

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4123 Federal Environmental Permitting

SPONSOR(S): Burgin

TIED BILLS: None **IDEN./SIM. BILLS:** SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	14 Y, 0 N	Cunningham	Blalock
2) State Affairs Committee	13 Y, 0 N	Cunningham	Hamby

SUMMARY ANALYSIS

The bill repeals an obsolete reporting requirement related to the development of a mechanism or plan to consolidate federal and state wetland permitting programs.

The dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP), and the federal Clean Water Act (Act) requires the same person to obtain a 404 permit from the U.S. Army Corps of Engineers (USCOE) if the wetlands in question fall within the jurisdiction of the Act. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the USCOE. The SPGP is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas and associated facilities; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

The bill repeals the provision in the law requiring the DEP to file the report described above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Florida's wetlands includes permitting by both the state and federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899 (Act). This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of certain activities that occur in or near the nation's wetlands and surface waters. The regulatory plan is intended to control the dredging and filling of wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

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To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

Effect of Proposed Changes

This bill repeals s. 373.4144(2), F.S., requiring the DEP to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.

B. SECTION DIRECTORY:

Section 1. Repeals s. 373.4144(2), F.S., directing the DEP to file a report with the Speaker of the House of Representatives and the President of the Senate proposing any required federal and state statutory changes that would be necessary to accomplish consolidation state and federal wetland permitting programs, and to coordinate with the Florida congressional Delegation on any necessary changes to federal law.

Section 2. Provides an effective date of July 1, 2012.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a 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

None.