HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/CS/HB 503 (CS/CS/CS/SB 716)	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Rulemaking & Regulation Subcommittee; Agriculture & Natural Resources Subcommittee; Patronis and others(Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation; Community Affairs; Bennett and others)	112 **Y's**	0 **N's**
COMPANION BILLS:	CS/CS/CS/SB 716	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/CS/HB 503 passed the House on February 23, 2012, and subsequently passed the Senate on March 8, 2012. The bill creates and amends numerous provisions relating to environmental regulation and permitting, including:

- Prohibiting a local government from conditioning the approval for a development permit, after July 1, 2012, on an applicant obtaining a permit or approval from any other state or federal agency.
- Providing conditions under which the DEP is authorized to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act.
- Expanding the use of internet-based self-certification services for certain exemptions and general permits.
- Exempting injection wells under the State Underground Injection Control Program from permitting under part III of chapter 373, F.S.
- Requiring action on certain permit applications within 60 days of receipt of last timely requested material; precluding state agencies from delaying action because of pending approval from other local, state, or federal agencies.
- Providing for the DEP to obtain an expanded state programmatic general permit from the federal government for certain activities in waters of the U.S. governed by the Clean Water Act and Rivers and Harbors Act.
- Revising the voluntary site cleanup program by raising the priority ranking score from 10 points or less to 29 points or less, and excluding expenditures associated with program deductibles, copayments, and limited contamination assessment reports from state restoration funds available for low scored site initiatives.
- Providing that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.
- Providing expedited permitting for any inland multimodal facility receiving and/or sending cargo to and/or from Florida ports.
- Authorizing certain zones of discharges to groundwater for existing installations.
- Providing that sludge from a waste treatment works is not a solid waste.
- Allowing byproduct from the creation of renewable energy that is recycled to count towards the state recycling goal.
- Exempting new solid waste disposal areas at an already permitted facility from having to be specifically authorized in a permit if monitored by an existing or modified groundwater monitoring plan; extending the duration of permits issued to solid waste management facilities that are designed with a leachate control system and those without a leachate control system if certain conditions are met.
- Providing a general permit for a stormwater management system under 10 acres may be authorized without agency action.
- Expanding the definition of blended gasoline, defines the term 'alternative fuel', and authorizes the sale of unblended fuels for certain uses.
- Providing that holders of valid permits or other authorizations are not required to make payments to authorizing agencies for use of certain extensions granted under chapter 2011-139 Laws of Florida.
- Extending certain ERP and development permits for 2 years after its previously scheduled date of expiration.

The bill appears to have an indeterminate fiscal impact on state and local governments (see fiscal comments below).

The bill was approved by the Governor on May 4, 2012, ch. 2012-205, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Section 1 amends s. 125.022, F.S., and Section 3 amends s. 166.033, F.S., prohibiting a county or municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation

Some in the development community say there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a state or federal agency, regardless of whether the development proposal required state or federal approval.

Effect of Proposed Changes

The bill provides that for any development permit application filed with the county or municipality after July 1, 2012, a county or a municipality is prohibited from requiring as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit. The bill also provides that the issuance of a development permit by a county or municipality does not create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create liability on the part of the county or municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county or municipality can attach such a disclaimer to the issuance of a development permit and can include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development. This provision does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 2. Amends s. 161.041, F.S., providing conditions under which the DEP is authorized to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act.

Current Situation

Section 161.041, F.S., requires that a coastal construction permit be obtained from the DEP to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state. Applications for coastal construction permits are made on terms and conditions as DEP requires by rule.

The DEP can authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including:

- Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;

- Design features of the proposed structures or activities; and
- Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such a permit.

The DEP can also require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects. In addition, the DEP is authorized, as a condition to the granting of a coastal construction permit, to require mitigation, financial or other assurances acceptable to the DEP to assure performance of conditions of a permit, or to enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must be based upon clearly defined scientific principles.

Current law also provides that the permit application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. To obtain additional information that the DEP needs (and is not contained in the original permit application) to make a decision on whether to issue a permit, the DEP will submit a request for additional information (RAI) to the applicant for this information. The DEP is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. However, there is no time limit in current law on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information before deeming an application complete.

In 2011, the Secretary of the DEP established an RAI policy for the permitting process with the following guidelines:

- 1st RAI-will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.
- 2nd RAI-must be signed by the program administrator.
- 3rd RAI-must be signed by the district director or bureau chief. In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.
- 4th RAI or more-will require the DEP Secretary's approval prior to issuing the 4th or more RAIs.

Effect of Proposed Changes

The bill authorizes the DEP to issue a coastal construction permit in advance of the issuance of any incidental take authorization as provided under the Endangered Species Act and its implementing regulations if the permit and authorization include a condition requiring that authorized activities not begin until the incidental take authorization is issued.

Section 4. Amends s. 218.075, F.S., authorizing the Department of Environmental Protection (DEP) and Water Management Districts (WMDs) to reduce or waive permit processing fees for certain entities.

Current Situation

Section 218.075, F.S., provides that the DEP or a WMD can reduce or waive permit processing fees for counties with a population of 50,000 or less until that county exceeds a population of 75,000, and for municipalities with a population of 25,000 or less. 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 certain factors.[1]

[1] Section 218.075, F.S.

Effect of Proposed Change

The bill amends s. 218.075, F.S., to include entities created by a special act or local ordinance or interlocal agreement by counties or municipalities for purposes of the DEP and WMD reduced or waived permit processing fees.

Section 5. Amends s. 373.026, F.S., expanding the use of Internet-based self-certifications.

Current Situation

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March 2007, issued an interim project report titled "Improving Consistency and Predictability in Dock and Marina Permitting."[2] This report concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Recommendation 3, 4, and 5 of the LCIR report suggested that the Department of Environmental Protection (DEP) expand the use of the Internet for permitting and certification purposes.

The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the Army Core of Engineers (COE) State Programmatic General Permit (SPGP IV). In addition, Florida's five water management districts (WMDs) have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's website for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits).[3]

According to the LCIR report, interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from the DEP permit review staff to verify the exempt status of the projects submitted under Self-Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to self-certification.

Effect of Proposed Change

The bill authorizes the DEP and WMDs to expand the use of internet-based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs, providing such expansion is economically feasible. In addition to expanding the use of internet based self certification services for appropriate exemptions and general permits, the DEP and WMDs are directed to identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

[2] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf
[3] See http://www.flwaterpermits.com/

Section 6. Amends s. 373.326, F.S., excluding injection wells authorized under the State Underground Injection Control Program from regulation under Chapter 373, Part III, F.S.

Current Situation

Chapter 373, part III, F.S., regulates the construction, repair, and abandonment of water wells[4] in Florida.[5] The definition of "well" presently could apply to certain injection wells. An injection well is a well into which fluids are being or will be injected, by gravity flow or under pressure.[6] Florida regulates injection wells under the State Underground Injection Control Program,[7] comprising a comprehensive chapter of the Florida Administrative Code[8] adopted primarily under the authority of ss. 403.061 and 403.087, F.S. The state program in turn is approved and accepted by the U.S. Environmental Protection Agency[9] under the authority of the Safe Drinking Water Act.[10]

Effect of Proposed Change

The bill exempts injection wells that are authorized under the State Underground Injection Control Program from the permitting requirements in part III of chapter 373, F.S.

Section 7. Amends s. 373.4141, F.S., reducing the amount of time the Department of Environmental Protection (DEP) or a water management district (WMD) has to approve a permit from 90 to 60 days after receipt of original application or last item of timely requested additional material; providing that a state agency cannot require, as a condition of approval for a environmental resource permit, that an applicant obtain permit approval from local, state or federal agencies without statutory authority.

Current Situation

Under part IV of chapter 373, F.S., the DEP and the WMDs issue environmental resource permits (ERPs) to any person seeking to construct or alter any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works. Section 373.4141, F.S., provides that upon receipt of an application for an ERP, the DEP is required within 30 days to examine the application and request submittal of all additional information the DEP or WMD is permitted by law to require. If the applicant believes any request for additional information (RAI) is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57, F.S. Within 30 days after receipt of such additional information, the DEP or WMD must review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the DEP or WMD for such additional information is not authorized by law or rule, the DEP or WMD, at the applicant's request, shall proceed to process the permit application. A permit must be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

In 2011, the Secretary of the DEP established an RAI policy for the permitting process with the following guidelines:

[4] "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, development, or artificial recharge of groundwater, but such term does not include any well for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying; for inserting media to dispose of oil brines or to repressure oil-bearing or natural gas-bearing formation; for storing petroleum, natural gas, or other products; or for temporary dewatering of subsurface formations for mining, quarrying, or construction purposes. Section 373.03(7), F.S.
[5] Section 373.306, F.S.
[6] Rule 62-528.200(39), Florida Administrative Code (F.A.C.).
[7] Rule 62-528.110(1), F.A.C.
[8] Chapter 62-528, F.A.C.
[9] 40 C.F.R., Part 147, Subpart K.
[10] 42 U.S.C. Part C, ss. 300h – 300h-8.

- 1st RAI-will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.
- 2nd RAI-must be signed by the program administrator.
- 3rd RAI-must be signed by the district director or bureau chief. In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.
- 4th RAI or more-will require the DEP Secretary's approval prior to issuing the 4th or more RAIs.

Effect of Proposed Changes

The bill amends s. 373.4141, F.S., by providing that a permit shall be approved, denied, or subject to a notice of proposed agency action within 60 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application. The bill also provides that a state agency or an agency of the state cannot require, as a condition of approval for an ERP or as an item to complete a pending ERP application, that an applicant obtain a permit or approval from other local, state, or federal agency without explicit statutory authority to require such permit or approval.

Section 8. Amends s. 373.4144, F.S., providing for the expansion of the use of State Programmatic General Permits (SPGP).

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 some activities occurring in or near the nation's wetlands. The regulatory plan is intended to control discharge from dredge or fill materials into 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.

The third permit is a SPGP. This permit 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 projects are also limited. Wetland impacts allowed in general permits usually range from 5,000 square feet to 1 acre. Activities covered by the current SPGP include: 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; maintenance dredging of canals and channels; selected regulatory exemptions; and selected ERP noticed general permits. Monroe County and those counties within the jurisdiction of the Northwest Florida WMD are excluded from the SPGP permit.

Under current law, the Department of Environmental Protection (DEP) works with the COE to streamline the issuance of both the state and federal permits for work in wetlands and other surface waters in Florida. The SPGP process allows the DEP or WMD to grant both the ERP and the federal permit, instead of requiring both agencies to process the application.

The general permit process is supposed to eliminate individual review by the COE and allow certain activities to proceed with little or no delay. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization; however, this is not always the case. Since the general permit authorizes the issuance of federal permits, federal resource agency coordination requirements remain. If a permit impacts a listed species, the permit must be forwarded to the COE for coordination with federal resource agencies.

Effect of Proposed Changes

The bill authorizes the DEP to obtain issuance of an expanded SPGP or a series of regional general permits from the COE for categories of activities in waters of the U.S. governed by the Clean Water Act and Rivers and Harbors Act of 1899, which are similar in nature, which will only cause minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. In appropriate cases, the need for a separate individual approval from the COE would be eliminated.

The bill directs the DEP to not seek issuance of or take any action pursuant to such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under part IV of chapter 373, F.S., and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the COE if the general permit is at least as protective of the environment and natural resources as existing state law under part IV of ch. 373, F.S., and federal law under the Clean Water Act and Rivers and Harbors Act of 1899. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 9. Amends s. 376.3071, F.S., revising program qualifications and providing that program deductibles, copayments, and contamination assessment report requirements do not apply to expenditures under the low-scored initiative within the Inland Protection Trust Fund.

Current Situation

The Legislature created the Inland Protection Trust Fund with the intent that it serve as a repository for funds that will enable the department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products to protect the public health, safety, and welfare and to minimize environmental damage.[11] Section 376.3071(4), F.S., directs the Department of Environmental Protection (DEP) to obligate moneys available in the fund whenever incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the environment or the public health, safety, or welfare to provide for:

- Prompt investigation and assessment of contamination sites.
- Expeditious restoration or replacement of potable water supplies.
- Rehabilitation of contamination sites.
- Maintenance and monitoring of contamination sites.

[11] Section 376.3071, F.S.

- Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities described in this subsection.
- Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.
- Establishment and implementation of the compliance verification program.
- Activities related to removal and replacement of petroleum storage systems.
- Reasonable costs of restoring property as nearly as practicable to the conditions which existed prior to activities associated with contamination assessment or remedial action.
- Repayment of loans to the fund.
- Expenditure of sums from the fund to cover ineligible sites or costs if the department deems it necessary to do so.

Section 376.3071(5), F.S., provides the site selection and cleanup criteria that the department uses in determining the priority ranking for sites seeking state funded rehabilitation. The priority ranking is based upon a scoring system for state-conducted cleanup at petroleum contamination sites based upon factors that include, but need not be limited to:

- The degree to which human health, safety, or welfare may be affected by exposure to the contamination;
- The size of the population or area affected by the contamination;
- The present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting, or will migrate to and substantially affect, a known public or private source of potable water; and
- The effect of the contamination on the environment.

Section 376.3071(11), F.S., authorizes a low-scored site initiative for sites with a priority ranking score of 10 points or less and provides conditions for voluntary participation, including:

- Upon reassessment pursuant to DEP rule, the site retains a priority ranking score of 10 points or less;
- No excessively contaminated soil, as defined by DEP rule, exists onsite as a result of a release of petroleum products;
- A minimum of 6 months of groundwater monitoring indicates that the plume is shrinking or stable;
- The release of petroleum products at the site does not adversely affect adjacent surface waters, including their effects on human health and the environment;
- The area of groundwater containing the petroleum products' chemicals of concern is less than one-quarter acre and is confined to the source property boundaries of the real property on which the discharge originated; and
- Soils onsite that are subject to human exposure found between land surface and 2 feet below land surface meet the soil cleanup target levels established by DEP rule, or human exposure is limited by appropriate institutional or engineering controls.

If these conditions are met, DEP must issue a No Further Action determination, which means minimal contamination exists onsite and that contamination is not a threat to human health or the environment. If no contamination is detected, the DEP may issue a site rehabilitation completion order (SRCO). Sites that are eligible must be voluntarily initiated by the source property owner or responsible party for the contamination. For sites eligible for state restoration funding, the DEP may pre-approve the costs of the site assessment, including 6 months of groundwater monitoring, not to exceed $30,000 for each site. The DEP may not pay the costs associated with the establishment of institutional or engineering

controls. Assessment work must be completed no later than 6 months after the DEP issues its approval.

Effect of Proposed Change

The bill raises the priority ranking score from 10 points or less to 29 points or less, thus expanding the number of sites that will qualify for the low-scored site initiative.

The bill specifies that program deductibles, copayments, and contamination assessment report requirements do not apply to expenditures under the low-scored site initiative within the Inland Protection Trust Fund.

Section 10. Amends s. 376.30715, F.S., providing that the transfer of title for a petroleum contaminated site to a child or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance.

Current Situation

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program to provide state clean-up assistance to property owners of petroleum-contaminated sites that were acquired prior to July 1, 1990. To be eligible for clean up, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. A conveyance of property to a spouse, a surviving spouse in trust or free of trust, or a revocable trust created for the benefit of the settlor, does not disqualify the site from participating in the Innocent Victim Petroleum Storage System Restoration Program. The current property owner of the contaminated site must have acquired the property prior to July 1, 1990.

Effect of Proposed Changes

The bill amends s. 376.30715, F.S., to specify that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance. The bill also specifies that applicants previously denied coverage may reapply.

Section 11. Amends s. 380.0657, F.S., authorizing certain inland multimodal facilities for expedited permitting.

Current Situation

Section 380.0657, F.S., provides that the Department of Environmental Protection (DEP) and the water management districts (WMDs) are required to adopt programs to expedite the processing of wetland resource and environmental resource permits when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(1)(q), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by Division of Strategic Business Development in consultation with Enterprise Florida, Inc.:

- Future growth—Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to businesses that export goods to, or provide services in, international markets and businesses that replace domestic and international imports of goods or services.

- Stability—The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not typically subject to decline during an economic downturn.
- High wage—The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent—The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis, except for businesses in the renewable energy industry.
- Industrial base diversification and strengthening—The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis. Special consideration should also be given to the development of strong industrial clusters that include defense and homeland security businesses.
- Positive economic impact—The industry is expected to have strong positive economic impacts on or benefits to the state or regional economies. Special consideration should be given to industries that facilitate the development of the state as a hub for domestic and global trade and logistics.

Effect of Proposed Changes

The bill amends s. 380.0657, F.S., to include any inland multimodal facility receiving or sending cargo to or from Florida ports as a type of economic development project that should receive expedited processing of water resource and environmental resource permits.

Section 12. Amends s. 403.061, F.S., requiring the Department of Environmental Protection (DEP) to establish reasonable zones of mixing for discharges into specified waters and providing certain discharges do not create liability for site cleanup.

Current Situation

Section 403.061, F.S., authorizes the DEP with the power and the duty to control and prohibit pollution of air and water. The DEP is required to adopt rules to establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and standards for the abatement of excessive and unnecessary noise. The DEP is also authorized to establish reasonable zones of mixing for discharges into waters.

Effect of Proposed Changes

The bill amends s. 403.061, F.S., to specify that for existing installations as defined by Rule 62-520.200(10), F.A.C.,[12] zones of discharge to groundwater are authorized horizontally to a facility's or owner's property boundary and extending vertically to the base of a specifically designated aquifer or aquifers. Such zones of discharge may be modified in accordance with procedures specified in department rules. Exceedance of primary and secondary groundwater standards that occur within a zone of discharge does not create liability pursuant to chapter 403 or 376, F.S., for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

[12] The term "existing installations" is defined in Rule 62-520.200(10), F.A.C., to mean any installation which had filed a complete application for a water discharge permit on or before January 1, 1983, or which submitted a groundwater monitoring plan no later than six months after the date required for that type of installation as listed in Rule 17-4.245, F.A.C. (1983), and a plan was subsequently approved by the department; or which was in fact an installation reasonably expected to release contaminants into the groundwater on or before July 1, 1982, and operated consistently with statutes and rules relating to groundwater discharge in effect at the time of operation.

Section 13. Amends s. 403.087, F.S., revising conditions under which the Department of Environmental Protection (DEP) is authorized to revoke permits.

Current Situation

Section 403.087(1), F.S., specifies that a stationary installation that is reasonably expected to be a source of air or water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and valid permit issued by the DEP, unless exempted by DEP rule.

Section 403.087(7), F.S., specifies that the DEP may revoke permits issued pursuant to this section for the following reasons:

- The permit holder has submitted false or inaccurate information on the application;
- The permit holder has violated law, the DEP's orders, rules, or regulations, or permit conditions;
- The permit holder has failed to submit operational reports or other information required by the DEP's rule or regulation;
- The permit holder has refused lawful inspection under s. 403.091, F.S.[13]

Effect of Proposed Changes

The bill amends s. 403.087(7), F.S., by limiting, in the follow manner, the reasons described above for which the DEP can revoke a permit:

- Specifies that inaccurate or false information must relate directly to the application for the permit;
- Specifies that the failure to submit operational reports and other information required by the DEP only applies to those reports or information which directly relate to the permit and where the applicant has refused to correct or cure such violations when requested to do so; and
- Specifies that the refusal of a lawful inspection only pertains to the facility authorized by the permit.

Section 14. Amends s. 403.1838, F.S., relating to the Small Community Sewer Construction Assistance Act

Current Situation

Section 403.1838, F.S., establishes the Small Community Sewer Construction Assistance Act (Act), and directs the Department of Environmental Protection (DEP) to use funds specifically appropriated to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For the purposes of the Act, the term "financially disadvantaged small community" means a municipality with a population of 7,500 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. The DEP is authorized to provide grants, from funds specifically appropriated for this purpose, to financially disadvantaged small communities for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses. The Act also provides that the rules implementing the grant program must:

[13] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.
- Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.
- Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.
- Establish a system to determine eligibility of grant applications.
- Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.
- Provide for termination of grants when program requirements are not met.

Effect of Proposed Changes

The bill amends s. 403.1838, F.S., by expanding the population ceiling from 7,500 to 10,000 for communities eligible to apply for grants under the Small Community Sewer Construction Assistance Act.

Section 15. Amends s. 403.7045, F.S., providing that sludge from an industrial waste treatment works meets certain exemption requirements.

Current Situation

Section 403.708(1)(a), F.S., states that no person can place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the DEP. Section 403.703, F.S., defines "solid waste" as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Sludge" includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

While virtually all discarded materials are considered solid waste, the following wastes or activities are not regulated under the Act if they are otherwise regulated by the DEP or the federal government pursuant to s. 403.7045, F.S.:

- Nuclear material, except for certain mixtures of hazardous waste and radioactive waste.
- Suspended solids or dissolved materials in domestic sewage effluent or irrigation return flows or other point source discharges.
- Air emissions.
- Drilling fluids and wastes associated with oil and natural gas exploration.
- Recovered materials (defined to include only metal, paper, glass, plastic, textiles, or rubber materials), if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year, if the recovered materials or byproducts are managed so that they do not pose a pollution threat and are not considered hazardous waste, and if the facility managing the materials is registered as required by s. 403.7046, F.S.
- Industrial byproducts, if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within 1 year, and if the recovered materials or byproducts are managed

so that they do not pose a pollution threat, do not cause a significant threat to public health, and are not considered hazardous waste.

Effect of Proposed Change

The bill specifies that sludge from an industrial waste treatment works meeting the exemption requirements for industrial byproducts is not to be considered a solid waste as defined under s. 403.703, F.S.

Section 16. Amends s. 403.706, F.S., adjusting the rate in which waste-to-energy counts towards the state recycling goal.

Current Situation

Section 403.706, F.S., allows renewable energy facilities to count each megawatt hour they produce using solid waste as a fuel, as one ton of recycled material and be applied to the recycling goals, as set forth in this section. As an incentive, a county creating renewable energy from solid waste that implements and maintains a program to recycle at least 50% of municipal solid waste by means other than creating renewable energy, is authorized to count two tons of recycled material for one megawatt hour produced. If waste originates from a different county than where the renewable energy facility resides, the originating county will receive the recycling credit. Any county that has a debt service payment related to its waste to energy facility will receive one ton of recycled materials credit for every ton of solid waste processed at such facility. Byproducts resulting from the creation of renewable energy will not count as waste.

Effect of Proposed Changes

The bill amends s. 403.706, F.S., to adjust the rate in which waste-to-energy counts towards the sate recycling goal from 2 tons to 1.25 tons. The bill also provides that any byproduct resulting from the creation of renewable energy that is recycled must count towards the county recycling goals.

Section 17. Amends s. 403.707, F.S., requiring the DEP to allow waste-to-energy facilities to maximize acceptance and processing of nonhazardous solid and liquid waste; deleting the public nuisance condition for issuing permits for a solid waste management facility; exempting new solid waste disposal areas at an already permitted facility from having to be specifically authorized in a permit if monitored by an existing or modified monitoring plan; extending the duration of all permits issued to solid waste management facilities that meet specified criteria.

Current Situation

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without valid permits issued by the Department of Environmental Protection (DEP). Permits for solid waste management facilities are subject to all requirements applicable generally to permits for potential sources of air or water pollution.[14] A permit for a source of water pollution must be renewed every 10 years.[15] DEP is required to set applicable permit fees and review those fees at least every 5 years, increasing them (within the fee caps set in statute) if necessary according to the Consumer Price Index or similar inflation indicator.[16]

Permits under s. 403.707, F.S., are not required for the following, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations or orders:

[14] Section 403.707(3), F.S., incorporates the permitting requirements of ss. 403.087 and 403.088, F.S.
[15] Section 403.087(1), F.S.
[16] Section 403.087(6)(a), F.S.

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under chapter 403, F.S., or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.

Effect of Proposed Changes

The bill provides that for the purpose of permitting under chapter 403, F.S., the DEP must allow waste-to-energy facilities to maximize acceptance and processing of nonhazardous solid and liquid waste.

The bill deletes the public nuisance requirements in s. 403.707(2), F.S., which provides that a permit is not required if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders.

The bill specifies that if a facility has a permit authorizing disposal activity, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

The bill extends to 20 years the term of a permit issued for a solid waste management facility designed with a leachate control system that meets the DEP's requirements unless the applicant requests a shorter term. For these facilities, the statutory limitations on reviewing and adjusting fees are excluded and existing permit fees for qualifying solid waste management facilities must be prorated to the permit term authorized under current law. This provision applies to all qualifying solid waste management facilities that apply for an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012. Permits for solid waste facilities without leachate control systems meeting DEP requirements shall be renewed every 10 years, unless a shorter time is requested by the applicant, upon meeting additional statutory requirements.

The bill provides that a permit, including a general permit, but not including registration, issued to a solid waste management facility that does not have a leachate control system must be renewed for 10 years, unless the applicant requests a shorter term. The following conditions must be met:

- The applicant has conducted the activity at the same site for at least four and a half years before the permit application is received.
- At the time of applying for the renewal permit:
    1. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the DEP for violation of an applicable law or rule
    2. The DEP has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards, or the applicant is completing corrective actions in accordance with applicable DEP rules.
    3. The applicant must be in compliance with the applicable financial assurance requirements.

The bill authorizes the DEP to adopt rules to administer these provisions. However, the DEP is not required to submit rules to the Environmental Regulation Commission for approval. Permit fee caps for solid waste management facilities must be prorated to reflect the extended permit term.

The bill authorizes the DEP to require owners or operators of solid waste management facilities to provide financial assurances for the cost of completing corrective actions ordered by the agency.

Section 18. Amends s. 403.7125, F.S., authorizing DEP by rule to require financial assurance for the cost of complying with corrective action ordered by the Agency.

Current Situation

Owners and operators of landfills are jointly and severally liable for the improper operation and resulting closure of the facility.[17] To offset potential liabilities where the landfill is owned or operated by a local, state, or federal governmental entity, the owner or operator must establish and collect a fee, surcharge, or other revenue source in an amount necessary to ensure adequate funds are available in the event the landfill must be closed. The funds collected must be deposited in an interest-bearing escrow account maintained by the owner or operator.[18] Alternatively, owners or operators may provide DEP with a financial assurance of funds for the closure of the facility, in the form of a surety bond, certificates of deposit, or other specified financial instruments.[19]

Effect of Proposed Change

The bill creates a new subsection (5) mandating that DEP adopt a rule requiring owners/operators of solid waste management facilities taking waste after October 9, 1993, to provide financial assurance for necessary costs if DEP orders the facility take corrective action for violations of water quality standards. The assurance may be of the same type as listed in existing subsection (3).

Section 19. Amends s. 403.814, F.S., providing for the issuance of general permits for certain stormwater management systems without agency action of the Department of Environmental Protection (DEP) or a water management district (WMD).

Current Situation

Currently, the DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP.[20] Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes.
- Installation and repair of riprap at the base of existing seawalls.
- Installation of culverts associated with stormwater discharge facilities.
- Construction and modification of certain utility and public roadway construction activities.

Effect of Proposed Changes

The bill amends current law to require the DEP to grant a general permit for the construction, alteration, and maintenance of stormwater water management systems serving a total project area of up to 10 acres. When the stormwater management system is designed, operated and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S., there will be a rebuttable presumption that the discharge for such systems will comply with state water quality standards. The

[17] Section 403.7125(1), F.S.
[18] Section 403.7125(2), F.S.
[19] Section 403.7125(3), F.S.
[20] Section 403.814(1), F.S.

construction of such a system can proceed without an agency action by the DEP or WMD if within 30 days of commencement of construction, an electronic self-certification is submitted to the DEP or WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area is less than 10 acres;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;
- The project is not part of a larger common plan, development or sale; and
- The project does not:
    - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
    - Cause adverse impacts to existing surface water storage and conveyance capabilities;
    - Cause a violation of state water quality standards; or
    - Cause an adverse impact to the maintenance of surface or groundwater levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.; and

Section 20. Amends s. 403.853, F.S., adding groundwater usage and services to religious institutions to the definition of transient noncommunity water systems for the purpose of obtaining a sanitary survey related to drinking water standards.

Current Situation

Under the Federal Safe Drinking Water Act, the Environmental Protection Agency (EPA) has promulgated national primary drinking water regulation for contaminants that may adversely affect human health, if the contaminant is likely to occur in public water systems often and at levels of public health concern, and if EPA's Administrator decides that regulating the contaminant will meaningfully reduce health risks for those served by public water systems. The federal act also authorizes states to assume the implementation and enforcement of the federal act. In 1977, Florida adopted the Florida Safe Drinking Water Act (FSDWA), which is jointly administered by the Florida Department of Environmental Protection (DEP), in a lead-agency role, and the Florida Department of Health (DOH), in a supportive role with specific duties and responsibilities of its own. The DOH and its agents have general supervision and control over all private water systems and public water systems not covered or included in the FSDWA. Every county health department in Florida has a minimum degree of mandatory participation in the FSDWA. This minimal level of participation is supportive in nature because most of the county health departments do not have sufficient staff or capability to be fully responsible for the program. In those counties where the county health department is without adequate capability, the appropriate DEP office is heavily involved in administering all aspects of the program.

Under the FSDWA, a regulated "public water system" is a system that provides water for human consumption through pipes or other constructed conveyances, and such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.[21] The only exception is for those systems which, in addition to meeting the criteria for being a public water system, also meet all four additional criteria which form the basis for exemption.[22]

Public water systems are either community or noncommunity. A community water system serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.[23] A noncommunity water system is either a nontransient noncommunity system or a

[21] Section 403.852(2), F.S.
[22] Section 403.853(2), F.S.
[23] Section 403.852(3), F.S.

transient noncommunity water system.[24] A nontransient noncommunity water system serves at least 25 of the same persons over 6 months per year.[25] A transient noncommunity water system has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year, but does not regularly serve 25 or more of the same persons for more than 6 months per year.[26]

Under the FSDWA, the DEP is required to adopt and enforce state primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time[27] and state secondary drinking water regulations patterned after the national drinking water regulations.[28] The DEP also is to adopt and enforce primary and secondary drinking water regulations for nontransient noncommunity water systems and transient noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time, except that nontransient, noncommunity systems shall monitor and comply with additional primary drinking water regulations as determined by the DEP.[29] A "primary drinking water regulation" is a rule that applies to public water systems; specifies contaminants that may have an adverse effect on the health of the public; specifies a maximum contaminant level for each contaminant or a treatment technique to reduce the level of the contaminant; and contains criteria and procedures to assure a supply of drinking water that dependably complies with maximum contaminant levels, including monitoring and inspection procedures.[30] A "secondary drinking water regulation" is a rule that applies to public water systems and specifies maximum contaminant levels, and such regulations may vary according to geographic and other circumstances.[31] Upon the request of the owner or operator of a transient noncommunity water system serving businesses, other than restaurants or other public food service establishments, and using groundwater as a source of supply, the DEP, or a local county health department designated by the DEP, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to DEP criteria, the DEP shall reduce the requirements of such owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis.

Effect of Proposed Change

The bill specifies that the DEP, or a local county health department designated by the DEP, is authorized at the request of the owner or operator of a transient noncommunity water systems using groundwater as a source of supply and serving religious institutions (except those with school or day care services) to perform a sanitary survey, and upon receipt of satisfactory results, the DEP must reduce the monitoring and reporting requirements.

Section 21. Amends s. 403.973, F.S., providing for the creation of regional action teams for expedited permitting for businesses that will house one or more other businesses or operations that would collectively create at least 50 jobs and clarifying the process and use of Memorandum of Agreement (MOA).

Current Situation

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

[24] Section 403.852(4), F.S.
[25] Section 403.852(17), F.S.
[26] Section 403.852(18), F.S.
[27] Section 403.853(1)(a) 1, F.S.
[28] Section 403.853(1)(a) 2, F.S.
[29] Section 403.853(1)(b), F.S.
[30] Section 403.852(12), F.S.
[31] Section 403.852(13), F.S.

Under s. 403.973, F.S., the secretary of the Department of Environmental Protection (DEP) must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by:

- Businesses creating at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county have a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memoranda of Agreement (MOA) with the secretary of DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the Department of Transportation; Department of Agriculture & Consumer Services; the Florida Fish & Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

The MOA may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are party to the MOA. A MOA must, to the extent feasible, provide for proceedings and hearings otherwise held separately by the parties of the MOA to be combined into one proceeding or held jointly and at one location. Such waivers or modifications are not available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

The MOA guidelines may include, but are not limited to, the following:

- A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements.
- Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency.
- A mandatory pre-application review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review.
- The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies.
- Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184, F.S., from appealing or participating in this

expedited plan amendment process and any review or appeals of decisions made under this paragraph.
- Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order. In those proceedings where the more than one state agency action is challenged, the governor shall issue the final order within 45 working days of receipt of the administrative law judge's recommended order.

Expedited permitting provides a special assistance process for Rural Economic Development Initiative (REDI) counties. The Department of Economic Opportunity, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Effect of Proposed Changes

The bill revises the structure and process for expedited permitting of targeted industries. The bill adds commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs to activities qualifying for expedited review; requires regional teams to be established through the execution of a project-specific MOA; and specifies that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 22. Amends s. 526.203, F.S., expanding the state Renewable Fuel Standard to include other alternative fuel and clarifying that the state Renewable Fuel Standard does not prohibit the sale of unblended fuel for exempted purposes.

Current Situation

In FY 2010-2011, Florida consumed approximately 8.2 billion gallons of gasoline,[32] and is the third largest consumer of gasoline in the nation.[33] From January through August of 2011, approximately 2.65 billion gallons of unblended gasoline and approximately 7 billion gallons of blended gasoline (9 to 10 percent ethanol) were sold in the state.[34] [35] According to the Florida Biofuels Association, there are several commercial advanced biofuel ethanol projects in development that encompass a total investment in excess of $1 billion in capital.[36] The state has invested approximately $39 million in grant awards for the development of ethanol since 2006.[37]

Federal Renewable Fuel Standard

[32] Fuel Tax Distributions spreadsheet found on Department of Revenue website: http://dor.myflorida.com/dor/taxes/fuel.
[33] Texas and California lead Florida in amount of gasoline consumed.
[34] By terminal suppliers, importers, blenders, and wholesalers.
[35] Department of Revenue correspondence, December 2, 2011.
[36] These include, but are not limited to: INEOS – New Planet BioEnergy; Highlands EnviroFuels, LLC; Vercipia Biofuels/BP Biofuels; Algenol; Petro Algae; LS9**;** and Southeast Renewable Fuels, LLC.
[37] Correspondence with the Department of Agriculture and Consumer Services, December 5, 2011.

The federal government requires the U.S. Environmental Protection Agency (EPA) to develop and implement regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS). The RFS program was created under the Energy Policy Act of 2005, which established the first renewable fuel volume mandate in the United States. Originally, the program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.[38] However, the federal Energy Independence and Security Act of 2007, signed into law on December 19, 2007, set the renewable fuel standard minimum annual goal for renewable fuel use at 9 billion gallons in 2008 and 36 billion gallons by 2022.[39]

Florida Renewable Fuel Standard Act (Act)

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (ss. 526.201-526.207, F.S.), which provided findings that "it is vital to the public interest and to the state's economy to establish a market and the necessary infrastructure for renewable fuels in this state by requiring that all gasoline offered for sale in this state include a percentage of agriculturally derived, denatured ethanol." Further, "that the use of renewable fuel reduces greenhouse gas emissions and dependence on imports of foreign oil, improves the health and quality of life for Floridians, and stimulates economic development and the creation of a sustainable industry that combines agricultural production with state-of-the-art technology."[40]

Based on these findings, the Legislature established the standard that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler shall be blended gasoline.[41] The act does not address retail sales of gasoline.

"Blended gasoline" is defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume, that meets the specifications as adopted by the Department of Agriculture and Consumer Services. The fuel ethanol portion may be derived from any agricultural source. "Fuel ethanol" means an anhydrous denatured alcohol produced by the conversion of carbohydrates that meets the specifications as adopted by the department.[42] The act does not include other types of renewable fuel in the standard.

The act provides specific exemptions from the standard.[43] They include the following:

- Fuel used in aircraft;
- Fuel sold for use in boats and similar watercraft;
- Fuel sold to a blender;
- Fuel sold for use in collector vehicles or vehicles eligible to be licensed as collector vehicles, off-road vehicles, motorcycles, or small engines;
- Fuel unable to comply due to requirements of the United States Environmental Protection Agency;
- Fuel transferred between terminals
- Fuel exported from the state in accordance with s. 206.052, F.S.;
- Fuel qualifying for any exemption in accordance with Chapter 206, F.S.;
- Fuel for a railroad locomotive; and
- Fuel for equipment, including vehicle or vessel, covered by a warranty that would be voided, if explicitly stated in writing by the vehicle or vessel manufacturer, if the equipment were to be operated using fuel meeting the requirements of the act.

[38] See the EPA website: http://www.epa.gov/otaq/fuels/renewablefuels.
[39] *EPA Proposes 2012 Renewable Fuel Standards and 2013 Biomass-Based Diesel Volume,* EPA-420-F-11-018, Office of Transportation and Air Quality, June 2011, p. 1.
[40] Section 526.202, F.S.
[41] Section 526.203(2), F.S.
[42] Section 526.203(1), F.S.
[43] Section 526.203(3), F.S.

Effect of Proposed Changes

The bill expands the renewable fuel standard by including "other alternative fuel" in the definition of "blended gasoline" and "unblended gasoline". "Alternative fuel" is defined in the bill to mean "a fuel produced from biomass, as defined in s. 366.91, F.S., that is used to replace or reduce the quantity of fossil fuel present in petroleum fuel that meets the specifications as adopted by the department." "Biomass" is defined in s. 366.91, F.S., to mean a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.

The bill, in effect, may capture future renewable products, such as biobutanol,[44] that can be compatibly blended with gasoline and requires that the "other alternative fuel" meet the specifications as adopted by the Department of Agriculture and Consumer Services. This section of law applies to gasoline only. Therefore, the expansion does not include biodiesel or biomass-based diesel, which cannot be blended with gasoline.

The bill clarifies that the state Renewable Fuel Standard does not prohibit the sale of unblended fuel for exempted uses. [See above list of exemptions.] Although these exemptions are enumerated in statute, there has been confusion over whether the law prevents retailers from selling unblended gas. The law does not address retailers. This addition to the section is provided to add clarification that unblended gasoline can be sold for exempted purposes, without penalty.

Section 23. Providing that holders of valid permits or other authorizations are not required to make payments to authorizing agencies for use of certain extensions granted under chapter 2011-139 Laws of Florida.

Current Situation

Sections 73 and 79 of chapter 2011-139, Laws of Florida, provides that any building permit and any permit issued by the DEP or by a water management district, pursuant to part IV of chapter 373, F.S., which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for a period of two years after its previously scheduled date of expiration. The extension includes any local government-issued development order or building permit including certificates of levels of service.

The extension does not apply to:

- A permit issued by the Army Corps of Engineers.
- A permit held by an owner or operator determined to be in significant noncompliance with the conditions of the permit as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.
- A permit if granted an extension that would delay or prevent compliance with a court order.

Effect of Proposed Changes

The bill provides that a holder of valid permits or other authorizations are not required to make payments to authorizing agencies for use of certain extensions granted under section 73 or 79 of chapter 2011-139, Laws of Florida. The bill also provides that this provision applies retroactively and is effective as of June 2, 2011.

[44] Biobutanol is a four-carbon alcohol derived mainly from the fermentation of the sugars in organic feedstocks. (http://alternativefuels.about.com/od/thedifferenttypes/a/biobutanol.htm)

Section 24. Extending certain ERP and development permits for 2 years after its previously scheduled date of expiration.

Current Situation

In 2009,[45] the Legislature provided a retroactive 2-year extension and renewal for permits that at the time had an expiration date of September 1, 2008, through January 1, 2012, from the date of expiration for:

- Any permit issued by the Department of Environmental Protection or a Water Management District pursuant to part IV of ch. 373, F.S.;
- Any local government-issued development order or building permit; and
- Buildout dates, including a buildout date extension previously granted under section 380.016(19)(c), F.S.

Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The 2-year extensions did not apply to a permit or authorization:

- Under any programmatic or regional general permit issued by the Army Corps of Engineers;
- Held by an owner or operator determined to be in significant noncompliance with the conditions of the permit; and
- That would delay or prevent compliance with a court order if extended.

Permits extended continued to be governed by the rules in effect at the time the permit was issued, except when it could be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

The Legislature in 2010[46] reauthorized the 2-year extensions granted in 2009 because the underlying law was being challenged in court.[47]

In 2010,[48] the Legislature also provided another retroactive 2-year extension and renewal from the date of expiration for permits that at the time had an expiration date of September 1, 2008, through January 1, 2012. The types of permits eligible for the extension were identical to the types eligible in 2009. The 2-year extension granted in 2010 was in addition to the 2-year extension granted in 2009. Those with valid permits or other authorization that were eligible for the 2-year extension were required to notify the authorizing agency in writing by December 31, 2010, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

[45] S. 14, ch. 2009-96, L.O.F.
[46] S. 47, ch. 2010-147, L.O.F.
[47] Because ch. 2009-96, L.O.F., was involved in pending litigation, s*ee City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010), the Legislature in 2010 reauthorized the permit extensions granted in ch. 2009-96, L.O.F. in order to protect those who had relied on the extensions.
[48] S. 46, ch. 2010-147, L.O.F.

Because the 2-year extensions granted in 2009 and 2010 only applied to those permits and authorizations that had expiration dates of September 1, 2008 through January 1, 2012, there were certain permits and authorizations that were extended beyond the September 1, 2008, to January 1, 2012, window by the 2009 2-year extension, and therefore were unable to take advantage of the 2010 2-year extension.

In 2011, HB 7207 was approved by the governor. The bill extended and renewed any permit or any authorization that was extended by ch. 2009-96, s. 14, Laws of Florida, as reauthorized by ch. 2010-147, s. 47, Laws of Florida, for a period of two additional years with conditions from its previously scheduled expiration date. The extension was in addition to the extension granted by ch. 2009-96, s. 14, Laws of Florida, as reauthorized by ch. 2010-147, s. 47, Laws of Florida. The holder of a valid permit or authorization eligible for the 2-year extension must notify the authorizing agency in writing by December 31, 2011, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization. Permits that were extended by a total of 4 years pursuant to ch. 2009-96, s. 14, Laws of Florida, as reauthorized by ch. 2010-147, s. 47, Laws of Florida, and ch. 2010-147, s. 46, Laws of Florida, were not eligible for this extension.

The bill also, in recognition of the 2011 real estate market conditions, extended and renewed for a period of 2-years with conditions any building permit, and any permit issued by DEP or by a water management district pursuant to part IV of ch. 373, F.S., which had an expiration date from January 1, 2012, through January 1, 2014. This extension included any local government-issued development order or building permit including certificates of levels-of-service and is in addition to any existing permit extension. Development of Regional Impact development order extensions were not eligible for this extension and any permit that has received a cumulative extension of 4-years pursuant to ch. 2009-96, s. 14, Laws of Florida, as reauthorized by ch. 2010-147, s. 47, Laws of Florida; ch. 2010-147, s. 46, Laws of Florida; or another extension granted by this bill were not eligible for this 2-year extension.

Effect of Proposed Changes

The bill provides that any building permit, and any ERP permit issued by the DEP or a WMD, which has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for two years after its previously scheduled date of expiration. This extension includes any local government-issued development order or building permit including certificates of levels of service. This does not prohibit conversion from the construction phase to the operation phase upon completion of construction. Any permit extensions granted pursuant to this section, section 14 of chapter 2009-96, L.O.F. (as reauthorized by section 47 of chapter 2010-147, L.O.F.); section 46 of chapter 2012-147, L.O.F.; or section 74 or section 79 of chapter 2011-139, L.O.F., must not exceed 4 years in total.

The dates for commencement and completion for any required mitigation associated with a phased construction project are also extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

The holder of a valid permit or other authorization that is eligible for the 2-year extension is required to notify the authorizing agency in writing by December 31, 2012, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The extension does not apply to the following:

- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.
- A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

- A permit or other authorization, if granted an extension that would delay or prevent compliance with a court order.

Permits extended under this section of the bill will continue to be governed by the rules in effect at the time the permit was issued, except when it could be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit which lessens the environmental impact, except that any such modification does not extend the time limit beyond 2 additional years.

The provisions in this section of the bill do not impair the authority of a county or municipality to require the owner of a property that has notified the county or municipality of the owner's intent to receive the extension of time granted to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

Section 25. Provides an effective date.

This act shall take effect on July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Environmental Protection provided that there will be an unknown insignificant impact to the Permit Fee Trust Fund associated with reducing or waiving permit processing fees for entities created by special acts, local ordinances, and interlocal agreements by low-population counties based on the low number of such entities.

The provision in the bill making retroactive the prohibition that holders of extended permits make payments on such permits, which includes development order or building permit, could result in a negative impact on local government revenues if they are required to return any such payments they may have required to have been paid.

2. Expenditures:

Local governments that operate solid waste management facilities and opt for longer-term permits would see permit fees increased. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-year permit; if the bill becomes law, the permit fee will increase to a maximum of $40,000 for a 20-year permit. However, the permit would not have to be renewed for 20 years, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately 4-fold. In the long run such local governments should see significant cost savings. Of course, if the local government elects to continue to renew permits on a 5-year cycle, permit fees would not increase.

The Department of Environmental Protection stated that expanding the eligibility criteria for the Innocent Victim Petroleum Storage System Restoration will likely result in more sites being eligible to participate in the state-funded cleanup program. The number of additional sites that may be eligible is unknown. The cost of each such cleanup averages $380,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill expands the population ceiling from 7,000 to 10,000 for communities that are eligible to apply for grants under the Small Community Sewer Construction Assistance Act, which will allow for more municipalities to receive grants for sewage facilities.

The Department of Environmental Protection provided the following:

- Local governments that have their environmental regulatory programs preempted will notice a cost savings from program elimination.
- When a local government is a permit applicant, increased availability of Internet based self certifications and general permits should reduce permitting costs.
- When a local government is an ERP permit applicant, shortened permitting time frames might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for time frame waivers.
- Local governments that operate solid waste management facilities would have permit fees reduced to one-quarter of current costs. Local governments that operate landfills that have caused environmental impacts would be relieved of the costs of addressing these impacts.
- Entities created by special acts, local ordinances or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

The provision in the bill making retroactive the prohibition that holders of extended permits make payments on such permits could result in a negative impact on local government revenues if local governments are required to return any such payments they may have required to have been paid.

2. Expenditures:

Local governments providing drinking water to their citizens will likely incur additional costs to remove contaminants from drinking water sources if those responsible for discharging the contaminants are not liable for those costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Producers of other types of renewable fuel (other than ethanol) may see an increase in demand for renewable fuel products and may experience facilitated lending as a result of the expanded Renewable Fuel Standard.

The Department of Environmental Protection provided the following private sector benefits:

- Increased availability of internet-based self-certifications and general permits should reduce permitting costs.
- Shortened ERP permitting time frames might reduce costs to obtain a permit if overall permit times are actually reduced, and the provisions do not result in additional permit denials or the need for time frame waivers.
- Owners or operators of transient noncommunity water systems using groundwater as a source of supply and serving religious institutions may see reduced costs from reduced monitoring and reporting requirements.

The provision in the bill making retroactive the prohibition that holders of extended permits make payments on such permits could result in a positive fiscal impact on the private sector if the DEP or local governments are required to return any such payments they may have been required to pay.

D. FISCAL COMMENTS:

The DEP will be required to adopt rules to implement the changes in permit duration and fees. This will require minor expenditures for publication of rulemaking notices.

Extending the length of some solid waste permits to 10 years and 20 years may, in the long run, result in reductions in the amount of time dedicated to permit review.