

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SPB 7184

INTRODUCER: For consideration by the Environmental Preservation and Conservation Committee

SUBJECT: Environmental Rules

DATE: January 19, 2012

REVISED: _____

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

I. Summary:

The bill ratifies amendments to rules 62-302 and 62-303 of the Florida Administrative Code (F.A.C.). The bill clarifies that it serves no other purpose than ratification of the submitted rules. It prohibits codification in the Florida Statutes but allows publication in the F.A.C. or Florida Administrative Weekly (F.A.W.), as appropriate.

II. Present Situation:

Legislative Ratification of Agency Rules

Section 120.541, F.S., requires agencies to prepare a statement of estimated regulatory costs (SERC). Changes to the law contained in ch. 2010-279, Laws of Florida, require agencies to include an analysis of a rule's fiscal and adverse impacts over the first five years in the SERC. If the proposed rule change is estimated to cost \$1 million in the aggregate within the first five years of implementation, an agency must submit the rule to the Legislature for ratification.

In accordance with s. 120.541(3), F.S., the Department of Environmental Protection (DEP) submitted rule amendments to rules 62-302 and 62-303, F.A.C., to the Legislature for ratification on December 9, 2011. The rule amendments are estimated to exceed the allowable thresholds for implementation costs for rule adoption without legislative ratification.

Background on Numeric Nutrient Criteria Rule Approval

The rules were approved for adoption by the Environmental Regulation Commission (ERC) on December 8, 2011. Since the ERC approved additional amendments to the rules, the DEP

submitted a Notice of Change in the F.A.W., which was published in the December 22, 2011, edition of the F.A.W.

The approved state rules plus amendments set numeric nutrient criteria on the amount of phosphorus and nitrogen allowed in state waters. The DEP based these rules on more than a decade of research and data collection. The numeric nutrient standards were designed to:

- ensure water quality,
- protect public health, and
- preserve well-balanced aquatic ecosystems throughout Florida.

They replace Florida's narrative standard, which was the subject of a lawsuit and subsequent consent decree between the U.S. Environmental Protection Agency (EPA) and several environmental groups. This lawsuit led to the development of federal numeric nutrient criteria rules.

The approved state rules are more cost effective than the federal rules, and the DEP asserts they will afford the same level of protection for Florida's water bodies. While the numbers are the same or similar for both the state and federal rules, the state rules implementation is more tailored to Florida's specific needs. The Florida State University Center for Economic Forecasting and Analysis estimated the costs of implementation for the DEP rules. The median cost estimate for the state rules is \$75 million annually.¹ While those costs are significant, they are much less than some of the median cost estimates for the federal rules, which may be as high as \$4 billion annually.²

Legal Challenge to the DEP-Amended Rules

Pursuant to s. 120.56, F.S., a petition has been filed challenging both of the approved state rules. This will prevent or delay the DEP from filing the certification packages for these rules with the Department of State. The Division of Administrative Hearings has scheduled a hearing on this challenge for February 6-10, 2012. In response to the ERC's action and the ongoing legal challenge, the EPA has proposed to extend the implementation date of the federal rules until June 4, 2012. The current date for implementation is March 6, 2012.

III. Effect of Proposed Changes:

Section 1 provides for ratification of chs. 62-302 and 62-303, F.A.C., as approved for adoption by the ERC on December 8, 2011.

Section 2 provides that the bill serves no other purpose than ratification and may not be codified in the Florida Statutes. It allows publication of the rules in the F.A.C., F.A.W., or both as appropriate. The bill clarifies the ratification:

- does not alter rulemaking delegated by prior law;

¹ E-mail from Frank Nearhoof, DEP (January 18, 2012) (on file with the Senate Committee on Environmental Preservation and Conservation).

² Cardno ENTRIX, *Addendum to the Economic Analysis of the Federal Numeric Nutrient Criteria for Florida* (2011) (on file with the Committee on Environmental Preservation and Conservation).

- does not constitute legislative preemption or exception to any provision of law governing adoption or enforcement of the rules;
- preserves the status of any cited rule as a rule under ch. 120, F.S.;
- does not cure any rulemaking defect; and
- does not preempt any challenge to the rulemaking process.

Section 3 provides the act takes effect upon becoming a law.

Other Potential Implications:

If the rule amendments to chs. 62-302 and 62-303, F.A.C., are not ratified, the federal rules will become effective on March 6, 2012, or, if the proposed extension is approved, on June 4, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector would be responsible for the majority of the increases in regulatory and compliance costs. As stated above, the median fiscal impact from the state rules is estimated at \$75 million annually. To the extent possible, it is expected these costs will be passed on to end users or consumers.

C. Government Sector Impact:

The DEP estimates its costs associated with rule implementation to be between \$645,250 and \$1.95 million.

The water management districts will likely incur costs associated with rule implementation and enforcement; however, the extent of the fiscal impact and whether they can absorb the costs with existing staff and resources are unknown.

The Florida Fish and Wildlife Conservation Commission and the Florida Department of Agriculture and Consumer Services will incur minimal to no additional costs.

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.)

None.

B. **Amendments:**

None.