

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 389 Conceptual Permits for Urban Redevelopment Projects
SPONSOR(S): State Affairs Committee, 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 | 15 Y, 0 N, As CS | Deslatte | Hamby |

SUMMARY ANALYSIS

The bill amends current law to require that DEP and WMDs reduce or waive permit processing fees for an entity created by special act, local ordinance, or interlocal agreement of counties or municipalities meeting specified population limits.

The bill amends current law directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities of airports. The permit applies statewide and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. This change will allow the DOT to take advantage of grant money offered by the Federal Aviation Authority (FAA) to address the specific needs of stormwater management systems that serve airports.

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.

There may be an insignificant fiscal impact on those local governments that have already established either a Community Development Area or an urban infill and redevelopment area. Those local governments would have to amend those plans if they wanted to obtain a conceptual permit. The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues. However, 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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0389f.SAC

DATE: 4/11/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Airside Stormwater Management

The Federal Aviation Authority (FAA) provides grants to the Florida Department of Transportation (DOT) Aviation Office for airport airside improvements. The grants have 18 month time frames making it difficult to permit and complete a stormwater project within the required time to take advantage of the grant. A solution to the abbreviated time frame would be for the DEP to create a general environmental resource permit for stormwater systems serving airside activities¹ at Florida's airports.

In 1998, the DOT, the DEP and three WMDs outlined a study to evaluate airport runway, taxiway and apron stormwater quality. In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular². The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. A joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff and how best management practices can help airports meet federal and state water quality standards.

Another phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.

Waiver or Reduction of Permit Fees

Section 218.075, F.S., provides that DEP and the WMDs must reduce or waive permit processing fees for certain specified small counties and municipalities with a population of 25,000 or less, or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

- Per capita taxable value is less than the statewide average for the current fiscal year;
- Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
- Any condition specified in s. 218.503(1), F.S., which results in the county or municipality being in a state of financial emergency;
- Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or

¹ Typically the airside includes significant open space/grass areas serving to separate runways and taxiways from each other. Elements of the airport airside are:

- One or more runways for aircraft landing and takeoff operations. These are usually paved, but may be turf for facilities serving light airplanes.
- One or more taxiways allowing aircraft to move between the runway(s) and parking areas
- One or more aprons (also called "ramps") for aircraft to park.

This information can be found in the FL. DOT "Florida Airport Stormwater Best Management Practices Manual, 2005"; <http://webcache.googleusercontent.com/search?q=cache:EeOMjzAye04J:publicfiles.dep.state.fl.us/dworm/stormwater/Stormwater%2520at%2520Airports/Best%2520Management%2520Practices%2520Manual.pdf+airside+stormwater+management+florida&cd=5&hl=en&ct=clnk&gl=us&source=www.google.com>

² U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdf1c5aa1083986256c690074ebab/\\$FILE/150-5200-33.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf)

- A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality or a third party under contract with a county or municipality and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee shall not exceed \$100.

Growth Policy Act

In 1999, the Florida Legislature enacted the Growth Policy Act³ (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;⁴
- 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.⁵

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 ordinance⁶ 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.⁷

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)⁸ by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.⁹ 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,¹⁰ designate an area or areas to be a Community Redevelopment Area (CRA), and approve a community redevelopment plan.¹¹ Once

³ Ss. 163.2511- 163.2523, F.S.

⁴ S. 290.0058, F.S., provides the definition for “general distress.”

⁵ S. 163.2514(2), F.S.

⁶ The local government is not required to adopt the urban infill and redevelopment plan as a comprehensive plan amendment.

⁷ The boundaries in the future land use element are delineated pursuant to the adopted urban infill and redevelopment plan.

⁸ According to the Department of Community Affairs, as of March 2011, there were 203 active CRAs statewide.

⁹ 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.”

¹⁰ S. 163.356, F.S.

¹¹ See ch. 163, part III, F.S.

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.

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.¹²

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)¹³ by 80 percent or by 95 percent for Outstanding Florida Waters.¹⁴

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).¹⁵ 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,¹⁶ 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 amends s. 218.075, F.S. to require that DEP and WMDs reduce or waive permit processing fees for an entity created by special act, local ordinance, or interlocal agreement of counties or municipalities.

The bill amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The permit applies statewide

¹² 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).

¹³ 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.

¹⁴ 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.

¹⁵ Ch. 62-40 F.A.C.

¹⁶ S. 403.067, F.S.

and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. This change will allow the DOT to take advantage of grant money offered by the FAA to address the specific needs of stormwater management systems that serve airports.

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 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. Amends s. 218.075, F.S., providing for an entity created by special act, local ordinance, or interlocal agreement of a county or municipality to receive certain reduced or waived permit processing fees; requiring that the project for which such fee reduction or waiver is sought serves a public purpose.

Section 2. Amends s. 373.118, F.S., requiring that the DEP initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; providing for statewide application of the general permit; providing for any WMD or delegated local government to administer the general permit; providing that the rules are not subject to any special rulemaking requirements relating to small businesses.

Section 3. Creates s. 373.4131, F.S., authorizing 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 4. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues.

The DOT may be able to more fully take advantage of the FAA's grants to address stormwater management systems for airside activities. Since the rulemaking has not yet taken place, the impact is indeterminate.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments

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:

The bill requires the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The permit applies statewide and must be administered

by any WMD or delegated local government, with no additional rulemaking required. These rules are not subject to any special rulemaking requirements related to small business. This change will allow the DOT to take advantage of grant money offered by the FAA to address the specific needs of stormwater management systems that serve airports.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 7, 2011, the State Affairs Committee amended and passed HB 389 as a Committee Substitute. The CS provided the following:

- Allowing an entity created by special act, local ordinance, or interlocal agreement of counties or municipalities that are entitled to a permit processing fee waiver or reduction to also receive a waiver or reduction.
- Directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airports. The permit applies statewide and may be administered by any WMD or delegated local government. The bill specifies that no additional rulemaking is required and the rules are not subject to any special rulemaking requirements related to small business. This change will allow the DOT to take advantage of grant money offered by the FAA to address the specific needs of stormwater management systems that serve airports.