

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/CS/SB 602

INTRODUCER: Budget Subcommittee on General Government Appropriations; Transportation and Community Affairs Committees and Senator Storms

SUBJECT: Stormwater Management Permits

DATE: February 28, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	Favorable
2.	<u>Uchino</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Looke</u>	<u>Buford</u>	<u>TR</u>	Fav/CS
4.	<u>Pigott</u>	<u>DeLoach</u>	<u>BGA</u>	Fav/CS
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill expands eligibility for entities created by special act, local ordinance, or interlocal agreement of counties or municipalities that are entitled to a permit processing fee waiver or reduction. It directs the Department of Environmental Protection (DEP) to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The bill requires that the water management districts (WMDs), in consultation with the DEP, establish an urban redevelopment conceptual permitting program and specifies that urban redevelopment projects may qualify for a noticed general permit. Finally, the bill requires areas covered by a conceptual permit to adhere to federally delegated pollution abatement programs administered by the state.

This bill substantially amends sections 218.075 and 373.118 and creates section 373.4131 of the Florida Statutes.

II. Present Situation:

Waiver or Reduction of Permit Fees

The DEP and the WMDs are authorized to reduce or waive permit processing fees for certain specified small counties and municipalities with a population of 25,000 or less, or any county or municipality not included within a metropolitan statistical area.¹ Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

- Per capita taxable value is less than the statewide average for the current fiscal year;
- Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
- Any condition specified in s. 218.503(1), F.S., which results in the county or municipality being in a state of financial emergency;
- Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or
- A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

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

Airside Stormwater Management

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

In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular.² The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. In 1998, the DOT, the DEP and three WMDs outlined a study to evaluate airport runway, taxiway and apron stormwater quality. Another joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff

¹ See U.S. Census Bureau, *Metropolitan and Micropolitan*, <http://www.census.gov/population/www/metroareas/metrodef.html> (last visited Nov. 30, 2011).

² U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdf1c5aa1083986256c690074ebab/\\$FILE/150-5200-33.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf) (last visited Nov. 11, 2011).

and how best management practices can help airports meet federal and state water quality standards.

A secondary phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.³

The Community Redevelopment Act of 1969⁴

The Community Redevelopment Act of 1969 was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community redevelopment.⁵ It allows counties or municipalities to retain tax increment revenues from certain community taxing districts to fund redevelopment within a designated Community Redevelopment Area (CRA). To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a CRA, create a community redevelopment plan, and establish a trust fund to receive the tax increment revenues.⁶

The Growth Policy Act of 1999

The Growth Policy Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers.⁷ The Act defines "urban infill and redevelopment area" as an area or areas where:

- Public services such as water and wastewater, transportation, schools, and recreation are already available or are scheduled to be provided within five years.
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress.
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government.
- More than 50 percent of the area is within a quarter of a mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation.
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment area or similar designation.⁸

³ See generally, Email from Eric H. Livingston, Program Administrator, NPDES Stormwater Section, Dep't of Environmental Protection, to analyst (Mar. 21, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁴ See ch. 163, Part III, F.S.

⁵ Section 163.353, F.S.

⁶ See *supra* note 4.

⁷ See ss. 163.2511 through 163.2523, F.S.

⁸ Section 163.2514(2), F.S.

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

Urban Stormwater Management

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

- Compaction of soil,
- Addition of impervious surfaces such as roads and parking lots,
- Alteration of natural landscape features such as natural depressional areas that hold water, floodplains and wetlands,
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation, and
- Pollutant loading of receiving water bodies from stormwater discharge.⁹

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems and loss of habitat.¹⁰

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment and design criteria for best management practices (BMPs) that will achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet water quality standards.¹¹ The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids¹² by 80 percent, or by 95 percent for Outstanding Florida Waters (OFWs).¹³

In 1990 the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).¹⁴ This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the

⁹ Florida Dep't of Environmental Protection, *State Stormwater Treatment Rule Development Background*, <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited Nov. 30, 2011).

¹⁰ *Id.*

¹¹ *Id.*

¹² Total Suspended Solid is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

¹³ Rule 62-302.700, F.A.C., provides that an OFW is a water body designated worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.

¹⁴ See *supra* note 9. See also ch. 62-40, F.A.C.

WMDs and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post development stormwater pollutant loading of pollutants “that cause or contribute to violations of water quality standards.”¹⁵

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.¹⁶ Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of part IV of ch. 373, F.S.

Delegated Federal Permitting Programs in Florida

The total maximum daily load (TMDL) program is administered by the DEP under a delegated authority by the U.S. Environmental Protection Agency (EPA) contained in the federal Clean Water Act (CWA) and pursuant to s. 403.067(7), F.S.¹⁷ A TMDL is the maximum allowable pollutant a water body can absorb and still maintain its intended purpose, e.g., fishable/swimmable. Under the CWA, TMDLs must be developed for all water bodies that are not meeting their classification standards and are deemed impaired. There can be multiple TMDLs for one water body if there are multiple pollutants contributing to water quality standards violations.¹⁸

Once a TMDL is established for an impaired water body, the DEP creates a basin management action plan (BMAP) in cooperation with local stakeholders.¹⁹ BMAPs are the blueprints used to create restoration and recovery strategies for an impaired water body. Activities, permitted and otherwise, contributing to pollutant loading of an impaired water body are assessed in order to develop strategies to reduce loading. These strategies may include reducing permit limits, developing BMPs and creating or revising conservation programs. Local stakeholder input and commitment to the BMAP are crucial to ensure recovery of an impaired water body.²⁰

In addition to the TMDL and BMAP programs, the DEP also administers the National Pollutant Discharge Elimination System (NPDES) permitting program under delegated authority from the EPA and pursuant to s. 403.0885, F.S. The NPDES permitting program regulates point source discharges of stormwater into surface waters of the state from certain municipal, industrial and construction activities.²¹

¹⁵ See *supra* note 9.

¹⁶ See ch. 373, Part IV, F.S. See also Florida Dep’t of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited Nov. 30, 2011).

¹⁷ 33 U.S.C. s. 1342. See also s. 303(d) of the federal Clean Water Act.

¹⁸ Florida Dep’t of Environmental Protection, *The Total Maximum Daily Load Program – Overview* (Jan. 20, 2003), available at http://www.dep.state.fl.us/water/tmdl/docs/TMDL_Program_Overview.pdf (last visited Dec. 1, 2011).

¹⁹ Florida Dep’t of Environmental Protection, *Total Maximum Daily Loads*, <http://www.dep.state.fl.us/water/tmdl/> (last visited Dec. 1, 2011).

²⁰ Florida Dep’t of Environmental Protection, *Watershed Management*, <http://www.dep.state.fl.us/water/watersheds/bmap.htm> (last visited Dec. 1, 2011).

²¹ Florida Dep’t of Environmental Protection, *NPDES Stormwater Program*, <http://www.dep.state.fl.us/water/stormwater/npdes/> (last visited Jan. 13, 2012).

III. Effect of Proposed Changes:

Section 1 amends s. 218.075, F.S., allowing an entity created by special act, local ordinance or interlocal agreement of counties or municipalities that are entitled to a permit processing fee waiver or reduction to also receive a waiver or reduction.

Section 2 amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airports. The permit applies statewide and may be administered by any WMD or delegated local government. The bill specifies that no additional rulemaking is required and the rules are not subject to any special rulemaking requirements related to small business.

Section 3 creates s. 373.4131, F.S., addressing conceptual permits for urban redevelopment projects. The bill allows counties and municipalities creating urban redevelopment areas or urban infill and redevelopment areas to adopt stormwater adaptive management plans that address stormwater quality and quantity discharging from those areas. A local government that adopts a plan may obtain a conceptual permit from a WMD or the DEP on the basis of its stormwater adaptive management plan.

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

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

The bill directs that urban redevelopment projects that meet all requirements qualify for a noticed general permit for construction and operation of the permitted system.

Finally, the bill requires areas covered by a conceptual permit to adhere to federally delegated pollution abatement programs administered by the state pursuant to ss. 403.0885 and 403.067(7), F.S. These sections address the NPDES permitting program, and the total maximum daily loads and basin management action plan programs, respectively.

Section 4 requires that a challenge to a consolidated environmental resource permit or associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with deepwater ports be conducted within 30 days after a party files a motion for summary hearing. Also requires the DEP to issue the final order within 45 working days after receipt of the administrative law judge's recommended order.

Section 5 provides an effective date of July 1, 2012 except where otherwise expressly stated.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An entity created by special act, local ordinance or interlocal agreement of a county or municipality may receive a reduction or waiver of permit processing fees. The DEP's fee revenues from such permits may be reduced; however, the impact is indeterminate.

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:**

- Requires that a challenge to a consolidated environmental resource permit or associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with deepwater ports be conducted within 30 days after a party files a motion for summary hearing; and
- Requires the DEP to issue the final order within 45 working days after receipt of the administrative law judge's recommended order.

CS/CS by Transportation on January 26, 2012:

Allows conceptual permits for urban redevelopment projects to be issued for periods longer than 20 years and allows for renewal of such permits.

CS by Community Affairs on January 12, 2012:

- Allows a county or municipality that has created a community redevelopment area or an urban infill and redevelopment area to adopt a stormwater adaptive management plan;
- Authorizes the WMDs, in consultation with the DEP, to establish a conceptual permit;
- Deletes the definition for "stormwater management plan";
- Removes the renewal option for a 20-year conceptual permit;
- Specifies that areas meeting the criteria in the conceptual permit qualify for a noticed general permit;
- Clarifies that the noticed general permit authorizes construction and operation for the duration of the conceptual permit; and
- Requires areas covered by a conceptual permit adhere to NPDES, TMDL and BMAP programs.

B. Amendments:

None.