

1 A bill to be entitled
2 An act relating to expedited permitting; amending s.
3 403.973, F.S.; transferring certain authority over the
4 expedited permitting and comprehensive plan amendment
5 process from the Office of Tourism, Trade, and Economic
6 Development to the Secretary of Environmental Protection;
7 revising job-creation criteria for businesses to qualify
8 to submit permit applications and local comprehensive plan
9 amendments for expedited review; providing that permit
10 applications and local comprehensive plan amendments for
11 specified renewable energy projects are eligible for the
12 expedited permitting process; providing for the
13 establishment of regional permit action teams through the
14 execution of memoranda of agreement developed by permit
15 applicants and the secretary; revising provisions relating
16 to the memoranda of agreement developed by the secretary;
17 providing for the appeal of local government comprehensive
18 plan approvals for projects and requiring such appeals to
19 be consolidated with challenges to state agency actions;
20 requiring recommended orders relating to challenges to
21 state agency actions pursuant to summary hearing
22 provisions to include certain information; extending the
23 deadline for issuance of final orders relating to such
24 challenges; providing for challenges to state agency
25 action related to expedited permitting for specified
26 renewable energy projects; revising provisions relating to
27 the review of sites proposed for the location of
28 facilities eligible for the Innovation Incentive Program;

29 | revising criteria for counties eligible to receive
 30 | technical assistance in preparing permit applications and
 31 | local comprehensive plan amendments; specifying expedited
 32 | review eligibility for certain electrical power projects;
 33 | providing an effective date.

34 |

35 | Be It Enacted by the Legislature of the State of Florida:

36 |

37 | Section 1. Section 403.973, Florida Statutes, is amended
 38 | to read:

39 | 403.973 Expedited permitting; amendments to comprehensive
 40 | plans ~~plan amendments~~.

41 | (1) It is the intent of the Legislature to encourage and
 42 | facilitate the location and expansion of those types of economic
 43 | development projects which offer job creation and high wages,
 44 | strengthen and diversify the state's economy, and have been
 45 | thoughtfully planned to take into consideration the protection
 46 | of the state's environment. It is also the intent of the
 47 | Legislature to provide for an expedited permitting and
 48 | comprehensive plan amendment process for such projects.

49 | (2) As used in this section, the term:

50 | (a) "Duly noticed" means publication in a newspaper of
 51 | general circulation in the municipality or county with
 52 | jurisdiction. The notice shall appear on at least 2 separate
 53 | days, one of which shall be at least 7 days before the meeting.
 54 | The notice shall state the date, time, and place of the meeting
 55 | scheduled to discuss or enact the memorandum of agreement, and
 56 | the places within the municipality or county where such proposed

57 memorandum of agreement may be inspected by the public. The
 58 notice must be one-eighth of a page in size and must be
 59 published in a portion of the paper other than the legal notices
 60 section. The notice shall also advise that interested parties
 61 may appear at the meeting and be heard with respect to the
 62 memorandum of agreement.

63 (b) "Jobs" means permanent, full-time equivalent positions
 64 not including construction jobs.

65 (c) "Office" means the Office of Tourism, Trade, and
 66 Economic Development.

67 (d) "Permit applications" means state permits and
 68 licenses, and at the option of a participating local government,
 69 local development permits or orders.

70 (e) "Secretary" means the Secretary of Environmental
 71 Protection or his or her designee.

72 (3) (a) The secretary ~~Governor, through the office,~~ shall
 73 direct the creation of regional permit action teams, for the
 74 purpose of expediting review of permit applications and local
 75 comprehensive plan amendments submitted by:

- 76 1. Businesses creating at least 50 ~~100~~ jobs; or
- 77 2. Businesses creating at least 25 ~~50~~ jobs if the project
 78 is located in an enterprise zone, or in a county having a
 79 population of fewer ~~less~~ than 75,000 or in a county having a
 80 population of fewer ~~less~~ than 125,000 ~~100,000~~ which is
 81 contiguous to a county having a population of fewer ~~less~~ than
 82 75,000, as determined by the most recent decennial census,
 83 residing in incorporated and unincorporated areas of the
 84 county. ~~or~~

CS/HB 773

2010

85 (b) On a case-by-case basis and at the request of a county
86 or municipal government, the office may certify as eligible for
87 expedited review a project not meeting the minimum job creation
88 thresholds but creating a minimum of 10 jobs. The recommendation
89 from the governing body of the county or municipality in which
90 the project may be located is required in order for the office
91 to certify that any project is eligible for expedited review
92 under this paragraph. When considering projects that do not meet
93 the minimum job creation thresholds but that are recommended by
94 the governing body in which the project may be located, the
95 office shall consider economic impact factors that include, but
96 are not limited to:

- 97 1. The proposed wage and skill levels relative to those
98 existing in the area in which the project may be located;
- 99 2. The project's potential to diversify and strengthen the
100 area's economy;
- 101 3. The amount of capital investment; and
- 102 4. The number of jobs that will be made available for
103 persons served by the welfare transition program.

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

CS/HB 773

2010

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

115 (e) Projects that are part of the state-of-the-art
116 biomedical research institution and campus to be established in
117 this state by the grantee under s. 288.955 are eligible for the
118 expedited permitting process, if the projects are designated as
119 part of the institution or campus by the board of county
120 commissioners of the county in which the institution and campus
121 are established.

122 (f) Projects resulting in the production of biofuels
123 cultivated on lands that are 1,000 acres or more or in the
124 construction of a biofuel or biodiesel processing facility or a
125 facility generating renewable energy, as defined in s.
126 366.91(2)(d), are eligible for the expedited permitting process.

127 (4) The regional teams shall be established through the
128 execution of memoranda of agreement developed by the applicant
129 and the secretary, with input solicited from ~~between~~ the office
130 and the respective heads of ~~the Department of Environmental~~
131 ~~Protection~~, the Department of Community Affairs, the Department
132 of Transportation and its district offices, the Department of
133 Agriculture and Consumer Services, the Fish and Wildlife
134 Conservation Commission, appropriate regional planning councils,
135 appropriate water management districts, and voluntarily
136 participating municipalities and counties. The memoranda of
137 agreement should also accommodate participation in this
138 expedited process by other local governments and federal
139 agencies as circumstances warrant.

140 (5) In order to facilitate local government's option to

CS/HB 773

2010

141 participate in this expedited review process, the secretary
142 ~~office~~ shall, in cooperation with local governments and
143 participating state agencies, create a standard form memorandum
144 of agreement. A local government shall hold a duly noticed
145 public workshop to review and explain to the public the
146 expedited permitting process and the terms and conditions of the
147 standard form memorandum of agreement.

148 (6) The local government shall hold a duly noticed public
149 hearing to execute a memorandum of agreement for each qualified
150 project. Notwithstanding any other provision of law, and at the
151 option of the local government, the workshop provided for in
152 subsection (5) may be conducted on the same date as the public
153 hearing held under this subsection. The memorandum of agreement
154 that a local government signs shall include a provision
155 identifying necessary local government procedures and time
156 limits that will be modified to allow for the local government
157 decision on the project within 90 days. The memorandum of
158 agreement applies to projects, on a case-by-case basis, that
159 qualify for special review and approval as specified in this
160 section. The memorandum of agreement must make it clear that
161 this expedited permitting and review process does not modify,
162 qualify, or otherwise alter existing local government
163 nonprocedural standards for permit applications, unless
164 expressly authorized by law.

165 ~~(7) At the option of the participating local government,~~
166 Appeals of local government comprehensive plan approvals ~~its~~
167 ~~final approval~~ for a project shall ~~may~~ be pursuant to the
168 summary hearing provisions of s. 120.574, pursuant to subsection

169 (14), and consolidated with the challenge of any applicable
170 state agency actions ~~or pursuant to other appellate processes~~
171 ~~available to the local government. The local government's~~
172 ~~decision to enter into a summary hearing must be made as~~
173 ~~provided in s. 120.574 or in the memorandum of agreement.~~

174 (8) Each memorandum of agreement shall include a process
175 for final agency action on permit applications and local
176 comprehensive plan amendment approvals within 90 days after
177 receipt of a completed application, unless the applicant agrees
178 to a longer time period or the secretary ~~office~~ determines that
179 unforeseen or uncontrollable circumstances preclude final agency
180 action within the 90-day timeframe. Permit applications governed
181 by federally delegated or approved permitting programs whose
182 requirements would prohibit or be inconsistent with the 90-day
183 timeframe are exempt from this provision, but must be processed
184 by the agency with federally delegated or approved program
185 responsibility as expeditiously as possible.

186 (9) The secretary ~~office~~ shall inform the Legislature by
187 October 1 of each year which agencies have not entered into or
188 implemented an agreement and identify any barriers to achieving
189 success of the program.

190 (10) The memoranda of agreement may provide for the waiver
191 or modification of procedural rules prescribing forms, fees,
192 procedures, or time limits for the review or processing of
193 permit applications under the jurisdiction of those agencies
194 that are party to the memoranda of agreement. Notwithstanding
195 any other provision of law to the contrary, a memorandum of
196 agreement must to the extent feasible provide for proceedings

197 and hearings otherwise held separately by the parties to the
198 memorandum of agreement to be combined into one proceeding or
199 held jointly and at one location. Such waivers or modifications
200 shall not be available for permit applications governed by
201 federally delegated or approved permitting programs, the
202 requirements of which would prohibit, or be inconsistent with,
203 such a waiver or modification.

204 (11) The standard form for memoranda of agreement shall
205 include guidelines to be used in working with state, regional,
206 and local permitting authorities. Guidelines may include, but
207 are not limited to, the following:

208 (a) A central contact point for filing permit applications
209 and local comprehensive plan amendments and for obtaining
210 information on permit and local comprehensive plan amendment
211 requirements;

212 (b) Identification of the individual or individuals within
213 each respective agency who will be responsible for processing
214 the expedited permit application or local comprehensive plan
215 amendment for that agency;

216 (c) A mandatory preapplication review process to reduce
217 permitting conflicts by providing guidance to applicants
218 regarding the permits needed from each agency and governmental
219 entity, site planning and development, site suitability and
220 limitations, facility design, and steps the applicant can take
221 to ensure expeditious permit application and local comprehensive
222 plan amendment review. As a part of this process, the first
223 interagency meeting to discuss a project shall be held within 14
224 days after the secretary's ~~office's~~ determination that the

225 project is eligible for expedited review. Subsequent interagency
 226 meetings may be scheduled to accommodate the needs of
 227 participating local governments that are unable to meet public
 228 notice requirements for executing a memorandum of agreement
 229 within this timeframe. This accommodation may not exceed 45 days
 230 from the secretary's ~~office's~~ determination that the project is
 231 eligible for expedited review;

232 (d) The preparation of a single coordinated project
 233 description form and checklist and an agreement by state and
 234 regional agencies to reduce the burden on an applicant to
 235 provide duplicate information to multiple agencies;

236 (e) Establishment of a process for the adoption and review
 237 of any comprehensive plan amendment needed by any certified
 238 project within 90 days after the submission of an application
 239 for a comprehensive plan amendment. However, the memorandum of
 240 agreement may not prevent affected persons as defined in s.
 241 163.3184 from appealing or participating in this expedited plan
 242 amendment process and any review or appeals of decisions made
 243 under this paragraph; and

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

246 (12) The applicant, the regional permit action team, and
 247 participating local governments may agree to incorporate into a
 248 single document the permits, licenses, and approvals that are
 249 obtained through the expedited permit process. This consolidated
 250 permit is subject to the summary hearing provisions set forth in
 251 subsection (14).

252 (13) Notwithstanding any other provisions of law:

253 (a) Local comprehensive plan amendments for projects
 254 qualified under this section are exempt from the twice-a-year
 255 limits provision in s. 163.3187; and

256 (b) Projects qualified under this section are not subject
 257 to interstate highway level-of-service standards adopted by the
 258 Department of Transportation for concurrency purposes. The
 259 memorandum of agreement specified in subsection (5) must include
 260 a process by which the applicant will be assessed a fair share
 261 of the cost of mitigating the project's significant traffic
 262 impacts, as defined in chapter 380 and related rules. The
 263 agreement must also specify whether the significant traffic
 264 impacts on the interstate system will be mitigated through the
 265 implementation of a project or payment of funds to the
 266 Department of Transportation. Where funds are paid, the
 267 Department of Transportation must include in the 5-year work
 268 program transportation projects or project phases, in an amount
 269 equal to the funds received, to mitigate the traffic impacts
 270 associated with the proposed project.

271 (14) (a) Challenges to state agency action in the expedited
 272 permitting process for projects processed under this section are
 273 subject to the summary hearing provisions of s. 120.574, except
 274 that the administrative law judge's decision, as provided in s.
 275 120.574(2)(f), shall be in the form of a recommended order and
 276 shall not constitute the final action of the state agency. In
 277 those proceedings where the action of only one agency of the
 278 state other than the Department of Environmental Protection is
 279 challenged, the agency of the state shall issue the final order
 280 within 45 ~~10~~ working days after ~~of~~ receipt of the administrative

281 law judge's recommended order, and the recommended order shall
 282 inform the parties of their right to file exceptions or
 283 responses to the recommended order in accordance with the
 284 uniform rules of procedure pursuant to s. 120.54. In those
 285 proceedings where the actions of more than one agency of the
 286 state are challenged, the Governor shall issue the final order
 287 within 45 ~~10~~ working days after ~~of~~ receipt of the administrative
 288 law judge's recommended order, and the recommended order shall
 289 inform the parties of their right to file exceptions or
 290 responses to the recommended order in accordance with the
 291 uniform rules of procedure pursuant to s. 120.54. This paragraph
 292 does not apply to the issuance of department licenses required
 293 under any federally delegated or approved permit program. In
 294 such instances, the department shall enter the final order. The
 295 participating agencies of the state may opt at the preliminary
 296 hearing conference to allow the administrative law judge's
 297 decision to constitute the final agency action. If a
 298 participating local government agrees to participate in the
 299 summary hearing provisions of s. 120.574 for purposes of review
 300 of local government comprehensive plan amendments, s.
 301 163.3184(9) and (10) apply.

302 (b) Projects identified in paragraph (3)(f) or challenges
 303 to state agency action in the expedited permitting process for
 304 establishment of a state-of-the-art biomedical research
 305 institution and campus in this state by the grantee under s.
 306 288.955 are subject to the same requirements as challenges
 307 brought under paragraph (a), except that, notwithstanding s.
 308 120.574, summary proceedings must be conducted within 30 days

CS/HB 773

2010

309 after a party files the motion for summary hearing, regardless
310 of whether the parties agree to the summary proceeding.

311 (15) The office, working with the agencies providing
312 cooperative assistance and input regarding ~~participating in~~ the
313 memoranda of agreement, shall review sites proposed for the
314 location of facilities eligible for the Innovation Incentive
315 Program under s. 288.1089. Within 20 days after the request for
316 the review by the office, the agencies shall provide to the
317 office a statement as to each site's necessary permits under
318 local, state, and federal law and an identification of
319 significant permitting issues, which if unresolved, may result
320 in the denial of an agency permit or approval or any significant
321 delay caused by the permitting process.

322 (16) This expedited permitting process shall not modify,
323 qualify, or otherwise alter existing agency nonprocedural
324 standards for permit applications or local comprehensive plan
325 amendments, unless expressly authorized by law. If it is
326 determined that the applicant is not eligible to use this
327 process, the applicant may apply for permitting of the project
328 through the normal permitting processes.

329 (17) The office shall be responsible for certifying a
330 business as eligible for undergoing expedited review under this
331 section. Enterprise Florida, Inc., a county or municipal
332 government, or the Rural Economic Development Initiative may
333 recommend to the Office of Tourism, Trade, and Economic
334 Development that a project meeting the minimum job creation
335 threshold undergo expedited review.

336 (18) The office, working with the Rural Economic

337 Development Initiative and the agencies participating in the
 338 memoranda of agreement, shall provide technical assistance in
 339 preparing permit applications and local comprehensive plan
 340 amendments for counties having a population of fewer ~~less~~ than
 341 75,000 residents, or counties having fewer than 125,000 ~~100,000~~
 342 residents which are contiguous to counties having fewer than
 343 75,000 residents. Additional assistance may include, but not be
 344 limited to, guidance in land development regulations and
 345 permitting processes, working cooperatively with state,
 346 regional, and local entities to identify areas within these
 347 counties which may be suitable or adaptable for preclearance
 348 review of specified types of land uses and other activities
 349 requiring permits.

350 (19) The following projects are ineligible for review
 351 under this part:

352 (a) A project funded and operated by a local government,
 353 as defined in s. 377.709, and located within that government's
 354 jurisdiction.

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

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

358 2. Produce electrical power, unless the production of
 359 electricity is incidental and not the primary function of the
 360 project or the electrical power is derived from a fuel source
 361 for renewable energy as defined in s. 366.91(2)(d).

362 3. Extract natural resources.

363 4. Produce oil.

364 5. Construct, maintain, or operate an oil, petroleum,

CS/HB 773

2010

365 | natural gas, or sewage pipeline.

366 | Section 2. This act shall take effect upon becoming a law.