

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 389 Conceptual Permits for Urban Redevelopment Projects

SPONSOR(S): Agriculture & Natural Resources Subcommittee; Glorioso

TIED BILLS: None **IDEN./SIM. BILLS:** SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Deslatte	Blalock
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Gibson	Hoagland
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill creates s. 373.4131, F.S., which authorizes counties and municipalities that have created a community redevelopment area (CRA) or urban infill and redevelopment area to adopt a stormwater adaptive management plan addressing the quantity and quality of stormwater discharges for the area and allows those counties and municipalities to obtain a conceptual permit from the water management district (WMD) or the Department of Environmental Protection (DEP). The conceptual permit is established by the WMD in consultation with DEP.

The bill provides that the conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- May not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in this section.

The bill provides that urban redevelopment projects that meet the requirements of the conceptual permit qualify for general permits authorizing construction and operation for the duration of the conceptual permit. The permit may be issued for a duration of 20 years, unless a shorter duration is requested by the applicant.

The bill encourages urban infill and redevelopment and helps to limit the proliferation of urban sprawl.

The bill is not affected by the U.S. Environmental Protection Agency's December 2010 published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Growth Policy Act

In 1999, the Florida Legislature enacted the Growth Policy Act¹ (Act) in order to promote and sustain urban cores. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage infill and redevelopment within urban centers. The Act defines an urban infill and redevelopment area as an area where:

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided in the 5-year schedule of capital improvements;
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress;²
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government;
- More than 50 percent of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation; and
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community program or similar program.³

Pursuant to s. 163.2517, F.S., in order to designate an urban infill and redevelopment area, a local government must:

- 1) adopt an urban infill and redevelopment plan by ordinance⁴ and
- 2) amend its comprehensive land use plan to delineate the boundaries of the urban infill and redevelopment area within the future land use element.⁵

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969 (Act), was enacted in order to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The Act authorizes a county or municipality to create community redevelopment areas (CRAs)⁶ by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.⁷ CRAs are not permitted to levy or collect taxes; however, the local government is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated CRA to finance redevelopment projects within that area. To obtain this revenue, in addition to establishing a trust fund, a local government must create a community redevelopment agency,⁸ designate an area or areas to be a Community Redevelopment Area (CRA), and approve a community redevelopment plan.⁹ Once this is accomplished, the CRA can direct the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation, or redevelopment of the CRA.

¹ Ss. 163.2511- 163.2523, F.S.

² S. 290.0058, F.S., provides the definition for “general distress.”

³ S. 163.2514(2), F.S.

⁴ The local government is not required to adopt the urban infill and redevelopment plan as a comprehensive plan amendment.

⁵ The boundaries in the future land use element are delineated pursuant to the adopted urban infill and redevelopment plan.

⁶ According to the Department of Community Affairs, as of March 2011, there were 203 active CRAs statewide.

⁷ S. 163.340(7), F.S., provides the definition for “slum area” and s. 163.340(8), F.S., provides the definition for “blighted area.”

⁸ S. 163.356, F.S.

⁹ See ch. 163, part III, F.S.

Stormwater

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to the compaction of soil; the addition of impervious surfaces such as roads and parking lots; alteration of natural landscape features such as natural depressional areas which hold water, floodplains and wetlands; construction of highly efficient drainage systems; and the addition of pollutants from everyday human activities. These alterations within a watershed decrease the amount of rainwater that can seep into the soil to recharge aquifers, maintain water levels in lakes and wetlands, and maintain spring and stream flows. Consequently, the increased volume, speed, and pollutant loading in stormwater that runs off developed areas are leading to flooding, water quality problems, and the loss of habitat.¹⁰

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment, design criteria for best management practices (BMPs) that will achieve the performance standard, and a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will meet water quality standards. The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids (TSS)¹¹ by 80 percent or by 95 percent for Outstanding Florida Waters.¹²

In 1990, in response to legislation, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).¹³ The rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of DEP, the water management districts, and local governments. The rule provides that one of the primary goals of the program is to maintain, to the degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80 percent of the post-development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards." This performance standard is significantly different than the one used in the DEP and water management district (WMD) stormwater treatment rules of the 1980s.

In 1999, the Florida Watershed Restoration Act,¹⁴ was enacted leading to the implementation of Florida's water body restoration program and the establishment of Total Maximum Daily Loads (TMDLs). Since the program began, over 2000 impairments have been verified in Florida's surface waters, and nutrients have been identified as the major cause of such impairments.

Effect of the Bill

The bill creates s. 373.4131, F.S., relating to conceptual permits for urban redevelopment projects. The bill provides that a city or county that has created a community redevelopment area or urban infill and redevelopment area pursuant to chapter 163, may adopt a stormwater adaptive management plan that addresses the quantity and quality of stormwater discharges for the redevelopment or infill area and may obtain a conceptual permit from the WMD or DEP. The conceptual permit is established by the appropriate water management district in consultation with DEP. Urban projects that meet the requirements of the conceptual permit will qualify for general permits that will authorize construction

¹⁰ National Resources Defense Council. *Stormwater Strategies*, May 1999 report, available at: <http://www.nrdc.org/water/pollution/storm/stoinx.asp> (last visited March 24, 2011).

¹¹ Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

¹² Rule 62-302.700 F.A.C. provides that an Outstanding Florida Water (OFW), is a water designated worthy of special protection because of its natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality.

¹³ Ch. 62-40 F.A.C.

¹⁴ S. 403.067, F.S.

and operation for the duration of the conceptual permit. The permit may be issued for a duration of 20 years, unless a shorter duration is requested by the applicant.

The bill provides that the conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- May not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in section 373.413, F.S.

The bill encourages urban infill and redevelopment and helps to limit the proliferation of urban sprawl.

The bill is not affected by the U.S. Environmental Protection Agency's December 2010 published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs. The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Creates s. 373.4131, F.S.; authorizes municipalities and counties that have created a community redevelopment area or an urban infill and redevelopment area to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; provides requirements for establishment of such permits by water management districts in consultation with the Department of Environmental Protection; provides that urban redevelopment projects that meet the criteria for a conceptual permit, qualify for a noticed general permit.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

There may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Subcommittee on Agriculture & Natural Resources amended HB 389 as a Committee Substitute. The CS did the following:

Provides that a city or county that has created a community redevelopment area or urban infill and redevelopment area pursuant to chapter 163, may adopt a stormwater adaptive management plan that addresses certain quantity and quality standards for the redevelopment or infill area and obtain a conceptual permit from a WMD or DEP. Urban projects that meet the requirements of the conceptual permit will qualify for general permits that will authorize construction and operation for the duration authorized in the conceptual permit. The permit may be issued for a duration of 20 years, unless a shorter duration is requested by the applicant.

The conceptual permit must do the following:

- Allow for the rate and volume of stormwater discharge for stormwater management systems of urban redevelopment projects or urban infill and redevelopment areas to continue up to the maximum rate and volume of stormwater discharge within the areas as of the date the plan was adopted.
- Allow for stormwater discharges for stormwater management systems of urban redevelopment projects or urban infill and redevelopment areas to demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan was adopted for any applicable pollutants of concern in the receiving water body. Those that demonstrate a net improvement will be presumed not to cause or contribute to violations of water quality criteria.
- May not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in this section.