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 Environmental Preservation and Conservation Committee

BILL:	PCS/SB 1404 (975266)
INTRODUCER:	Environmental Preservation and Conservation Committee
SUBJECT:	Environmental Permitting
DATE:	April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Pre-meeting**
2.			CA	
3.			AG	
4.			BC	
5.				
6.				

I. Summary:

The proposed committee substitute (PCS) creates, amends and redefines provisions relating to environmental permitting. It addresses development, construction, operating and building permits; permit application requirements and procedures, including waivers, variances, revocation and challenges; state programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, aggregate mitigation fees and solid mineral mining activities. Specifically the PCS:

- Provides that the burden of persuasion and evidence falls on third party, non-applicants who wish to challenge an agency's decision for those challenges arising under chs. 373, 378 or 403, F.S;
- Prohibits a local government or a municipality from conditioning the processing for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Allows applicants 90 days to respond to requests for additional information (RAI);
- Prohibits a county from requiring an applicant to obtain state and federal permits as a condition of approval for development permits;
- Shortens the time frame that permits must be noticed for proposed agency action from 90 days to 60;
- Clarifies beach and shore restoration requirements;
- Specifies additional uses and activities in the Biscayne Bay Aquatic Preserve;
- Expands the use of Internet-based self-certification services for exemptions and general permits;

- Requires the Florida Department of Transportation to use private mitigation banks, if available, to mitigate its environmental impacts;
- Clarifies how the Department of Environmental Protection issues RAIs;
- Provides for an expanded state programmatic general permit;
- Shifts the proceeds of the Lake Belt water treatment upgrade fee to the South Florida Water Management District from Miami-Dade County for a limited time;
- Requires certain counties and municipalities with specified populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting;
- Revises qualifications for fiscal assistance for innocent victim petroleum storage system restoration;
- Expands the statutory exemptions for certain solid mineral mines;
- Revises the definition for "financially disadvantaged small community";
- Authorizes zones of discharges to groundwater for existing installations, with certain limitations;
- Revises requirements for permit revocation;
- Provides for incentive-based environmental permitting;
- Revises the definition of industrial sludge;
- Revises provisions related to solid waste disposal and management;
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action;
- Provides expedited permitting for inland multimodal facilities;
- Clarifies creation of regional action teams for expedited permitting for certain businesses;
- Establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects;
- Allows for sale of unblended fuels for specified applications;
- Extends certain deadlines for petroleum storage tank upgrades;
- Clarifies statutory requirements related to the Uniform Mitigation and Assessment Method; and
- Adds an exemption for certain entities to the reduced or waived permit fee provisions.

This PCS substantially amends ss. 120.569, 125.022, 161.041, 163.3180, 166.033, 218.075, 258.397, 373.026, 373.413, 373.4136, 373.4137, 373.414, 373.4141, 373.4144, 373.41492, 373.441, 376.30715, 380.06, 380.0657, 403.061, 403.087, 403.1838, 403.7045, 403.707, 403.814, 403.973, 526.203, Florida Statutes.

This PCS creates ss. 161.032 and 403.0874, Florida Statutes, and an unnumbered section of law.

II. Present Situation:

The affected permitting and other areas proposed to be amended by this PCS are diverse. They include administrative hearing challenge requirements and burdens, shortened timelines to review applications, biofuels manufacturing, limiting redundant federal, state and local permitting authority, agency requests for additional information (RAIs), burdens and requirements on challenging parties, Internet-based self-certification, state programmatic general permitting, delegation of permitting authority, incentive-based permitting, general permits for surface water management systems, solid mineral mining, expedited permitting for economic

development projects and mitigation. Each programmatic area will be addressed in the "effect of proposed changes" of the PCS to allow for greater clarity of how it is affected by the particular proposed change.

III. Effect of Proposed Changes:

Section 1 amends s. 120.569, F.S., relating to challenges under the Administrative Procedures Act.[1]

Chapter 120, F.S., is called the Administrative Procedures Act (APA). It regulates how executive branch agencies adopt rules used to implement and administer their powers and duties. Section 120.569, F.S., provides an avenue for administrative review of proceedings in which the substantial interests of a party are determined by an agency. Under current law, when a third party challenges an agency action, the applicant has the ultimate burden of persuasion and evidence in a de novo administrative proceeding.[2]

The PCS establishes the procedures for any hearing arising under chapters 373,[3] 378,[4] or 403,[5] F.S. If a third party, non-applicant challenges an agency's issuance of a license, permit or conceptual approval, the applicant may go first to present a prima facie case demonstrating a right to the license, permit or conceptual approval, followed by the issuing agency. The third party then has the burden of ultimate persuasion and the burden of going forward to prove the case. The applicant and the agency may present rebuttal evidence to demonstrate the application meets the conditions for issuance. This change focuses the challenge to specific issues, rather than making the applicant defend the entire application, as is currently the case. It also shifts the burden of persuasion to the third party challenger instead of the applicant.

Section 2 amends s. 125.022, F.S., relating to county development permit requirements.

Stakeholders in the business and regulated communities have expressed some frustration at the local permitting process. There is anecdotal evidence that local governments may condition approval of development permits on the applicant's first securing state and federal permits. For complicated permits requiring local, state and federal permits, this process can cause delays and drive up costs.

The PCS prohibits a county from making processing of a development permit conditional on the applicant securing permits from any other state or federal agency, unless the agency issues a notice of intent to deny the permit before the county's action. It specifies that issuance of a county development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a county is not liable for the applicant's failure to fulfill its

[1] Section 120.51, F.S.
[2] See *Fla. Dep't of Transportation v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).
[3] Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.
[4] Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.
[5] Chapter 403, F.S., establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.

legal obligations. The PCS allows a county to require that an applicant obtain all state and federal permits before commencing development.

Section 3 creates s. 161.032, F.S., relating to application review and RAIs.

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit for applicants to respond to RAIs. There is also no limit to the number of RAIs an agency may request from an applicant.

The federal Endangered Species Act (ESA) governs activities that impact listed species. Section 10a(1)B of the ESA regulates incidental takings of listed species. The ESA defines a "take" as, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The ESA prohibits takings of listed species through direct harm or habitat destruction. The U.S. Fish and Wildlife Service issues permits for incidental takings, which allows permit holders to engage in legal activity that results in incidental takings of listed species.[6]

The PCS specifies how the Department of Environmental Protection (DEP) processes applications and issues RAIs. The PCS requires the DEP to issue any RAIs within 30 days of receiving an application. It limits the types of information that can be included in a RAI. Once the RAI is received, the DEP may only require additional information needed to clarify or directly related to the responses to the first RAI. If the applicant believes the RAI is not authorized by law or rule, he or she may request the DEP to process the application. Additionally, the PCS allows the applicant 90 days to respond to a RAI and for one 90-day extension for applicants who notify the DEP. Further extensions may be granted for good cause. Failure of the applicant to sufficiently answer an RAI results in denial of the permit without prejudice.

The PCS authorizes the DEP to issue a permit in advance of an applicant securing an incidental take permit from the U.S. Fish and Wildlife Service if the permit contains conditions that prohibit the authorized activity from occurring until the incidental take permit is approved.

Section 4 amends s. 161.041, relating to permits required for beach and shore preservation.

Beach restoration and nourishment projects are permitted by the DEP pursuant to Rule 62B-41.008(1)(k)4.b., Florida Administrative Code (F.A.C.). Permit applications must include a quality control/assurance plan to ensure the sediment from the sand borrow area will meet the

[6] U.S. Fish and Wildlife Service, *Endangered Species Permits*, http://www.fws.gov/midwest/endangered/permits/hcp/index.html (last visited Apr. 8, 2011).

standards contained in Rule 62B-41-007(2)(j), F.A.C.[7] Some coastal counties conducting or planning beach nourishment projects have expressed concerns over the DEP's inconsistent rule interpretation on the percentage of silt, clay or colloids allowed in beach fill. The rule provides that silt, clay or colloids cannot make up more than five percent by weight of the borrowed sand.

Proviso language in the Fiscal Year 2008-2009 General Appropriations Act called for creation of a working group to evaluate the effectiveness of Florida's beach management program. The working group included the Secretary of Environmental Protection along with city and county representatives, experts, engineers and environmental stakeholders. The working group was tasked with coming up with recommendations to address funding challenges, increasing regulatory costs and the need for better program accountability.[8] One of the recommendations was to amend chapter 161, F.S., to include Legislative intent to simplify the permitting of maintenance nourishment projects previously permitted by the DEP under the Joint Coastal Permit process.[9]

The PCS provides that the incentive-based program created in new s. 403.0874, F.S., of this PCS, applies to all permits issued under chapter 161, F.S. It also prohibits the DEP from requiring higher standards than those contained in existing rules or statutes for sediment quality specifications or turbidity standards for beach restoration projects. Additionally, it prohibits the DEP from issuing guidelines that are enforced as standards without conducting rulemaking. The PCS directs the DEP to amend rules to streamline the permitting process for periodic beach maintenance projects when renourishment of the beach at issue has been previously permitted.

Section 5 amends s. 163.3180, F.S., relating to concurrency.

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system and measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.[10]

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), F.A.C., allows local governments to evaluate transportation

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[7] Florida Dep't of Environmental Protection, *Guidelines for Preparing Sediment Quality Control / Quality Assurance Plans for Submittal to the Florida Department of Environmental Protection*, available at http://www.dep.state.fl.us/beaches/publications/pdf/QCQAPlan9-09.pdf (last visited Apr. 8, 2011).

[8] Beach Management Working Group, *Recommendations of the Beach Management Working Group* (on file with the Senate Committee on Environmental Preservation and Conservation).

[9] *Id.* at 7.

[10] Florida Dep't of Community Affairs, *Division of Community Planning*, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm (last visited Mar. 27, 2011).

concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.[11]

The Florida Department of Transportation (DOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or "*de minimis*" are exempted from concurrency, where certain criteria are met. There are two alternatives:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit."[12] To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

The PCS provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and

[11] *Id.*
[12] Section 163.31801(15)(a), F.S.

associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first five years of the project's development;
- The project, upon completion, would result in the creation of at least 50 full-time jobs;
- The project is compatible with existing and planned adjacent land uses;
- The project is consistent with local and regional economic development goals or plans;
- The project is proximate to regionally significant road and rail transportation facilities; and
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 6 amends s. 166.033, F.S., relating to municipal development permits.

This section of the PCS is substantially similar to section two of the PCS, except it addresses municipalities instead of counties. The PCS prohibits a municipality from making processing of its permit conditional on the applicant securing permits from any other state or federal agency. It specifies that issuance of a municipal development permit does not create any rights for the applicant to obtain permits from other agencies. It also clarifies that a municipality is not liable for the applicant's failure to fulfill its legal obligations. The PCS allows a municipality to require that an applicant obtain all state and federal permits before commencing development.

Section 7 amends s. 258.397, F.S., relating to the Biscayne Bay Aquatic Preserve.

Florida has 41 aquatic preserves, encompassing approximately 2 million acres. Biscayne Bay Aquatic preserve is located in Southeast Florida in Miami-Dade and Monroe Counties. Its boundaries, management authorities, and rules are established in Rule 18-18, F.A.C.[13] The Board of Trustees of the Internal Improvement Trust Fund (Board) may not convey sovereignty submerged lands within the preserve except upon a showing of extreme hardship by the applicant and that the conveyance is in the public interest. There are no exceptions for municipal projects. In addition, dredging and filling activities are restricted to four activities:

- For public navigation, public necessity or preservation of the bay;
- For enhancement of the quality and utility of the preserve;
- For creation and maintenance of marinas, piers and docks and their associated activities as long as the Board makes a specific finding that the dredge and fill activities will not adversely affect the quality and utility of the preserve; and
- For the purpose of eliminating public health hazards, stagnant waters, islands and spoil banks, if the dredging will enhance the aesthetic and environmental quality and utility of the preserve.

The PCS exempts a municipal applicant from having to show extreme hardship for a proposed project, although the Board must still find the project is in the public interest. The PCS also

[13] Florida Dep't of Environmental Protection, *About the Biscayne Bay Aquatic Preserve*, http://www.dep.state.fl.us/coastal/sites/biscayne/info.htm (last visited Apr. 9, 2011).

expands specified dredge and fill activities to allow for creation of public waterfront promenades.

Section 8 amends s. 373.026, F.S., relating to DEP powers and duties and self-certification.

Self-certification of permit requirements is the process of the permitting agency allowing "applicants" to manage their own compliance for a given regulated activity. The regulating agency sets up the specific requirements of the permit, and if followed, "applicants" do not apply for permits in the traditional sense. They simply undertake the regulated activity and "self-certify" that they have complied with all conditions of the permit. The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands. Through this electronic process, one may immediately determine whether a dock can be constructed without further notice or review by the DEP. The DEP is working on expanding its online self-certification into other permitting areas, but it is currently limited to constructing, repairing, and adding boatlifts to private docks and adding rip rap to the toe of existing seawalls.[14]

In addition, the water management districts (WMD) allow users to access nearly all permitting documents and forms online. Their websites also allow interested third parties access to permitting applications and supplementary materials. According to the Legislative Committee on Intergovernmental Relations report,[15] interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's website. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of a project submitted under self-certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

The PCS requires the DEP to expand the use of Internet-based self-certification services for appropriate exemptions and general permits, if economically feasible. In addition to expanding the use of such online services, the DEP and WMDs must identify and develop general permits for appropriate activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 9 amends s. 373.413, F.S., relating to permits for construction or alteration that affect management and storage of surface waters.

The PCS requires that the "Florida Incentive-based Permitting Act," created in this PCS, applies to permits for construction or alteration of water management systems issued under this section of the Florida Statutes.

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[14] Florida Dep't of Environmental Protection, *FDEP's Self-Certification Process for Single-Family Docks*, http://appprod.dep.state.fl.us/erppa/ (last visited Mar. 26, 2011).

[15] Florida Legislative Committee on Intergovernmental Relations, *Improving Consistency and Predictability in Dock and Marina Permitting* (Mar. 2007), available at http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf (last visited Mar. 26, 2011).

Section 10 amends s. 373.4137, F.S., relating to the mitigation requirement for specified transportation projects.

Enacted in 1996, s. 373.4137, F.S., directs the DOT to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The DOT creates escrow accounts with the DEP or a WMD for its mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., are also able to create escrow accounts with the WMDs and the DEP for their mitigation requirements.

On a annual basis, the DOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over or under transfer of funds.

The PCS provides Legislative intent that mitigation credits for transportation projects must be purchased from private mitigation banks, or if not available, through any other mitigation options that satisfy state and federal requirements. The requirement that private mitigation banks be used first also applies to mitigation plans submitted pursuant to s. 373.4137(4), F.S. In determining the activities to include in the plans, the WMDs are required to purchase mitigation credits from a private or public mitigation bank. Consideration of other mitigation options shall not be included in the plan even if they are more cost-effective. The PCS makes it optional for transportation authorities to participate in the program. It provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD will have continuing responsibility for the mitigation project. Lastly, it allows the DOT, a transportation authority or a WMD to unilaterally exclude specific projects from the mitigation plan.

Section 11 amends s. 373.4141, F.S., relating to the DEP's permit processing procedures.

Upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and RAIs. The application is not deemed complete until the agency determines that it has all of the information it needs to approve or deny the application. An applicant may request that the agency process the application if he or she believes that an RAI is not authorized by law or rule. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, or limitation to the number of times the agency may request additional information.

The PCS prohibits the DEP or a WMD from requesting more than two RAIs unless the applicant waives this limitation in writing. If the applicant does not respond to a RAI within 90 days, or a different time frame if agreed upon with the DEP or a WMD, the application is considered withdrawn. The PCS also shortens the time frame that permits must be notice for a proposed agency action from 90 days to 60. Additionally, the PCS prohibits an agency from requiring a permit from any other local, state or federal agency as a condition to approve or submit a completed application unless statutorily authorized to do so.

Section 12 amends s. 373.4144, F.S., relating to federal environmental permitting.

One of Florida's key characteristics is its vast wetlands, including the Everglades. Wetlands are defined as being neither dry nor covered by open water but continually influenced by water. At times, wetlands may be dry for months or even years, or they may be covered with water the majority of the time only drying out for short periods.[16]

For activities occurring in "waters of the United States" in Florida, including wetlands, the Federal Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) require compliance with and regulate activities under the authority of Section 404 of the federal Clean Water Act (CWA).[17] Wetlands are also regulated under Section 10 of the federal Rivers and Harbors Act of 1899,[18] although the focus of that legislation is primarily maintaining navigable waters.[19] When a dredge and fill permit is required in addition to permits required by the state, it is issued independently from the DEP or the WMD permits and is reviewed by the Corps. However, the Corps' issuance of the permit is dependent on the applicant first receiving state water quality certification or waiver through the state Environmental Resource Permit (ERP)[20] program. If the permitted activity is in a coastal county, the application must also have received a finding of consistency with the Florida Coastal Zone Management Program.[21]

In addition to permits issued under the CWA and the federal Rivers and Harbors Act, the Corps also administers the National Pollution Discharge Elimination System (NPDES) permit program. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems, certain industrial activities and construction activities. The WMDs do not have delegated authorization from the EPA to implement this program. The EPA has determined that the separate WMDs do not constitute a central state authority, and therefore, they do not have the state-wide consistency required for federal delegation of the NPDES permit program.

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[16] Florida Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf (last visited Mar. 28, 2011).
[17] 33 U.S.C. §§ 1251-1387.
[18] 33 U.S.C. § 403.
[19] Florida Dep't of Environmental Protection, *Consolidation of State and Federal Wetland Permitting Programs, Implementation of House Bill 759 (Chapter 2005-273, Laws of Florida)* (Sep. 2005), available at http://www.dep.state.fl.us/ig/reports/files/final_report016.pdf (last visited Mar. 28, 2011).
[20] *See generally* ch. 373, Part IV, F.S.
[21] Florida Dep't of Environmental Protection, *Summary of the Wetland and Other Surface Water Regulatory and Proprietary Programs in Florida* (2007), available at http://www.dep.state.fl.us/water/wetlands/docs/erp/overview.pdf (last visited Mar. 28, 2011).

The Corps has also delegated to Florida the authority to issue federal dredge and fill permits under Section 404 of the CWA for certain activities. These are known as State Programmatic General Permits (SPGP). Under this delegated authority, the department may issue state authorization for limited state exemptions and noticed general permits for shoreline stabilization, docks, boat ramps, and maintenance dredging that constitute federal authorization. Such authorization may be subject to additional specific federal conditions, however.[22] The DEP has expressed interest in expanding the SPGP program for activity-specific categories, subject to acreage limitations. In addition to a closer alignment of state and federal wetland delineation methods, changes to statutes or rules must be made to address federal coordination and consultation requirements for threatened and endangered species.

The PCS requires the DEP to obtain an expanded SPGP or a series of regional general permits from the Corps for activities in waters similar in nature that will only cause minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment. Where appropriate, the SPGP program should be used to eliminate the need for a separate individual approval from the Corps.

The PCS directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The PCS authorizes the DEP and the WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the Corps, if the SPGP is at least as protective as existing state and federal laws. The PCS would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

The PCS also removes obsolete language requiring the DEP to report to the Legislature on how to consolidate federal and state wetland permitting functions.

Section 13 amends s. 373.41492, F.S., relating to mitigation for mining activities within the Miami-Dade County Lake Belt.

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning; these issues include the quality of the rock; thickness of overburden; water table levels, and sinkhole conditions. The most economically advantageous deposits of aggregate materials are located in 79 square miles in Northwest Miami-Dade County known as the Lake Belt. The Lake Belt is distinct in that it has been identified as the highest concentration of the highest quality aggregate indigenous to Florida. Nearly all aggregates mined in Florida are used instate.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. The Lake Belt Plan protects the Everglades from encroaching development while maintaining the numerous economic benefits of the state's limestone industry. Under the plan, the Lake Belt

[22] *Id. at* 20.

limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the Corps.

In 2008 Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately $350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately $16.2 million in rockmining fees. About $9.8 million has been spent on planning and design, and about $6.4 million remains, of which $3 million is committed to the current design contract.

The PCS adds seepage mitigation projects, as authorized in an ERP, to the various activities that can be funded by the Miami-Dade County Lake Belt water treatment plant upgrade fee. Those projects may include hydrological structures. It defines "proceeds of the fee" to mean all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees; and provides that the amount deducted for administrative costs may not exceed three percent of the total revenues collected and may equal only those costs attributable to the fees.

The PCS provides that beginning January 1, 2012, and ending either December 31, 2017 or upon issuance of Water Quality Certification for Phase II mining activities, whichever occurs sooner, proceeds from the water treatment plant upgrade fee, less administrative costs, must be redirected to South Florida WMD and deposited into the Lake Belt Mitigation Trust Fund. Also, beginning January 1, 2018 this same fee is to be returned to Miami-Dade County for activities authorized under this section.

The PCS provides that the proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund must only be used to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an ERP issued by DEP for mining activities within the Miami-Dade County Lake Belt Area.

Section 14 amends s. 373.441, F.S., relating to delegation of ERPs to local governments.

Florida Statutes and rules authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments.[23] Local governments are entitled to request delegation authority from the DEP for a variety of programs and the DEP has authority to approve those delegations. With respect to programs related to section 404 of the CWA, both wastewater and ERP programs may be delegated to local governments, but delegation is

[23] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.

permissive, not mandated. The various delegations are periodically updated in rule 62-113, F.A.C.[24] Currently, only Broward County has a received an ERP program delegation, but the DEP is processing requests by Miami-Dade and Hillsborough Counties. In general, delegations are requested by larger local governments that have the resources to implement and oversee these complex permitting programs.

Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are approved or denied. The goals are to "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.[25]

According to the statute, delegation includes the applicability of chapter 120, F. S., (the APA), to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

The PCS requires any county having a population of 200,000 or more, or a municipality that has local pollution control programs regulating wetlands within its geographic boundary and serving populations of more than 100,000, to apply for delegation of ERP authority on or before Jun 1, 2012. Local governments that fail to receive delegation of all or part of ERP authority within one year or June 1, 2013, may not require permits that are substantially similar to the requirements needed to obtain an ERP from the DEP or a WMD. The PCS includes a grandfather clause for local governments that receive ERP delegation by June 1, 2012.

The PCS specifies that the DEP is responsible for all ERP delegations to local governments. The DEP must approve or deny the application with one year of receipt. If a delegation is denied, a challenge to the denial tolls the one year deadline until the issue is resolved. The PCS also prohibits a WMD from regulating activities subject to a delegated authority unless specifically required to do so in a delegation agreement.

The PCS does not prohibit or limit a local government from regulating wetlands or surface waters after June 1, 2012, if it receives delegation of all or part of ERP authority within one year of application. If an application is denied, the same tolling provision applies until the issue is resolved.

Section 15 amends s. 376.30715, F.S., relating to innocent victim petroleum storage system restoration.

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[24] Florida Dep't of Environmental Protection, *Delegations*, available at http://www.dep.state.fl.us/legal/Rules/shared/62-113/62-113.pdf (last visited Mar. 26, 2011).

[25] Rule 62-344, F.A.C., provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

The PCS provides that the transfer of title for a petroleum contaminated site to a child, a child in trust or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The PCS allows applicants who were previously denied coverage to reapply.

Section 16 amends s. 380.06, F.S., relating to solid mineral mining activities.

Section 380.06, F.S., provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one local government.[26] Regional planning councils assist the developer by coordinating multi-agency developments of regional impact (DRI) review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews DRIs for compliance with state law and to identify th regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving mitigating conditions, or not approving proposed developments. There are numerous exemptions from the DRI process specified in statute.[27]

The PCS exempts any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from DRI review. Any proposed changes to any previously approved solid mineral mine DRI's development orders having vested rights will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.[28] Any previously approved solid mineral mine DRI development orders will continue to be effective unless rescinded by the developer. The PCS also provides that all local government regulations of proposed solid mineral mines or addition, expansion or change to solid mineral mines remain in effect.

Section 17 amends s. 403.1838, F.S., relating to the small community sewer construction act.

[26] Section 380.06(1), F.S.
[27] Section 380.06(24), F.S.
[28] Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

Florida's Small Community Wastewater Facilities Grants Program is administered by the DEP. The DEP grants funds for the planning, design, and construction of wastewater management systems for qualifying small municipalities. Highest priority is given to projects that address the most serious risks to public health, are necessary to achieve compliance or assist systems most in need based on an affordability index. The population limit to qualify as a financially disadvantaged small community is currently 7,500 or less.

The PCS increases the population size to 10,000 or fewer to qualify as a financially disadvantaged small community.

Section 18 amends s. 380.0657, F.S., relating to expedited permitting for economic development projects.

The DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource permits and ERPs when such permits are for the purpose of 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.

Pursuant to s. 288.106(2)(t), F.S., a "target industry business" is defined as 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 of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Future growth in both employment and output;
- Workforce is not subject to periodic layoffs;
- High wages compared to the surrounding area;
- Market and resource independence from Florida markets;
- Expansion or diversification of the state's or the area's economic base; and
- Strong economic benefits to the state or regional economies.

An inland multimodal cargo facility, also called an inland port, is typically a distribution complex designed to provide intermodal transfers between ship, rail and truck operations. The Port of Palm Beach has limited expansion options. Its terminal size is also limiting its growth potential. To address its limitations, Port staff developed the inland port idea to be located in western Palm Beach County.[29] The project has not gotten out of the planning stage and has hit a number of delays. The most recent came when the Port St. Lucie Planning & Zoning Board rejected plans to annex 7,139 acres for development and to amend the comprehensive plan to change the land use from agricultural to heavy industrial.[30]

The PCS specifies that any inland multimodal facility that receives and sends cargo to and from Florida's ports qualifies for expedited permitting review.

[29] Florida Dep't of Transportation, *South Florida Inland Port Feasibility Study – final report* (June 2007), available at http://www.dot.state.fl.us/seaport/pdfs/SFL_Inland_Port_Final_Report_11_07.pdf (last visited Mar. 26, 2011).
[30] Alex Howk, *Planning board rejection signals dwindling support for Port St. Lucie inland port project*, TCPalm, Mar. 3, 2011, available at http://www.tcpalm.com/news/2011/mar/03/planning-board-rejection-signals-dwindling-for/ (last visited Mar. 26, 2011).

Section 19 amends s. 403.061, F.S., relating to zones of discharge to groundwater.

"Zone of Discharge" is defined in Rule 62-520.200(27), F.A.C. It means "a volume underlying or surrounding the site and extending to the base of a specifically designated aquifer or aquifers, within which an opportunity for the treatment, mixture or dispersion of wastes into receiving ground water is afforded." Additionally, Rule 62-520.300(2)(c), F.A.C., provides:

> The zone of discharge and exemption provisions are designed to provide an opportunity for the future consideration of factors relating to localized situations which could not adequately be addressed in the rulemaking hearing of March 1, 1979, including economic and social consequences, attainability, irretrievable conditions, natural background, and detectability.

Further, Rule 62-520.200(10), F.A.C., defines "existing installation" as:

> [A]ny installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a ground water monitoring plan no later than six months after the date required for that type of installation as listed in former Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the Department; or which was in fact an installation reasonably expected to release contaminants into the ground water on or before July 1, 1982, and operated consistently with statutes and rules relating to ground water discharge in effect at the time of the operation.

Currently, many existing installations don't have a permit or groundwater monitoring plan. It is therefore impossible in these instances for the DEP to designate a specific aquifer for discharge. The DEP has historically used the uppermost aquifer as the default and specified other aquifers if required on case-by-case basis.

The PCS authorizes zones of discharge to groundwater from the property boundary to the base of the uppermost aquifer or a specifically designated aquifer or aquifers. Discharges occurring within a zone of discharge or on land that is over a zone of discharge do not create liability under chapters 373 or 376 for site cleanup. The PCS also specifies that exceedances of soil cleanup target levels do not constitute a basis for enforcement or site cleanup.

Section 20 amends s. 403.087, F.S., relating to revocation of permits.

Currently, the DEP may revoke permits for the following reasons:
- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation; or
- The permit holder has refused lawful inspection under s. 403.091, F.S.[31]

[31] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person

The PCS allows the DEP to revoke a permit if the permit holder failed to submit required operational reports or other information that directly relate to the permit and has refused to correct or cure such violations when requested to do so. It also clarifies that the DEP may revoke a permit when a permit holder has refused a lawful inspection at a specific permitted facility.

Section 21 creates s. 403.0874, F.S., relating to the "Florida Incentive Based Permitting Act."

There were several bills introduced during the 2007 Regular Session that addressed incentive-based permitting.[32] Ultimately, none passed. Currently, the DEP has no comprehensive program to reward those in the regulated community who consistently meet or exceed their permit requirements, although having a record of compliance may lead to increased permit durations in some instances.[33] However, the DEP does not consistently consider applicants' past violations or compliance when reviewing requests for new permits.

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility. In addition to listed permit requirements, pursuant to Rule 62-4.070(5), F.A.C., the DEP must consider environmental violations of the applicant, at any location in the state, when determining whether the applicant has provided the necessary "reasonable assurance" that it will be able to meet the permit requirements. However, the rule does not specify exactly which violations may be considered, leading to inconsistent application throughout the DEP's permitting programs.

Within certain individual program areas of the DEP, additional rules or statutes narrow the scope of Rule 62-620.320, F.A.C. For example, s. 403.707(8), F.S., authorizes the DEP to deny a permit application for a solid waste management facility if an applicant has repeatedly violated statutes, rules, orders, or permit terms or conditions relating to any solid waste management facility and is deemed to be irresponsible, as defined by Rule 62-701.320(3)(b), F.A.C. For wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination.[34] For ERPs, the DEP considers specific ERP rule and permit violations.[35] Similar to Rule 62-620.320, F.A.C., none of these programmatic rules or statutes provide guidance as to what type of violations should be considered or how far back into an applicant's history the DEP should review.

Additionally, under s. 403.0611, F.S., the DEP has statutory authority to adopt alternative permitting programs on a pilot project basis. The Legislature directed the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution. To date the DEP has not implemented a pilot program under this section.

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obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

[32] See SB 738, HB 297 and HB 7171 (2007 Reg. Session).

[33] See s. 403.087(3), F.S.

[34] See Rule 62-620.320, F.A.C.

[35] See Rule 40B-400.104(2), F.A.C.

In June of 2000, the EPA established the National Environmental Performance Track program. The EPA discontinued the program in March 2009.[36] The last year data are available for the program is 2007. The goal of the program was for government to complement existing programs with tools and strategies that protected people and the environment, reduced cost and spurred technological innovation.[37] Benefits of membership included exclusive regulatory and administrative benefits, reduced routine inspections, and public recognition.[38]

The PCS creates s. 403.0874, F.S., the "Florida Incentive-based Permitting Act." It establishes the Legislature's finding that the DEP should consider a permit applicant's site-specific and program-specific history of compliance when considering whether to issue, renew, amend or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This PCS applies to all persons and regulated activities subject to permitting requirements of chs. 161, 373, and 403, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However, it does not apply to environmental permitting or authorization laws that regulate zoning, growth management or land use. Additionally, it does not apply where its implementation would jeopardize the state's delegation or assumption of federal law or permit programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system or project, for which a permit, certification or authorization is required under chs. 161, 373 and 403, F.S.

The PCS directs the DEP to consider permit applicants' compliance histories for 10 years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least eight of the 10 years prior; or
- Have conducted the same regulated activity at a different site within the state for at least eight of the last 10 years prior; and
- Not have been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge (ALJ) or civil or criminal court found the applicant violated any environmental law or rule or otherwise been subject to an administrative settlement or consent order that established a violation of an applicable law or rule; and
- Demonstrate that during the 10-year compliance history period, the implementation of activities or practices that reduced discharges or emissions, reduced impacts to public lands or natural resources, and implemented voluntary environmental performance programs.

[36] U.S. Environmental Protection Agency, Letter to Performance Track Partners, available at http://www.epa.gov/performancetrack/downloads/PTClosure_MEMO_CKent.pdf (last visited Mar. 26, 2011).
[37] U.S. Environmental Protection Agency, *National Environmental Performance Track*, available at http://www.epa.gov/performancetrack/ (last visited Mar. 26, 2011).
[38] *Id.*

The PCS requires that an applicant must request applicable compliance incentives at the time of application submittal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 30 days after the application is filed and final agency action shall be taken no later than 60 days after the application is deemed complete;
- Priority review of permit applications;
- Reduced number of routine compliance inspections;
- No more than two requests for additional information under s. 120.60, F.S.; and
- Longer permit durations.

Furthermore, the PCS allows the DEP adopt additional incentives by rule, which are binding on the WMDs and any local government that has been delegated or assumed a regulatory program to which the incentive-based permitting program applies. The PCS also contains a savings clause related to an applicant's responsibility to provide assurances and to the DEP's, a WMD's or a local government's ability to consider factors when evaluating an application.

Section 22 amends s. 403.7045, F.S., relating to industrial waste.

Currently, solid waste is defined in statute to mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material. Industrial byproducts are not considered hazardous wastes.

The PCS clarifies that sludge from industrial waste treatment works that meet certain exemptions contained in s. 403.7045(1)(f), F.S., is not considered solid waste.

Section 23 amends 403.707, F.S., relating to permitting of solid waste disposal.

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by DEP. Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP

under this chapter or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

The PCS allows an entity that is authorized by a permit or exemption to dispose of its own waste on its own property and to also dispose of the waste in other new areas of the property without further express authorization if the new areas are properly monitored. It also provides that permits issued to a solid waste management facility with a leachate control system will have a 20-year term, which applies to all solid waste management facilitates that obtain an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 24 amends 403.814, F.S., relating to delegation of general permits.

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singularly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[39] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes,
- Installation and repair of riprap at the base of existing seawalls,
- Installation of culverts associated with stormwater discharge facilities, and
- Construction and modification of certain utility and public roadway construction activities.

The PCS directs the DEP to create a general permit for construction, alteration, and maintenance of surface water management systems for up to 10 acres. The system may be constructed without action by the DEP or a WMD if:

- The total project area is less than 10 acres;
- The total project area involves less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan of development or sale;
- The project does not:
  - Cause adverse water quantity or flooding to receiving waters or adjacent lands;
  - Cause adverse impacts to existing surface water storage and conveyance capabilities;
  - Cause violations of state water quality standards;
  - Cause adverse impacts to the maintenance of surface or groundwater levels or surface water flows or a work of a WMD; and
- The water management system design plans are signed and sealed by a registered professional.

[39] Section 403.814(1), F.S.

Section 25 amends 403.973, F.S., relating to expedited permitting and comprehensive plan amendments.

Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., OTTED or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 50 jobs; or
- Create 25 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memorandum of Agreement (MOA) with the secretary of the DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the DCA, DOT, Florida Department of Agriculture and Consumer Services; the Florida Fish and Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Presently, certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments; and
- Waiver of interstate highway concurrency with approved mitigation.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The ALJ's recommended order is not the final state agency action unless the

participating agencies of the state opt at the preliminary hearing conference to allow the ALJ's decision to constitute the final agency action. Where only one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the ALJ's recommended order. In those proceedings where the more than one state agency action is challenged, the Governor shall issue the final order within 10 working days of receipt of the ALJ's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction; or
- A project, the primary purpose of which is to:
  - Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
  - Produce electrical power (unless the production of electricity is incidental and not the project's primary function);
  - Extract natural resources;
  - Produce oil; or
  - Construct, maintain or operate an oil, petroleum, natural gas or sewage pipeline.

The PCS revises the structure and process for expedited permitting of targeted industries. It substitutes the Secretary of DEP, or his or her designee, for OTTED. It clarifies that commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs qualify for expedited review. The PCS requires regional teams to be established through the execution of a project-specific MOA. It also clarifies that subsection 403.973(14), F.S., applies to permits issued by the department pursuant to a federal program, but that the DEP, not the Governor, issues the final order for those permits. Finally, the PCS provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 26 amends s. 526.203, F.S., relating to the sale of unblended fuels.

The Federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuels standard (RFS) minimum annual goal for renewable fuel use at 9.0 billion gallons in 2008 and 36 billion gallons by 2022. Beginning in 2016, all of the fuel increase in the RFS target must be met by advanced biofuels, defined as fuels derived from other than corn starch.[40]

[40] U.S. Department of Energy's website: http://www.eere.energy.gov/afdc/incentives_laws_security.html.

Motor gasoline and diesel fuel, both fossil fuels, make up more than 87 percent of Florida's transportation energy costs, with aviation fuel accounting for less than ten percent. There are approximately 50 ethanol fueling stations open to the public selling E10 (90 percent gasoline and 10 percent ethanol) in Florida.

The Legislature passed a comprehensive energy bill in 2008 that, in part, established the Florida Renewable Fuel Standard Act (Act). The bill provided the following definitions:

- "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "Blended gasoline" means a mixture of ninety percent gasoline and ten percent fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services. The ten percent fuel ethanol portion may be derived from any agricultural source.
- "Unblended gasoline" means gasoline that has not been blended with fuel ethanol meeting the specifications as adopted by the Department of Agriculture and Consumer Services.
- "10 percent" means 9-10 percent ethanol by volume.

The bill provided that on and after December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler is to contain, at a minimum, 10 percent of agriculturally derived, denatured ethanol fuel by volume.

The following are exempted from the act:

- Fuel used in aircraft;
- Fuel sold at marinas and mooring docks for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, offroad vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel bulk transferred between terminals;
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with chapter 206, F.S.;
- Fuel at an electric power plant that is regulated by the United States Nuclear Regulatory Commission unless such commission has approved the use of fuel meeting the requirements of the act;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if it were to be operated using fuel meeting the requirements of the act.

The PCS provides that s. 526.203, F.S., does not prohibit the sale of unblended fuels for the uses exempted above.

Section 27 creates an unnumbered section of law relating to the installation of fuel tank upgrades.

Rule 62-761.510, F.A.C., provides deadlines for Category-A and Category-B petroleum storage tank systems to meet the standards for secondary containment, Category-C storage tank systems by certain dates. The DEP has been regulating both underground and aboveground petroleum storage tank systems since 1983.[41]

The PCS extends the deadline to December 31, 2012, for entities to comply with petroleum tank upgrade requirements for those who bought their facilities in 2009. The extension applies even if the owners of the facilities have previously signed consent orders requiring earlier upgrades.

Section 28 amends 373.414, revising rules of the DEP relating to the Uniform Mitigation Assessment Method (UMAM) for activities in surface waters and wetlands.

Subsection 373.414(18), F.S., directed the DEP and WMDs, in cooperation with local governments and the relevant federal agencies, to develop a state-wide method to determine the amount of mitigation required for regulatory permits. The UMAM rule[42] went into effect on February 2, 2004. Although only the DEP was required to adopt the method by rule, it is now the sole means for all state entities (DEP, WMDs, local governments and other governmental entities) to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to determine mitigation bank credits awarded and debited.

The rule is not intended to affect the many other aspects of wetland regulation that remain intact in current rules, such as ascertaining that the direct and secondary impacts have been reduced or eliminated, that the project does not result in unacceptable cumulative impacts, the appropriateness of the mitigation, and so forth.

Although UMAM is used by all state and local agencies, the state cannot require the Corps to use it. Nonetheless, the Corps' Jacksonville office conducted a study of UMAM and recommended that it be used for federal wetland regulatory purposes starting August 1, 2005. The Corps continues to use its time lag table rather than the state's time lag table for assessment purposes. The time lag associated with mitigation means the period of time between when the wetland functions are lost at an impact site and when the mitigation site has achieved the outcome that was scored as part of the UMAM process.

The PCS incorporates many aspects of the UMAM rule into subsection 373.414(18), F.S. The PCS provides clearer DEP oversight to ensure consistency in statewide application. It also allows any mitigation banker to apply for a reassessment of mitigation credits pursuant to the proposed changes if the request is made no later than September 30, 2011.

Section 29 amends 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Mitigation Banks are permitted by the DEP or a WMD that have adopted rules, based on the location of the bank and activity-based considerations. Additionally, a mitigation bank requires

[41] Florida Dep't of Environmental Protection, *Storage Tank Regulation*, http://www.dep.state.fl.us/waste/categories/tanks/ (last visited Apr. 11, 2011).
[42] See Rule 62-345, F.A.C.

federal authorization in the form of a Mitigation Bank Instrument signed by several agencies, with the Corps as lead. The mitigation bank applicant is strongly encouraged to have at least one pre-application meeting with an interagency Mitigation Bank Review Team, consisting of all state and federal agencies that will be involved in processing the permit. Both public and private entities are eligible to set up and operate mitigation banks if they can show sufficient legal interest in the property to operate the bank and can meet financial responsibility requirements. Special provisions apply to WMD and DEP operated banks.[43]

The PCS provides, for mitigation banks subject to UMAM, that the number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using the UMAM adopted pursuant to 373.414(18), F.S. It strikes language allowing for methodologies other than UMAM.

Section 30 amends 218.075, F.S., relating to reduction or waiver of permit fees.

The DEP and WMDs are required to reduce or waive permit fees for counties and municipalities with certain populations.

The PCS adds entities created by special act or local ordinance or interlocal agreement of local governments to the list of those who qualify for reduced or waive permit fees.

Section 31 provides an effective of July 1, 2011.

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:

None.

[43] Florida Dep't of Environmental Protection, *Mitigation and Mitigation Banking*, http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (last visited Apr. 10, 2011).

B. Private Sector Impact:

Reducing environmental permitting requirements, time, necessity and compliance costs for those who qualify for incentive-based rewards will collectively save business and individuals significant amounts of money; however, the savings cannot be calculated at this point.

Defendant parties to administrative hearings may save on litigation costs as their burdens will be reduced. Alternatively, the costs for interested third parties in administrative hearings will likely increase as their burdens for persuasion and evidence will be increased or shifted to them.

Private mitigation banks should see significant increases in revenue as they will be the required method of mitigation for many projects. However, the total impact cannot be determined at this time.

C. Government Sector Impact:

According to the DEP, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. Conversely, local governments that lose currently active permitting programs to state preemption will lose revenues associated with those programs. It is not known whether the cost savings will be greater than the lost revenues.

The WMDs have expressed concerns that the changes to the DOT mitigation funding scheme may leave them with insufficient funds to provide mitigation for DOT projects. Further, mitigation costs for certain DOT projects may increase because of the requirement that private mitigation banks be used regardless of whether they are the most cost-effective mitigation option available.

The DEP and the WMDs will see reduced permit revenue from the additional exemption applied to entities that qualify for a reduction or waiver of permit processing fees.

Miami-Dade County has expressed reservations with the provision that diverts rockmining fees away from drinking water treatment facilities Even though the diversion is for a limited time (until December 31, 2017), it will adversely impact the county's ability to design and construct the additional treatment facilities to protect the drinking water supply in the area. This fee is $0.15 per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

In section 14 of the PCS, local governments who do not receive delegation of ERP authority within one year or by June 1, 2013 are prohibited from requiring substantially similar permits. The dates can be inconsistently applied. Questions may arise as to what date applies and under what circumstances.

VII. Related Issues:

In section 11 of the PCS, language that notice of agency action must be provided within 60 days will create an unintended problem for the DEP. For some types of smaller projects, the DEP does not issue notices of intent to issue, but simply issues the permit with the notice of rights included on the permit. This language could be construed to mean that the DEP must always issue an intent to issue, which would actually slow down the permitting process.

VIII. Additional Information:

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

None.

B. Amendments:

None.