

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: SB 934

INTRODUCER: Senator Storms

SUBJECT: Surface Water Improvement Management Plans and Programs

DATE: March 14, 2011 REVISED: _____

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

I. Summary:

The bill requires the water management districts (WMDs) to establish an urban redevelopment permitting program. It allows jurisdictions to develop stormwater adaptive management plans for discharge coming from urban redevelopment projects so long as the discharge does not exceed the rate established on July 1, 2011. The bill also requires stormwater discharge to meet certain water quality standards.

This bill substantially amends s. 373.453, Florida Statutes.

II. Present Situation:

The Community Redevelopment Act of 1969

The Community Redevelopment Act of 1969¹ 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.² 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.³

¹ See ch. 163, Part III, F.S.

² Section 163.353, F.S.

³ See *supra* note 1.

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.⁴ 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.⁵

Pursuant to s. 163.2517, F.S., the Act requires local governments that want to designate urban infill and redevelopment areas to 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.

Stormwater

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,
- 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.⁶

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.⁷

⁴ See ss. 163.2511 through 163.2523, F.S.

⁵ Section 163.2514(2), F.S.

⁶ Florida Department 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).

⁷ *Id.*

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.⁸ The performance standard was to reduce postdevelopment stormwater pollutant loading of Total Suspended Solids (TSS)⁹ by 80 percent, or by 95 percent for Outstanding Florida Waters (OFWs).¹⁰

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).¹¹ 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."¹²

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.¹³ 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.

III. Effect of Proposed Changes:

Section 1 amends s. 373.453, F.S., to require each water management district to establish a permitting program for urban redevelopment projects located within community redevelopment areas created under ch. 163, F.S., or urban infill and redevelopment areas designated under s. 163.2517, F.S.

Jurisdictions with community or urban redevelopment areas will be allowed to develop stormwater management plans to address discharge from these areas. The discharge rate from these areas will be frozen as of July 1, 2011, and future discharges cannot exceed that maximum discharge rate.

Discharges from community and urban redevelopment areas will have to meet state water quality standards at the point of discharge. For discharges that are not subject to nutrient criteria, they

⁸ *Id.*

⁹ 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.

¹⁰ 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.

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

¹² See *supra* note 6.

¹³ See ch. 373, Part IV, F.S. See also Florida Department 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).

may not degrade the receiving water body beyond its existing classification. For discharges into an impaired water body, they may only be allowed if they reduce the daily loading of the receiving water body for pollutants of concern by 10 percent from its predevelopment condition to its postdevelopment condition.

Section 2 provides and effective date 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.

B. Private Sector Impact:

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

C. Government Sector Impact:

The WMDs will be required to expend funds to create and implement the permitting program required by this bill. It is expected that the 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.

VI. Technical Deficiencies:

First, the bill appears to be drafted to the wrong section of the Florida Statutes. Section 343.453, F.S., addresses at-risk water bodies that are of regional or statewide significance. Pursuant to this section, the DEP and the WMDs are directed to create surface water improvement management (SWIM) plans and programs for listed at-risk water bodies. SWIM plans and programs are used to address nonpoint source inputs to water bodies. Stormwater discharges are considered point source discharges and are generally regulated under either ch. 373, Part IV, F.S, or s. 403.0885, F.S., the state's implementation of the National Pollutant Discharge Elimination System

program. Construction and alteration of stormwater management systems is addressed under s. 373.413, F.S.

Second, the bill requires the WMDs to create a permitting program for urban redevelopment programs but does not give the WMDs rulemaking authority to do so.

Last, neither “stormwater adaptive management plan” nor “predevelopment” are defined in the bill or existing statute. The terms may cause confusion for applicants and the WMDs as to what is permissible. “Predevelopment,” as used in this bill, could mean either the pollution loading prior to any development of the area or the pollution loading prior to the urban redevelopment project taking place.

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.)

None.

B. Amendments:

None.