. Section 125.0112, Florida Statutes, is created to read:

125.0112 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined in s.



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12 570.957(1)(a), are each a valid industrial, agricultural, and
13 silvicultural use permitted within those land use categories in
14 the local comprehensive land use plan and for purposes of any
15 local zoning regulation. Such comprehensive land use plan and
16 local zoning regulation may not require the owner or operator of
17 a biofuel processing facility or a renewable energy generating
18 facility to obtain any local comprehensive plan amendment,
19 special exemption, use permit, waiver, or variance, or to pay
20 any special fee in excess of \$1,000 to operate in an area zoned
21 for or categorized as industrial, agricultural or silvicultural
22 use. The construction and operation of a facility and related
23 improvements on a portion of a property under this section may
24 not affect the remainder of the property's classification as
25 agricultural under s. 193.461.

26 Section 4. Section 166.0446, Florida Statutes, is created
27 to read:

28 166.0446 Biofuels and renewable energy.—The construction
29 and operation of a biofuel processing facility or a renewable
30 energy generating facility, as defined in s. 366.91(2)(d), and
31 the cultivation and production of bioenergy, as defined in s.
32 570.957(1)(a), are each a valid industrial, agricultural, and
33 silvicultural use permitted within those land use categories in
34 the local comprehensive plan and for purposes of any local
35 zoning regulation within an unincorporated area of a
36 municipality. Such local comprehensive land use plan and local
37 zoning regulation may not require the owner or operator of a
38 biofuel processing facility or a renewable energy generating
39 facility to obtain any local comprehensive plan amendment,
40 special exemption, use permit, waiver, or variance, or to pay



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41 any special fee in excess of \$1,000 to operate in an area zoned
42 for or categorized as industrial, agricultural, or silvicultural
43 use. The construction and operation of a facility and related
44 improvements on a portion of a property under this section may
45 not affect the remainder of that property's classification as
46 agricultural under s. 193.461.

47 Section 5. Subsection (6) is added to section 373.236,
48 Florida Statutes, to read:

49 373.236 Duration of permits; compliance reports.—

50 (6) A permit that is approved for the use of water for a
51 renewable energy operating facility or for cultivating
52 agricultural products on lands consisting of 1,000 acres or more
53 for renewable energy, as defined in s. 366.91(2)(d), shall, upon
54 the applicant's request, be granted for a term of at least 25
55 years based on the anticipated life of the facility if there is
56 sufficient data to provide reasonable assurance that the
57 conditions for issuing a permit will be met for the duration of
58 the permit. However, a permit may be issued for a shorter
59 duration that reflects the longest period for which such
60 reasonable assurances are provided. The permittee shall provide
61 a compliance report every 5 years during the term of the permit
62 as required under subsection (4).

63 Section 6. Subsection (4) of section 373.243, Florida
64 Statutes, is amended to read:

65 373.243 Revocation of permits.—The governing board or the
66 department may revoke a permit as follows:

67 (4) For nonuse of the water supply allowed by the permit
68 for a period of 2 years or more, the governing board or the
69 department may revoke the permit permanently and in whole unless



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70 the user can prove that his or her nonuse was due to extreme
71 hardship caused by factors beyond the user's control. However,
72 for a permit with a duration determined under s. 373.236(6), the
73 governing board or the department may revoke the permit only if
74 the nonuse of the water supply allowed by the permit is for a
75 period of 4 years or more.

76 Section 7. Subsections (3), (4), (7), and (11), paragraph
77 (b) of subsection (13), paragraph (b) of subsection (14),
78 subsection (15), and paragraph (b) of subsection (19) of section
79 403.973, Florida Statutes, are amended to read:

80 403.973 Expedited permitting; comprehensive plan
81 amendments.-

82 (3) (a) The Governor, through the office, shall direct the
83 creation of regional permit action teams, for the purpose of
84 expediting review of permit applications and local comprehensive
85 plan amendments submitted by:

- 86 1. Businesses creating at least 100 jobs, or
87 2. Businesses creating at least 50 jobs if the project is
88 located in an enterprise zone, or in a county having a
89 population of less than 75,000 or in a county having a
90 population of less than 100,000 which is contiguous to a county
91 having a population of less than 75,000, as determined by the
92 most recent decennial census, residing in incorporated and
93 unincorporated areas of the county. ~~or~~

94 (b) On a case-by-case basis and at the request of a county
95 or municipal government, the office may certify as eligible for
96 expedited review a project not meeting the minimum job creation
97 thresholds but creating a minimum of 10 jobs. The recommendation
98 from the governing body of the county or municipality in which



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99 the project may be located is required in order for the office
100 to certify that any project is eligible for expedited review
101 under this paragraph. When considering projects that do not meet
102 the minimum job creation thresholds but that are recommended by
103 the governing body in which the project may be located, the
104 office shall consider economic impact factors that include, but
105 are not limited to:

- 106 1. The proposed wage and skill levels relative to those
107 existing in the area in which the project may be located;
- 108 2. The project's potential to diversify and strengthen the
109 area's economy;
- 110 3. The amount of capital investment; and
- 111 4. The number of jobs that will be made available for
112 persons served by the welfare transition program.

113 (c) At the request of a county or municipal government, the
114 office or a Quick Permitting County may certify projects located
115 in counties where the ratio of new jobs per participant in the
116 welfare transition program, as determined by Workforce Florida,
117 Inc., is less than one or otherwise critical, as eligible for
118 the expedited permitting process. Such projects must meet the
119 numerical job creation criteria of this subsection, but the jobs
120 created by the project do not have to be high-wage jobs that
121 diversify the state's economy.

122 (d) Projects located in a designated brownfield area are
123 eligible for the expedited permitting process.

124 (e) Projects that are part of the state-of-the-art
125 biomedical research institution and campus to be established in
126 this state by the grantee under s. 288.955 are eligible for the
127 expedited permitting process, if the projects are designated as



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128 part of the institution or campus by the board of county
129 commissioners of the county in which the institution and campus
130 are established.

131 (f) Projects that result in the production of biofuels
132 cultivated on lands consisting of 1,000 acres or more, or in the
133 construction of a biofuel or biodiesel processing facility or
134 renewable energy generating facility as defined in s.
135 366.91(2)(d), are eligible for the expedited permitting process.

136 (4) The regional teams shall be established through the
137 execution of memoranda of agreement developed by the applicant
138 and between the office with input solicited from and the
139 respective heads of the Department of Environmental Protection,
140 the Department of Community Affairs, the Department of
141 Transportation and its district offices, the Department of
142 Agriculture and Consumer Services, the Fish and Wildlife
143 Conservation Commission, appropriate regional planning councils,
144 appropriate water management districts, and voluntarily
145 participating municipalities and counties. The memoranda of
146 agreement must should also accommodate participation in the this
147 expedited process by other local governments and federal
148 agencies as circumstances warrant.

149 (7) An appeal At the option of the participating local
150 government, appeals of a local government's its final approval
151 for a project must may be conducted pursuant to the summary
152 hearing provisions in of s. 120.574, pursuant to subsection
153 (14), and consolidated with the challenge of applicable state
154 agency actions, if any or pursuant to other appellate processes
155 available to the local government. The local government's
156 decision to enter into a summary hearing must be made as



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157 ~~provided in s. 120.574 or in the memorandum of agreement.~~

158 (11) The standard form memorandum ~~memoranda~~ of agreement
159 must ~~shall~~ include guidelines to be used in working with state,
160 regional, and local permitting authorities. Guidelines may
161 include, but are not limited to, the following:

162 (a) A central contact point for filing permit applications
163 and local comprehensive plan amendments and for obtaining
164 information on permit and local comprehensive plan amendment
165 requirements;

166 (b) Identification of the individual or individuals within
167 each respective agency who will be responsible for processing
168 the expedited permit application or local comprehensive plan
169 amendment for the ~~that~~ agency;

170 (c) A mandatory preapplication review process to reduce
171 permitting conflicts by providing guidance to applicants
172 regarding the permits needed from each agency and governmental
173 entity, site planning and development, site suitability and
174 limitations, facility design, and steps the applicant can take
175 to ensure expeditious permit application and local comprehensive
176 plan amendment review. As a part of the ~~this~~ process, the first
177 interagency meeting to discuss a project shall be held within 14
178 days after the office's determination that the project is
179 eligible for expedited review. Subsequent interagency meetings
180 may be scheduled to accommodate the needs of participating local
181 governments that are unable to meet public notice requirements
182 for executing a memorandum of agreement within the ~~this~~
183 timeframe. Such ~~This~~ accommodation may not exceed 45 days from
184 the office's determination that the project is eligible for
185 expedited review;



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186 (d) The preparation of a single coordinated project
187 description form and checklist and an agreement by state and
188 regional agencies to reduce the burden on an applicant to
189 provide duplicate information to multiple agencies;

190 (e) ~~Establishment of~~ A process for the adoption and review
191 of any comprehensive plan amendment needed by any certified
192 project within 90 days after the submission of an application
193 for a comprehensive plan amendment. However, the memorandum of
194 agreement may not prevent affected persons as defined in s.
195 163.3184 from appealing or participating in the ~~this~~ expedited
196 plan amendment process and any review or appeals of decisions
197 made under this paragraph; and

198 (f) Additional incentives for an applicant who proposes a
199 project that provides a net ecosystem benefit.

200 (13) Notwithstanding any other provisions of law:

201 (b) Projects that are qualified under this section are not
202 subject to interstate highway level-of-service standards adopted
203 by the Department of Transportation for concurrency purposes.
204 The memorandum of agreement specified in subsection (5) must
205 include a process by which the applicant will be assessed a fair
206 share of the cost of mitigating the project's significant
207 traffic impacts, as defined in chapter 380 and related rules.
208 The agreement must also specify whether the significant traffic
209 impacts on the interstate system will be mitigated through the
210 implementation of a project or payment of funds to the
211 Department of Transportation. If ~~where~~ funds are paid, the
212 Department of Transportation must include in the 5-year work
213 program transportation projects or project phases, in an amount
214 equal to the funds received, to mitigate the traffic impacts



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215 associated with the proposed project.

216 (14)

217 (b) Challenges to state agency action in the expedited
218 permitting process for establishment of a state-of-the-art
219 biomedical research institution and campus in the ~~this~~ state by
220 the grantee under s. 288.955 or a project identified in
221 paragraph (3) (f) are subject to the same requirements as
222 challenges brought under paragraph (a), except that,
223 notwithstanding s. 120.574, summary proceedings must be
224 conducted within 30 days after a party files the motion for
225 summary hearing, regardless of whether the parties agree to the
226 summary proceeding.

227 (15) The office, working with the agencies that provide
228 input to ~~participating in~~ the memoranda of agreement, shall
229 review sites proposed for the location of facilities eligible
230 for the Innovation Incentive Program under s. 288.1089. Within
231 20 days after the request for the review by the office, the
232 agencies shall provide to the office a statement as to each
233 site's necessary permits under local, state, and federal law and
234 an identification of significant permitting issues, which if
235 unresolved, may result in the denial of an agency permit or
236 approval or any significant delay caused by the permitting
237 process.

238 (19) The following projects are ineligible for review under
239 this part:

240 (b) A project, the primary purpose of which is to:

241 1. Effect the final disposal of solid waste, biomedical
242 waste, or hazardous waste in this state.

243 2. Produce electrical power, unless the production of



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244 electricity is incidental and not the primary function of the
245 project or the electrical power is derived from a renewable
246 energy fuel source as defined in s. 366.91(2)(d).

247 3. Extract natural resources.

248 4. Produce oil.

249 5. Construct, maintain, or operate an oil, petroleum,
250 natural gas, or sewage pipeline.

251

252 ===== T I T L E A M E N D M E N T =====

253 And the title is amended as follows:

254 Delete line 239

255 and insert:

256 specified activities; creating ss. 125.0112 and 166.0446, F.S.;

257 providing that the construction and operation of a biofuel

258 processing facility or a renewable energy generating facility

259 and the cultivation and production of bioenergy constitutes a

260 valid industrial, agricultural, and silvicultural use for

261 purposes of any local comprehensive plan and local zoning

262 regulation; prohibiting such plan and regulation from requiring

263 the owner or operator of the facility to obtain a plan

264 amendment, special exemption, use permit, waiver, or variance,

265 or to pay a special fee exceeding a specified amount; amending

266 s. 373.236, F.S.; requiring that a permit for the use of water

267 for cultivating agricultural products and renewable energy be

268 granted for a specified number of years if certain conditions

269 are met; providing requirements for permittees; providing an

270 exemption; amending s. 403.973, F.S.; providing for the

271 expedited review of permit applications for projects resulting

272 in the production of biofuels or in the construction of a



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273 biofuel or biodiesel processing facility or renewable energy
274 generating facility; clarifying provisions relating to memoranda
275 of agreement which establish regional teams for the expedited
276 review of such applications; providing an effective date.