

**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 Community Affairs Committee

**BILL:** CS/CS/SB 934

**INTRODUCER:** Community Affairs Committee, Environmental Preservation and Conservation Committee and Senator Storms

**SUBJECT:** Surface Water Improvement Management Plans and Programs

**DATE:** April 4, 2011

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Committee Substitute (CS) directs the Department of Environmental Protection (DEP) to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. It requires water management districts (WMDs) to establish an urban redevelopment conceptual permitting program in consultation with the DEP and specifies that urban redevelopment projects that satisfy the permit qualify for a notice general permit. The CS allows 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.

This CS substantially amends ss. 218.075 and 373.118, Florida Statutes, and creates s. 373.4131, Florida Statutes.

**II. Present Situation:**

**The Community Redevelopment Act of 1969**

The Community Redevelopment Act of 1969<sup>1</sup> was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.<sup>2</sup> It allows counties or municipalities to retain tax increment revenues from certain community taxing districts to fund redevelopment within a designated Community Redevelopment Area (CRA). To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a CRA, create a community redevelopment plan, and establish a trust fund to receive the tax increment revenues.<sup>3</sup>

### **The Growth Policy Act of 1999**

The Growth Policy Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers.<sup>4</sup> The Act defines “urban infill and redevelopment area” as an area or areas where:

- Public services such as water and wastewater, transportation, schools, and recreation are already available or are scheduled to be provided within five years.
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress.
- 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 a quarter of a mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation.
- 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 area or similar designation.<sup>5</sup>

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries.

### **Urban Stormwater Management**

Unmanaged urban stormwater creates a wide variety of effects on Florida’s surface and ground waters. Urbanization leads to:

- Compaction of soil,
- Addition of impervious surfaces such as roads and parking lots,
- Alteration of natural landscape features such as natural depressional areas that hold water, floodplains and wetlands,

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<sup>1</sup> See ch. 163, Part III, F.S.

<sup>2</sup> Section 163.353, F.S.

<sup>3</sup> See *supra* note 1.

<sup>4</sup> See ss. 163.2511 through 163.2523, F.S.

<sup>5</sup> Section 163.2514(2), F.S.

- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation, and
- Pollutant loading of receiving water bodies from stormwater discharge.<sup>6</sup>

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems and loss of habitat.<sup>7</sup>

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 and design criteria for best management practices (BMPs) that will achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet water quality standards.<sup>8</sup> The performance standard was to reduce postdevelopment stormwater pollutant loading of Total Suspended Solids (TSS)<sup>9</sup> by 80 percent, or by 95 percent for Outstanding Florida Waters (OFWs).<sup>10</sup>

In 1990, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).<sup>11</sup> This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the WMDs and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the postdevelopment stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards."<sup>12</sup>

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.<sup>13</sup> Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of ch. 373, Part IV, F.S.

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<sup>6</sup> Florida Dep't of Environmental Protection, *State Stormwater Treatment Rule Development Background*, available at <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited 03/12/2011).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

<sup>10</sup> Rule 62-302.700, F.A.C., provides that an OFW is a water body designated worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.

<sup>11</sup> See *supra* note 6. See also ch. 62-40, F.A.C.

<sup>12</sup> See *supra* note 6.

<sup>13</sup> See ch. 373, Part IV, F.S. See also Florida Dep't of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, available at <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited 03/12/2011).

### **Waiver or Reduction of Permit Fees**

DEP and the WMDs shall 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.<sup>14</sup> 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
- 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.

### **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 activities 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 circular.<sup>15</sup> 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

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<sup>14</sup> See U.S. Census Bureau website at <http://www.census.gov/population/www/metroareas/metrodef.html>.

<sup>15</sup> 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) (last visited 03/21/2011).

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.<sup>16</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 218.075, F.S., to allow 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.

**Section 2** amends s. 373.118, F.S., 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 CS 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.

**Section 3** creates s. 373.4131, F.S., to address conceptual permits for urban redevelopment projects. The CS allows counties and municipalities doing urban redevelopment projects to adopt stormwater adaptive management plans to address stormwater quality and quantity. Those that adopt such plans may obtain a conceptual permit from a WMD or the DEP.

The CS directs the WMDs, in consultation with the DEP, to establish the conceptual permit. The conceptual permit:

- Allows discharges from an urban redevelopment area created under ch. 163, F.S., or an urban infill and redevelopment area designated under s. 163.2517, F.S., to continue up to the maximum rate and volume in that area as of the date a stormwater adaptive management plan was adopted.
- Presumes that stormwater discharges from an urban redevelopment area that result in a net improvement of discharge quality as compared to discharges that existed at the time the stormwater adaptive management plan was adopted do not cause or contribute to violations of water quality criteria.
- Cannot contain additional or more stringent limitations than those in this section.
- Is issued for 20 years, unless the applicant requests a shorter time frame.

Finally, the CS permits urban redevelopment projects that meet all requirements to qualify for noticed general permits for construction and operation for the duration of the conceptual permit.

**Section 4** provides an effective date of July 1, 2011.

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<sup>16</sup> See generally, Email from Eric H. Livingston, Program Administer, NPDES Stormwater Section, Dep't of Environmental Protection, to analyst (Mar. 21, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

**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.

## B. Private Sector Impact:

The impact to the private sector cannot be determined but is expected to be negligible.

## C. Government Sector Impact:

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.

The DEP and WMDs will be required to expend funds to create and implement the permitting program required by this bill. It is expected that the DEP and WMDs can absorb these costs with existing staff and resources. Additionally, local governments may have to expend funds to modify plans for stormwater management plans in urban redevelopment areas. It is also expected that local governments can absorb these costs with existing staff and resources.

Any entity created by special act, local ordinance or interlocal agreement of a county or municipality may receive a reduction or waiver of permit processing fees.

**VI. Technical Deficiencies:**

The bill requires the WMDs to establish a conceptual permitting program for urban redevelopment programs but does not give the WMDs rulemaking authority to do so. Staff from the WMDs have stated that because the permitting program is conceptual it does not require rulemaking to establish. Clarification of this point may be needed at a future committee stop.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on April 4, 2011:**

Allows 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.

**CS by Environmental Preservation and Conservation on March 17, 2011:**

- Amends s. 373.118, F.S., to direct the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports.
- Creates new s. 373.4131, F.S., for conceptual permits for urban redevelopment projects.
- Allows counties and municipalities doing urban redevelopment projects to adopt stormwater adaptive management plans.
- Allows the WMDs or the DEP to issue conceptual permits for those projects.
- Directs the WMDs in consultation with DEP to establish the conceptual permit with the following criteria:
  - Allows stormwater discharges for projects to continue up to the maximum allowed rate prior to redevelopment of the area,
  - Presumes that a net improvement of discharges from projects do not contribute to water quality violations for the receiving water body,
  - Prohibits additional or more stringent standards than those contained in the section, and
  - Allows for 20-years permits, unless a shorter time frame is requested by the applicant.

Directs that projects meeting the criteria in the conceptual permit qualify for a noticed general permit for construction and operation for the duration of the permit.

**B. Amendments:**

None.