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 Committee on Appropriations

BILL:	CS/CS/SB 1684
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Weidenbenner	Halley	AG	**Favorable**
3.	Howard	DeLoach	AGG	**Fav/CS**
4.	Howard	Hansen	AP	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 1684 makes changes to environmental regulation and permitting statutes.

The bill has a fiscal impact to several trust funds within the Department of Environmental Protection. See Section V.

The bill:

- Provides that the Department of Environmental Protection (DEP) may adopt rules for the electronic submission of forms, documents, fees or reports.
- Provides that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. It also provides that prior to the third request; a permittee should be offered a meeting to resolve outstanding issues. It allows a permittee to request a final decision on the application if he or she believes the request for

additional information is not supported by any legal authority. Lastly, it stipulates that development permits do not include building permits.

- Provides for an expansion of the definition of "phosphate-related expenses".
- Provides that the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) is authorized to issue leases or consents of use to special event promoters and boat show owners to allow for the installation of temporary structures. The lease or consent of use must include appropriate lease fees and must be for a period not to exceed 45 days and for a duration not to exceed 10 consecutive years.
- Authorizes the DEP to establish general permits for special events relating to boat shows.
- Defines "first-come, first-served basis" as it relates to marinas, provides requirements for the calculation of lease fees for certain marinas, and provides conditions for the discount and waiver of lease fees for certain marinas, boatyards, and marine retailers.
- Provides for the waiver of lease fees for private residential docks and piers over sovereignty submerged lands.
- Provides general permits for local governments to construct certain mooring fields and places a limit on the size of mooring fields.
- Provides that if two or more consumptive use permit (CUP) applications are complete and in conflict, the DEP or WMD may then approve or modify the application that best serves the public interest.
- Provides that permitted water allocations may not be changed under certain circumstances with respect to seawater desalination plants;
- Provides for electronic mail notification of restrictions or changes to permitted water use in the case of a water shortage or emergency.
- Provides that the issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or local county health department, and prohibits government entities from imposing duplicative requirements and fees associated with the installation and abandonment of groundwater wells.
- Provides that licensure of water well contractors by a WMD must be the only water well construction license required for the construction, repair or abandonment of water wells in the state or any political subdivision.
- Exempts certain ponds, ditches and wetlands from regulatory requirements.
- Exempts certain independent water control districts created before July 1, 2013, from further wetlands regulations.
- Increases the funds available to DEP to contract for preapproved advanced cleanup work and increases the preapproval amount for contracting with a single facility.
- Provides that a person can bring a cause of action for damages resulting from a discharge of certain types of pollution if not regulated or authorized pursuant to ch. 403, F.S..
- Defines "beneficiary" as it relates to the entities from which a local government may collect stormwater fees, provides for the collection of stormwater utility fees from beneficiaries, and clarifies that the provisions only apply to fees billed on or after July 1, 2013.
- Provides that the DEP may adopt rules requiring or incentivizing the electronic submission of certain forms, documents, fees or reports.
- Extends the payment deadline for permit fees for major sources of air pollution and directs that fees must be based on actual emissions and not permitted emissions.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below their existing classification.

- Provides that local governments may not compete with recovered materials dealers for 90 days while an application for engaging in business is pending with the locality and provides relief for a violation of that provision.
- Provides for expedited permitting of interstate natural gas pipelines.
- Provides that a permit is not required for the restoration of seawalls at their previous locations or upland of their previous locations, or within 18 inches, instead of 12 inches, waterward of their previous locations; and
- Ratifies certain leases of land by the Board of Trustees in the Everglades Agricultural Area and provides that the leases are in the public interest and are not contrary to the public interest.

This bill substantially amends the following sections of the Florida Statutes: 20.255, 125.022, 166.033, 211.3103, 253.0345, 253.0347, 373.118, 373.233, 373.236, 373.246, 373.308, 373.323, 373.406, 376.30713, 376.313, 403.031, 403.061, 403.0872, 403.088, 403.0893, 403.7046, 403.813, and 403.973.

The bill creates sections 253.0346 and 403.8141, Florida Statutes.

II. Present Situation:

The statutes affected by this bill are diverse. The present situation of each area affected by the bill will be addressed in Section III – Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 and 18 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the DEP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for its organizational structure.
Section 403.061, F.S., authorizes the DEP to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it.

The DEP currently accepts certain types of permit applications on-line. In addition, Florida's five WMDs have developed a shared permitting portal. This portal is designed to direct the user to the appropriate WMD website for obtaining information regarding permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common relate to how much water is used (consumptive use permitting), the construction of wells (well construction permitting), and how new development affects water resources (environmental resource permitting).

Effect of Proposed Changes

The bill amends ss. 20.255 and 403.061, F.S., authorizing the DEP to adopt rules requiring or incentivizing electronic submission of any form, document, fee, or report required under ch. 161, F.S., (relating to beach and shore preservation), ch. 253, F.S., (relating to state lands), ch. 373,

F.S., (relating to water resources), ch. 376, F.S., (relating to pollutant discharge prevention and removal), ch. 377, F.S., (relating to energy resources), or ch. 403, F.S., (relating to environmental control).

Sections 2 and 3 amend ss. 125.022 and 163.033, F.S., respectively, relating to development permits.

Present Situation

A development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[1] Pursuant to ss. 125.022 and 166.033, F.S., when a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.

For any development permit application filed with a county or municipality after July 1, 2012, that county or 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 issuance of a development permit by a county or municipality does not create any rights on the part of the county or municipality for issuance of the permit if the applicant fails to obtain the 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 does not prohibit a county or municipality from providing information to an applicant regarding what other state or federal permits may apply.

Effect of Proposed Changes

The bill amends ss. 125.022 and 163.033, F.S., providing that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county (section 2) or the municipality (section 3) is directed to offer a meeting to try to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application. These sections do not apply to building permits.

Section 4 amends s. 211.3103, F.S., expanding activities qualifying as "phosphate-related expenses."

[1] Section 163.3164(16), F.S.

Present Situation

Pursuant to s. 211.3103, F.S., an excise tax is levied upon each person engaging in the business of severing phosphate rock from the soils or waters of this state for commercial use. The tax rate is $1.61 per ton severed, except for the time period from January 1, 2015, until December 21, 2022, when it is $1.80 per ton severed.

The proceeds of all taxes, interest and penalties imposed under this section of law are paid into the State Treasury as follows:

- To the credit of the Conservation and Recreation Lands Trust Fund: 25.5 percent.
- To the credit of the General Revenue Fund of the state: 35.7 percent.
- For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 12.8 percent.
- For payment to counties that have been designated as a rural area of critical economic concern in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary: 10 percent.

Any such proceeds received by a county must be used only for phosphate-related expenses.

Section 211.3103(6)(c), F.S., defines "phosphate-related expenses" as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Effect of Proposed Changes

The bill amends s. 211.3103, F.S., to expand the activities that qualify as "phosphate-related expenses" to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands which were formerly phosphate lands, and community infrastructure on county owned environmental lands that were formerly phosphate lands.

Sections 5 and 24 amend s. 253.0345, F.S., and create s. 403.8141, F.S., respectively, relating to special events on sovereignty submerged lands.

Present Situation

The Board of Trustees may authorize the use of sovereignty submerged lands for special events. The Board of Trustees is authorized to issue "consents of use" or leases to riparian landowners and event promoters to allow the installation of temporary structures, including docks, moorings, pilings and access walkways on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government owned upland property. Riparian owners of adjacent uplands who are not seeking a lease or consent of use must be notified by certified mail of any request for such a lease or consent of use prior to approval by the Board of Trustees. The Board of Trustees must balance the interests of any objecting riparian owners with the economic interests of the public and the state as a factor in determining whether a lease or consent of use should be executed over the objection of adjacent

riparian owners. This does not apply to structures for viewing motorboat racing, high-speed motorboat contests or high-speed displays in waters that manatees are known to frequent.[2]

The Board of Trustees' rules contain three classifications for special events:

- Class II Special Events are events of 30 days or less involving the construction of structures that are not revenue-generating and either preempt 1,000 square feet or less of sovereignty submerged lands or preempt no more than 10 square feet of sovereignty submerged land for each linear foot of the applicant's contiguous shoreline along the affected sovereignty submerged land. These activities require a letter of consent from the DEP but no lease.[3]
- Class III Special Events are single events involving the construction of 50 or fewer new slips or a preempted area of 50,000 square feet or less. A lease is required and the term of the lease is limited to 30 days or less.[4]
- Class IV Special Events are events that do not qualify as Class III events or are events authorized to be conducted more than once during the lease term. A lease is required and the term of the lease may be up to five years.[5]

Any special event must be for 30 days or less. The lease or consent of use may also contain appropriate requirements for removal of the temporary structures, including the posting of sufficient surety to guarantee appropriate funds for removal of the structures should both the promoter or riparian owner fail to do so within the time specified in the agreement.[6]

Effect of Proposed Changes

Section 5 of the bill amends s. 253.0345, F.S., to provide that the Board of Trustees is authorized to issue leases or consents of use to special event promoters and boat show owners to allow the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereignty submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. A lease or consent of use for a special event under this section must include an exemption from lease fees and must be for a period of 45 days or less and for a duration of 10 consecutive years or less.

Section 23 of the bill creates s. 403.8141, F.S., directing the DEP to issue permits for special events as defined in s. 253.0345, F.S. The permits must be for a period that runs concurrently with the letter of consent or lease issued and must allow for the movement of temporary structures within the footprint of the lease area.

Sections 6 and 7 create s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amend s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

[2] *See* s. 253.0345, F.S. *See also* Rule 18-21.0082, F.A.C., for information required on applications for leases or consents of use and for provisions concerning limitations on consents of use and leases, depending on the type of event.
[3] Rule 18-21.005(1)(c)17., F.A.C.
[4] Rule 18-21.005(1)(d)10., F.A.C.
[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.

Present Situation

The Board of Trustees is responsible for the administration and disposition of the state's sovereignty submerged lands. [7] It has the authority to adopt rules and regulations pertaining to anchoring, mooring or otherwise attaching to the bottom. Waterfront landowners must receive the Board of Trustees' authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the Board of Trustees' behalf.

Florida recognizes riparian rights for landowners with waterfront property bordering navigable waters, which include the rights of ingress, egress, boating, bathing, fishing and others as defined by law.[8] Riparian landowners must obtain the Board of Trustees' authorization for installation and maintenance of docks, piers and boat ramps on sovereignty submerged land.[9] Under the Board of Trustees' rules, "dock" generally means a fixed or floating structure, including moorings and access walkways, used for the purpose of mooring and accessing vessels.[10]

Authorization may be by rule, letter of consent, or lease.[11] All leases authorizing activities on sovereignty submerged lands must include provisions for lease fee adjustments and annual payments.[12]

The Board of Trustees has promulgated detailed rules regulating the design of docks and related structures, including determining whether a lease is required and setting the amount of lease fees.[13] The DEP determines whether a lease is required for a person to build a dock or related structure on sovereignty submerged lands based on a number of factors including:

- Location within or outside of an aquatic preserve;
- Area of sovereignty submerged land preempted;
- Number of wet slips or the number of boats the structure is designed to moor;
- Whether the dock is for a single-family residence or a multi-unit dwelling;
- Whether the dock generates revenue; and
- Whether the dock is for "private residential" or other uses.

A property owner who is required to obtain a lease to build a dock or related structure must follow the lease terms and pay applicable fees. Currently, the standard lease term is five years, and sites under lease must be inspected once every five years. Annual lease fees for standard term leases are calculated through a formula based on annual income, square footage or a minimum annual fee. Extended term leases are available, under limited conditions, for up to 25 years. Annual lease fees for extended term leases are calculated like standard lease fees but with

[7] Section 253.03(8)(b), F.S., defines submerged lands as publicly owned lands below the ordinary high-water mark of fresh waters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state.
[8] *See* s. 253.141(1), F.S.
[9] Rule 18-21.005(1)(d), F.A.C.
[10] *See* Rules 18-20.003(2) and (19), F.A.C.
[11] Rule 18-21.005(1), F.A.C.
[12] Rule 18-21.008(1)(b)(2), F.A.C.
[13] *See* Rules 18-20 and 18-21, F.A.C.

a multiplier for the term in years. Site inspections are conducted at least once every five years by the DEP or a WMD to determine compliance with lease conditions.[14]

When determining whether to approve or deny uses for sovereignty submerged land leases, the Board of Trustees must consider whether such uses pass a public interest test. "Public interest" is defined as:

> [T]he demonstrable environmental, social and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands, or severance of materials from sovereignty lands, the Board of Trustees must consider the ultimate project and purpose to be served by said use, sale, lease or transfer of lands or materials.[15]

There are currently three categories of leases identified in Rule 18-21.008, F.A.C.:

- Standard leases are for terms of five years with the exception of leases for marinas where at least 90 percent of the slips are maintained for rent to the public on a first-come, first-served basis, which are for ten years.
- Extended Term leases are those with terms in excess of standard leases and are available for up to 25 years. Such leases are for activities that will have an expected life equal to or greater than the requested lease term. Those leases include:
  - Facilities or activities that provide public access;
  - Facilities constructed, operated, or maintained by government or funded by government secured bonds; and
  - Facilities that have other unique operational characteristics as determined by the Board of Trustees.

Florida Clean Marina Program

The Florida Clean Marina Program is a voluntary designation program. Participants receive assistance in implementing best management practices through on-site and distance technical assistance, mentoring by other Clean Marinas and continuing education. To become designated as a Clean Marina, facilities must implement a set of environmental measures designed to protect Florida's waterways. These measures address critical environmental issues such as sensitive habitat, waste management, stormwater control, spill prevention and emergency preparedness.[16]

The Florida Clean Boatyard Program is a voluntary designation program that encourages boatyards to implement environmentally conscious practices. Measures include using dustless sanders, recycling oil and solvents, and re-circulating pressure wash systems to recycle wastewater.[17]

[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), F.A.C.
[16] DEP, *About Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/about.htm (last visited Mar. 29, 2013).
[17] *Id.*

The Florida Clean Marine Retailer Program is a voluntary designation program that encourages marine retailers to educate boaters by providing information to those who purchase vessels on clean boating practices. A Clean Marine Retailer also employs environmental best management practices in its boat and engine service operations and facilities.[18]

As of June 21, 2012, there were 263 designated Clean Marinas, 38 Clean Boatyards and 17 Clean Marine Retailers in Florida.[19]

Effect of Proposed Changes

Section 6 of the bill creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers. The bill defines "first-come, first-served basis" to mean the facility operates on state-owned submerged land for which:

- There is no club membership, stock ownership, equity interest, or other qualifying requirement; and
- Rental terms do not exceed 12 months and do not include automatic renewal rights or conditions.

For marinas that are open to the public on a first-come, first-served basis and for which at least 90 percent of the slips are open for rent to the public, a 30 percent discount on the annual lease fee must apply if dockage rate sheet publications and dockage advertising clearly state the slips are open for rent to the public on a first-come, first-served basis.

For a facility designated by the DEP as a Clean Marina, Clean Boatyard, or Clean Marine Retailer under the Clean Marina Program, the following requirements apply:

- A 10 percent discount on the annual lease fee must apply if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease; and
  - Does not change use during the term of the lease.
- Extended term lease surcharges must be waived if the facility:
  - Actively maintains designation under the program;
  - Complies with the terms of the lease;
  - Does not change use during the term of the lease; and
  - Is available to the public on a first-come, first-served basis.

If the facility has unpaid lease fees or fails to comply with this section, the facility is not eligible for the discount or waiver under this section until the debts have been paid and compliance with the program has been met.

This section only applies to new leases or amendments to leases effective after July 1, 2013.

[18] *Id.*
[19] DEP, *Florida Clean Marina Programs*, http://www.dep.state.fl.us/cleanmarina/ (last visited Mar. 29, 2013).

Section 7 of the bill provides that lease fees are not required for:

- Private residential single-family docks designed to moor up to four boats so long as the preempted area is equal to or less than 10 times the distance along the riparian shoreline or the square footage allowed for private residential single-family docks under rules adopted by the Board of Trustees, whichever is greater.
- Private residential multi-family docks designed to moor boats up to the number of units within the development that are equal to or less than 10 times the riparian shoreline along the sovereignty submerged land on the affected waterbody multiplied by the number of units with docks in the development.

Section 8 amends s. 373.118, F.S., relating to general permits for marine facilities built by local governments.

Present Situation

Section 373.118(4), F.S., directs the DEP to adopt one or more general permits for local governments to construct, operate and maintain public marina facilities, public mooring fields, public boat ramps, including associated courtesy docks and parking facilities located in uplands. A facility authorized under these general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities must be consistent with the local government manatee protection plan required pursuant to ch. 379, F.S., must obtain Clean Marina Program Status prior to opening for operation, and must maintain that status for the life of the facility. Marinas and mooring fields authorized under a general permit cannot exceed an area of 50,000 square feet over wetlands and other surface waters.

Effect of Proposed Changes

The bill amends s. 373.118(4), F.S., removing a provision directing the DEP to adopt rules for one or more general permits for local governments to construct, operate and maintain public marina facilities. The bill removes a provision that local government facilities permitted under s. 373.118(4), F.S., must obtain Clean Marina Program status before opening for operation and must maintain that designation for the life of the facility. The bill also removes a provision limiting such facilities to 50,000 square feet over wetlands and other surface waters.

The bill adds a provision limiting mooring fields permitted under s. 373.118(4), F.S., to 100 vessels and it adds a provision authorizing the Board of Trustees to delegate to the DEP the ability to issue leases for mooring fields that meet the requirements of the general permit per s. 373.118(4), F.S.

Section 9 amends s. 373.233, F.S., relating to consumptive use permitting.

Present Situation

A CUP establishes the duration and type of water an entity may use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with

the objectives of the WMD and not harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as the "three-prong test." Specifically, the proposed water use:

- Must be a "reasonable-beneficial use," as defined in s. 373.019, F.S.;
- Must not interfere with any presently existing legal use of water; and
- Must be consistent with the public interest.[20]

Section 373.233, F.S., provides that if two or more complete applications that otherwise comply with the provisions of Part II of ch. 373, F.S., are pending for a quantity of water that is inadequate for both or all applications, or that are in conflict for any other reason, the governing board of the DEP or the WMD has the right to approve or modify the application which best serves the public interest.

The Three Prong Test

"Reasonable-beneficial use," the first prong of the test, is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[21] The Legislature has declared water a public resource. Therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other demands.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and water management needs.[22] These criteria include consideration of the quantity of water requested; the need, purpose and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[23]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[24] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[25]

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[20] Section 373.223(1)(a-c), F.S.
[21] Section 373.019(16), F.S. *See also* Rule 62-410(2), F.A.C., for a list of 18 factors to help determine whether a water use is a reasonable-beneficial use.
[22] *See* Rule 62-40, F.A.C.
[23] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[24] Section 373.223(1)(b), F.S.
[25] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[26] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the particular WMD or the DEP gives preference to renewal applications.[27]

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to provide that where there are competing CUP applications and a WMD or the DEP has deemed the applications complete, the governing board of a WMD or the DEP has the right to approve or modify the application which best serves the public interest.

Section 10 amends s. 373.236, F.S., relating to the duration of CUPs.

Present Situation

Section 373.236(1), F.S., provides that CUPs must be granted for a period of 20 years if:

- Requested by the applicant; and
- There is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.

If either of these requirements is not met, a CUP with a shorter duration may be issued to reflect the period for which reasonable assurances can be provided. The WMDs and DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, type of use, or both.

Pursuant to s. 373.326(4), F.S., when necessary to maintain "reasonable assurance" that initial conditions for issuance of a 20-year CUP can continue to be met, a WMD or DEP may require a permittee to produce a compliance report every 10 years. A compliance report must contain sufficient data to maintain reasonable assurance that the initial permit conditions are met. After reviewing a compliance report, the WMD or DEP may modify the permit, including reductions or changes in the initial allocations of water, to ensure that the water use comports with initial conditions for issuance of the permit. Permit modifications made by a WMD or DEP during a compliance review cannot be subject to competing applications for water use if the permittee is not seeking additional water allocations or changes in water sources.

[26] *Supra* note 23.
[27] *See* s. 373.233, F.S.

Effect of Proposed Changes

The bill amends s. 373.236, F.S., to provide that in order to promote the sustainability of natural systems through the diversification of water supplies to include sources that are resistant to drought, a WMD may not reduce an existing permitted allocation of water during the permit term as a result of planned future construction of, or additional water becoming available from, a seawater desalination plant unless the reduction is a condition of a permit or funding agreement with the WMD. Except as otherwise provided, this does not limit the existing authority of DEP or the governing board of a WMD to modify or revoke a CUP.

Section 11 amends s. 373.246, F.S., relating to declarations of water shortages or emergencies.

Present Situation

Section 373.246, F.S., provides direction for the governing board of a WMD or the DEP during a water shortage. The section, among other things, requires the formulation of a plan for periods of water shortage, allows for the imposition of restrictions on water use, provides for notice to those residing in the areas affected by the water shortage, and provides for the rescission of a declaration of a water shortage.

Effect of Proposed Changes

The bill amends s. 373.246, F.S., to allow a WMD governing board or the DEP to notify permittees by electronic mail of any change in the condition of their permits or any suspension of their permits or any other restriction on permittees' use of water for the duration of the water shortage. This is in addition to the existing option of making such notification by regular mail.

Section 12 amends s. 373.308, F.S., relating to well permits issued by water management districts.

Present Situation

Section 373.308, F.S., directs the DEP to authorize the governing board of a WMD to implement a program for the issuance of permits for the location, construction, repair and abandonment of water wells. The DEP may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or part of the state. Some local governments also have certain ordinances pertaining to water wells, which have resulted in duplicative regulation at the state and local level.

Effect of Proposed Changes

The bill amends s. 373.308, F.S., to provide that upon authorization from the DEP, issuance of well permits is the sole responsibility of the WMDs, a delegated local government, or a local county health department, and that other government entities may not impose additional or duplicate requirements or fees, or establish a separate program for permitting the location, abandonment, boring, or other activities reasonably associated with the installation and abandonment of a groundwater well.

Section 13 amends s. 373.323, F.S., relating to licenses for water well contractors.

Present Situation

Any person that wishes to engage in business as a water well contractor must obtain a license from a WMD. Each person must apply to take the licensure examination and the application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. An applicant must:

- Be at least 18 years of age;
- Have two years of experience in constructing, repairing, or abandoning water wells; and
- Show certain proof of experience.[28]

Section 373.323(11), F.S., provides that licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water well systems.

Effect of Proposed Changes

The bill amends s. 373.323, F.S., to provide that licensure under this section by a WMD must be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision.

The bill also expands the types of systems that licensed water well contractors may install pumps, tanks, and water conditioning equipment on. The bill changes the systems water well contractors can work on from "water well systems" to "water systems."

Section 14 amends s. 373.406, F.S., relating to surface water management and storage.

Present Situation

Part IV of ch. 373, F.S., provides for the management and storage of surface water. Part IV also establishes the Environmental Resource Permit (ERP) program, which is the primary tool used by the DEP and the WMDs for preserving natural resources and fish and wildlife, minimizing degradation of water resources caused by stormwater discharges, and providing for the management of water and related land resources.

The activities regulated under the ERP program include the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, and appurtenant work and works. Individually and collectively these terms are referred to as "surface water management systems."

Certain activities are exempt by statute from the need to obtain an ERP under state law or by agency rule. Section 373.406, F.S., provides for several exemptions from the regulatory requirements in ch. 373, F.S. The DEP's rules also provide for certain exemptions and general

[28] Section 373.323, F.S.

permits for certain activities that cause only minimal individual and cumulative adverse impacts to wetlands and other surface waters. Some examples of exempt activities are:

- Construction, repair, and replacement of private docking facilities below certain size thresholds;
- Maintenance dredging of existing navigational channels and canals;
- Construction and alteration of boat ramps within certain size limits;
- Construction, repair, and replacement of seawalls and riprap in artificial waterways;
- Repair and replacement of structures; and
- Construction of certain agricultural activities.

In addition, the state has issued a number of noticed general permits for activities that are slightly larger than those that qualify for the above exemptions and that otherwise have been determined to have the potential for no more than minimal individual direct and secondary impacts. These include, but are not limited to, the following:

- 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; and
- Construction and modification of certain utility and public roadway construction activities.

Anything that does not specifically qualify for an exemption or noticed general permit typically requires an ERP permit.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to include the following exemptions from regulation under Part IV of ch. 373, F.S.:

- Construction, operation, or maintenance of any wholly owned, manmade ponds or drainage ditches constructed entirely in uplands as long as any alteration or maintenance does not involve any work to connect the pond to, or expand the farm into, other wetlands or surface waters;
- Activities affecting wetlands created solely by the unreasonable and negligent flooding or interference with the natural flow or surface water caused by an adjoining landowner. Requests to qualify for the exemption must be submitted in writing to a WMD or the DEP within seven years after the cause of the unauthorized flooding or diversion occurred. Such activities may not begin before a WMD or DEP confirms in writing that the activity qualifies for the exemption; and
- Any water control district created before July 1, 2013, and operating pursuant to ch. 298, F.S., for which a valid ERP or management and storage of surface waters permit has been issued pursuant to Part IV of ch. 373, F.S., is exempt from further wetlands regulations imposed pursuant to local government regulation under chs. 125, 163, and 166, F.S.

Section 15 amends s. 376.30713, F.S., relating to preapproved advanced cleanup of contaminated sites.

Present Situation

The Preapproved Advanced Cleanup Program is a cost-sharing program designed to provide an opportunity for site rehabilitation, on a limited basis, at contaminated sites in advance of their priority ranking in order to facilitate property transfers or public works projects.[29] Consideration for the program is through an application to the DEP. Applications must contain:

- A commitment to pay no less than 25 percent of total cleanup cost;
- A review fee of $25;
- A limited contamination assessment report; and
- A proposed course of action.[30]

If approved for the program, the applicant enters into a contract with the DEP. If the terms of the preapproved advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[31]

The DEP is allowed to enter into contracts with approved entities for a total of $10 million of preapproved advanced cleanup work each fiscal year and no facility may be preapproved for more than $500,000.[32]

Effect of Proposed Changes

The bill raises the total funds available for preapproved advanced cleanup work each fiscal year from $10 million to $15 million, and it raises the amount any one facility may be approved for from $500,000 to $5 million.

Section 16 amends s. 376.313, F.S., relating to the nonexclusiveness of remedies and individual causes of action for damages under ss. 376.30 to 376.317, F.S.

Present Situation

Section 376.313(3), F.S., provides that nothing contained in ss. 376.30-376.317, F.S., (relating to petroleum storage discharges, dry cleaning facilities, and wholesale supply facilities) prohibits any person from bringing a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by the referred to sections.

Effect of Proposed Changes

The bill amends s. 376.313(3), F.S., to provide that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S., that is not regulated or authorized pursuant to ch. 403, F.S. (relating to environmental control policies that conserve state water, protect and improve water quality for

[29] DEP, *Preapproved Advanced Cleanup Program (PAC)*, www.dep.state.fl.us/waste/categories/pcp/pages/pac.htm (last visited Apr. 18, 2013).
[30] Section 376.30713(2)(a), F.S.
[31] Section 376.30713(3)(b), F.S.
[32] Section 373.30713(4), F.S.

consumption, and maintain air quality to protect human health). This serves to limit the causes of action currently available under s. 376.313, F.S.

Sections 17, 21 and 27 amend ss. 403.031 and 403.0893, F.S., and creates an unnumbered section of law, respectively, regarding stormwater utility fees.

Present Situation

Section 403.031, F.S., provides definitions for ch. 403, F.S. Section 403.0893, F.S., provides that a county or municipality may:

- Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.;
- Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3), F.S.; or
- Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, F.S., one or more stormwater management system benefit areas.

Effect of Proposed Changes

Section 17 of the bill amends s. 403.031, F.S., to provide a definition for the term "beneficiary" to mean "any person, partnership, corporation, business entity, charitable organizations, not-for-profit corporation, state, county, district, authority, or municipal unit of government or any other separate unit of government created or established by law." Those entities listed here are responsible for paying stormwater fees assessed by a local government. This definition will make clear the entities from which a local government can collect stormwater fees.

Section 21 of the bill amends s. 403.0893, F.S. to provide that stormwater utility fees may be charged to the beneficiaries of a stormwater utility, and it provides for the collection of delinquent fees.

Section 27 of the bill creates an unnumbered section of law to provide that the two sections only apply to stormwater utility fees billed on or after July 1, 2013, to a beneficiary of a stormwater utility for services provided on or after that date.

Section 19 amends s. 403.0872, F.S., relating to operation permits for majority sources of air pollution and fee calculations.

Present Situation

The Clean Air Act (CAA) was enacted in 1970 as the comprehensive federal law to regulate air emissions from stationary and mobile sources. The law authorizes the U.S. Environmental

Protection Agency (EPA) to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants.[33]

In 1990, Congress amended Title V of the CAA to create the operating permit program. The program streamlines the way federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year pollution activities.[34] Under Title V, the EPA must establish minimum elements to be included in all state and local operating permit programs and then assist the state and local governments in developing their programs.[35] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

Pursuant to s. 403.0872, F.S., and as promulgated in ch. 62-4, F.A.C., the DEP is responsible for air permits regulating major and minor facilities. Section 403.0872(11), F.S., provides that each source of air pollution permitted to operate in Florida must pay between January 15 and March 1 of each year, upon written notice from the DEP, an annual operation license fee in an amount determined by DEP rule. The annual fee is assessed based upon the source's previous year's emissions and is calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by specific condition of the source's most recent construction or operation permit, and multiplying that by the annual hours of operation allowed by permit conditions provided, however, that:

1. The license fee factor is $25 or another amount determined by DEP rule, which ensures that the revenue provided by each year's operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the Secretary of Environmental Protection affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may not exceed $35.
2. For any source that operates for fewer hours during the calendar year than allowed under its permit, the annual fee calculation must be based upon actual hours of operation rather than allowable hours if the owner or operator of the source documents the source's actual hours of operation for the calendar year. For any source that has an emissions limit that is dependent upon the type of fuel burned, the annual fee calculation must be based on the emissions limit applicable during actual hours of operation.
3. For any source whose allowable emission limitation is specified by permit per units of material input or heat input or product output, the applicable input or production amount may be used to calculate the allowable emissions if the owner or operator of the source documents the actual input or production amount. If the input or production amount is not documented, the maximum allowable input or production amount specified in the permit must be used to calculate the allowable emissions.

[33] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[34] *See* EPA, *Air Pollution Operating Permit Program Update: Key Features and Benefits*, http://www.epa.gov/oaqps001/permits/permitupdate/index.html (last visited Mar. 29, 2013).
[35] *Id.*

4. For any new source that does not receive its first operation permit until after the beginning of a calendar year, the annual fee for the year must be reduced pro rata to reflect the period during which the source was not operational.
5. For any source that emits less of any regulated air pollutant than allowed by permit condition, the annual fee calculation for such pollutant must be based upon actual emissions rather than allowable emissions if the owner or operator documents the source's actual emissions by means of data from a DEP-approved certified continuous emissions monitor or from an emissions monitoring method which has been approved by the EPA under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method approved by the DEP.
6. The amount of each regulated air pollutant in excess of 4,000 tons per year allowed to be emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.
7. If the DEP has not received the fee by February 15 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by March 1. If the fee is not postmarked by March 1 of the calendar year, the DEP shall impose, in addition to the fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount computed in accordance with s. 220.807, F.S. The DEP may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The DEP may waive the collection of underpayment and is not required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The DEP may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty or interest.
8. Notwithstanding the computational provisions of s. 403.0872(a), F.S., the annual operation license fee for any source subject to this section cannot be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814, F.S., shall not exceed $50 per year.
9. Notwithstanding the provisions of s. 403.087(6)(a)5.a., F.S., authorizing air pollution construction permit fees, the DEP may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits are considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873, F.S. The DEP must, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a., F.S., for the construction of a new major source of air pollution that will be subject to the permitting requirements of s. 403.0872, F.S., once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the CAA, 42 U.S.C. ss. 7470-7514a.[36]

[36] Section 403.0872(11)(a)1.-9., F.S.

Effect of Proposed Changes

The bill amends s. 403.0872, F.S., to extend the annual payment deadline for air pollution permits from March 1 to April 1. In addition, the bill provides that the annual fee must be assessed based upon the source's previous year's emissions and must be calculated by multiplying the applicable annual operation license fee factor by the tons of each regulated air pollutant actually emitted, as calculated in accordance with DEP's emissions computation and reporting rules. The annual fee only applies to those regulated pollutants, except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source's most recent construction or operation permit. This will result in a decrease in fees charged since it is likely that most permitted entities are not discharging up to their permitted limit.

The bill deletes subparagraphs 2-5 from s. 403.0872(11), F.S.

The bill provides that if the DEP has not received the fee by March 1, instead of February 15, the permittee must be sent a written warning concerning the consequences of failing to pay the fee by April 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 20 amends s. 403.088, F.S., relating to conditions for the issuance of water pollution permits.

Present Situation

Section 403.088, F.S., provides guidance for the issuance of pollution discharge permits. Generally, if the DEP finds that a proposed discharge will reduce the quality of receiving waters below the classification established for them, the DEP is directed to deny the application and refuse to issue a permit.

Effect of Proposed Changes

The bill amends s. 403.088, F.S., to provide that when testing to determine whether or not a proposed discharge will reduce the quality of the receiving waters below the classification established for them, the DEP may not use results from a field procedure or laboratory method to make the finding or determine compliance unless the procedure or method has been adopted by rule or noticed and approved by DEP order pursuant to DEP rule. Additionally, field procedures and laboratory methods must satisfy quality assurance requirements of DEP rule and must produce data of known and verifiable quality. Lastly, the results of field procedures and laboratory methods must be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

Section 22 amends s. 403.7046, F.S., relating to the regulation of recovered materials.

Present Situation

Section 403.7046, F.S., governs the regulation of recovered materials. It allows the DEP to establish a system whereby recovered materials dealers must be certified by the DEP. At a minimum, the information that needs to be collected from a recovered materials dealer must include:

- The amount and types of recovered materials handled, and
- The amount and disposal site, or the name of the person with whom the disposal was arranged, of any solid waste generated by the recovered materials facility and subsequently disposed of.[37]

It also provides that prior to engaging in business within the jurisdiction of a local government, the dealer must provide the government with the DEP certification and must register with the local government. Local governments are limited to collecting the following information:

- Name, including the owner or operator of the dealer;
- If the dealer is a business entity:
  - Its general or limited partners; and
  - Its corporate officers and directors;
- Its permanent place of business;
- Evidence of its certification from the DEP; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of the section.

Local governments may also impose yearly reporting requirements which include:

- Requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

There are protections for trade secrets and any information that constitutes a trade secret is to be kept confidential.[38]

Effect of Proposed Changes

The bill amends s. 403.7046, F.S., providing that a local government that receives a registration application from a recovered materials dealer may not use the registration information to compete with the recovered materials dealer until 90 days after the registration information is submitted.

The bill also provides for injunctive relief or damages for recovered materials dealers, or associations whose members include recovered materials dealers, in cases where localities violate the prohibition.

[37] Section 403.7046(1), F.S.
[38] Section 403.7046(3)(b), F.S.

Section 23 amends s. 403.813, F.S., relating to conditions under which certain permits are not required for seawall restoration.

Present Situation

Section 403.813(1), F.S., provides that a permit is not required for the restoration of a seawall at its previous locations or upland of, or within 12 inches waterward of, its previous location.

Effect of Proposed Changes

The bill amends s. 403.813, F.S., to provide that a permit is not required for the restoration of a seawall at its previous location or upland of that location, or within 18 inches, instead of 12 inches, waterward of its previous location.

Section 25 amends s. 403.973, F.S., relating to expedited permitting of natural gas pipelines.

Present 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.

Under s. 403.973, F.S., the secretary of the 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 a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or
- Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having 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.

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 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.

Effect of Proposed Changes

The bill amends s. 403.973, F.S., to authorize expedited permitting for projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission.

Section 26 creates an unnumbered section of law, relating to land leases.

Current Situation

The Everglades Forever Act (EFA) was enacted in 1994 and is codified at s. 373.4592(5), F.S. It offers farmers impacted by the Everglades Restoration Project (Project) leases on several Board of Trustees parcels in the Everglades Agricultural Area in Palm Beach County. The law states that impacted farmers have the right to lease the parcels, upon expiration of the then existing leases, for a term of 20 years and at a rental rate determined by an appraisal using established state procedures. For those parcels that had previously been competitively bid, the rental rate may not be less than the rate the Board of Trustees received at that time. The Board of Trustees can also adjust the rental rate on an annual basis using an appropriate index, and update the appraisal at five-year intervals. If more than one impacted farmer desires to lease the same parcel of land, the one with the greatest number of acres affected by the Project has priority.[39]

The DEP developed new leases to implement the Act. Four of the leases are scheduled to expire on April 1, 2015 and three are scheduled to expire on January 31, 2016, December 31, 2016, and August 25, 2018, respectively. Five leases are issued to companies owned by affiliates of Florida Crystals Corporation (Florida Crystals) and two are issued to A. Duda and Sons, Inc. (Duda) They are located on non-conservation lands and state school lands.[40]

Situation Regarding the Florida Crystal Leases

The South Florida Water Management District (SFWMD) contacted the DEP to request that the five Florida Crystals leases be amended to extend the lease terms for an additional 30 years, and to delete a provision that allows the Board of Trustees to terminate a lease if the lessee ceases to be an impacted farmer. The extensions are a condition of a land exchange between SFWMD and Florida Crystals to secure additional stormwater treatment area that is critical to SFWMD's efforts under the Act[41]

Situation Regarding the Duda Leases

SFWMD contacted the DEP to request that the two Duda leases be extended for additional 30 year terms. The extensions have been requested as a condition of land acquisition negotiations between the SFWMD and Duda to secure property for water storage that is critical to SFWMD's efforts to protect the Caloosahatchee River and Estuary under the Northern Everglades and Estuary Protection Act (NEEP Act). To address water quality and quantity associated with the

[39] Section 373.4592(5)(c), F.S.
[40] Board of Trustees of the Internal Improvement Trust Fund, *Meeting Agenda, January 23, 2013*, http://www.myflorida.com/myflorida/cabinet/agenda13/0123/BOT012313.pdf (last visited Apr. 18, 2013).
[41] *Id.*

existing flows from Lake Okeechobee to the Caloosahatchee River and Estuary, SWFMD will construct a surface water reservoir on the property acquired from Duda. The primary objectives will be to rehydrate Lake Hicpochee and intercept harmful excess flows to the Caloosahatchee River.[42]

Florida Administrative Code

A 20-year term was originally authorized in the Act for Florida Crystals' five leases. Pursuant to Rule 18-2.018(3)(a)1.b., F.A.C., the standard lease term for agricultural leases is six years. The DEP offered the following to assist the Board of Trustees in affirming that the Florida Crystals' leases are not standard leases:

- The leases are critical to SFWMD's acquisition of the 4,700 acres of private property adjacent to Stormwater Treatment Area 1W. Unless the leases are extended, the SFWMD will have to seek condemnation at great cost to the state. No other fiscally reasonable and technologically practical site exists for acquisition;
- The specific project that will be constructed on the exchanged lands is included in enforceable state and federal water quality consent orders issued by the DEP to the SFWMD and was mandated by the permits issued by the DEP under the federal Clean Water Act to improve the quality of water flowing into the Everglades;
- The five lessees are the farmers most impacted by acquisition of land for Everglades restoration and hydroperiod purposes as identified in the EFA; and
- The EFA recognizes the need to maintain the quality of life for South Florida residents, including those in agricultural-related jobs, which contribute to the regional economy.[43]

For the Duda leases, the DEP offered the following to assist the Board of Trustees in affirming that the leases are not standard leases:

- the lease extensions are critical to the SFWMD's acquisition of the lands needed for water storage and treatment as a component of both the NEEP Act and Caloosahatchee Plan;
- Duda remains one of the farmers most impacted by acquisition of land for Everglades restoration as identified in the EFA; and
- if the leases are not extended, SFWMD will have to seek alternative lands at significant additional costs with uncertain results.[44]

Public Interest

Pursuant to rule 18-2.018(1), F.A.C., the decision to authorize the use of Board of Trustees owned uplands requires a determination that such use is not contrary to the public interest. The public interest determination requires an evaluation of the probable impacts of the proposed activity on the uplands. All direct and indirect impacts related to the proposed activity, as well as the cumulative effects of those impacts, must be considered.

[42] *Id.*
[43] *Id.*
[44] *Id.*

The DEP offered information to the Board of Trustees to aid in making a determination that the leases for Florida Crystals and Duda are in the public interest, and not contrary to the public interest.[45]

Pursuant to rule 18-2.018(2)(i), F.A.C., equitable compensation is required when the use of uplands will limit or preempt use by the general public or will generate income or revenue for a private user. The rule directs the Board of Trustees to award authorization for such uses on the basis of competitive bidding rather than negotiation, unless it is determined by the Board of Trustees to be in the public interest pursuant to the results of an evaluation of the impacts, both direct and indirect, which may occur as a result of the proposed use.

The DEP offered information to assist the Board of Trustees to make the determination that waiving the competitive bid requirements for Florida Crystals and Duda were in the public interest.

There have been at least two objections to the Duda leases from other farmers. One was received from Hundley Farms, Inc., and one from Roth Farms, Inc. Both object to the Duda lease extensions being granted without being competitively bid.[46]

On April 11, 2013, the Florida Wildlife Federation petitioned for a formal administrative hearing challenging whether several of the leases are typical agricultural leases, whether they represent the greatest combination of benefits to the public, whether the lease extensions are necessary for the project proposed by the SFWMD, and other aspects of the leases and the process by which they were awarded.[47]

Effect of Proposed Changes

The bill:

- Creates an unnumbered section of law that ratifies the decisions of the Board of Trustees with respect to the Florida Crystal and Duda leases, numbered 1447, 1971S, 3420, 3433, 3543, 3422 and 1935/1935-S.
- States the legislative finding that the decision to authorize the use of Board of Trustees-owned uplands and the use of those lands as set forth in the leases is not contrary to the public interest, that it is in the public interest to waive the competitive bid process, that the leases are not standard agricultural leases, and that the leases should be amended on the terms and conditions approved by the Board of Trustees.
- States the legislative finding that notwithstanding any other provision of law, the Legislature finds that the lease amendments and extensions approved by the Board or Trustees are necessary for Everglades restoration purposes, are in the public interest, and provide the greatest combination of benefits to the public.
- Will effectively render the administrative hearing request by the Florida Wildlife Foundation moot.

[45] *Id.*
[46] *Id.*
[47] Florida Wildlife Federation, Inc., v. Florida Department of Environmental Protection and Board of Trustees of the Internal Improvement Trust Fund, Amended Petition for Administrative Hearing, OGC Case No.: 13-0065, Apr. 11, 2013.

Section 28 provides an effective date of July 1, 2013

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:

Section 4 Expanding the use of the phosphate tax for education could benefit the private sector but the benefits cannot be quantified.

Sections 5 and 24 The Special Event promoter would benefit from structuring lease fees around the actual size of the preemption and the flexibility provided for restructuring of temporary structures. The public would not benefit from this reduction because the promoter charges the vendor to participate in the event. Substantial savings are expected but cannot be calculated at this time.

Section 6 There would be a positive impact from the annual reduction or elimination of the annual fee for leases of sovereignty submerged land.

Section 7 The private sector will benefit from reduced lease fees related to docks and piers. The savings cannot be calculated at this time.

Section 9 According to the DEP, if a private sector entity is a CUP applicant, the proposed language may result in increased costs resulting from litigation. The bill envisions a WMD issuing proposed affirmative agency action for two applications, even though there is not adequate water for both. Therefore, it would appear that a private entity seeking a permit would either be forced to challenge a competing permit or be subject to such a challenge.

Section 12 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain a separate local government water well construction permit, including any required fees.

Section 13 The bill would have a positive effect on water well contractors by eliminating the requirement to obtain any local government water well contractor licenses. It also expands the license to apply to all water systems, not just water well systems. The impact of this expansion is unknown and may create additional competition in the water systems business.

Section 14 The bill will ease some of the regulatory requirements for farm ponds, created wetlands, and certain water control districts. This will result in a positive but indeterminate affect on the private sector.

Section 15 There will be increased funds available for contamination cleanup so there could be increased participation in the program. By raising the individual facility limit, it could result in a lower number of facilities being able to take advantage of the program.

Section 16 Currently, if a person or entity is damaged as a result of a discharge or other condition of pollution covered in ss. 376.30 – 376.317, F.S., he or she has a cause of action to sue for damages. This bill limits those causes of action to situations where the offending party's activities are not regulated or authorized pursuant to ch. 403, F.S.

Section 19 According to the DEP, this legislation will save over 400 of Florida's manufacturing and industrial businesses an estimated $2 million per year. Approximately $1.4 million would be saved in Title V permit fees because they would be paying fees based on their "actual emissions" instead of their "adjusted allowable emissions." Synchronizing the Title V fee and annual operating report requirements will save the sources an additional estimated $600,000 by eliminating the need to compute and submit different emission calculations.

Section 22 The bill will provide more certainty for recovered materials dealers when applying for permits to operate with a locality. Ultimately, this will have a positive but indeterminate impact.

Section 25 The bill will have a sizeable impact on entities that wish to build natural gas pipelines in the state. The effect is indeterminate. Giving one party the option to force summary judgment could have a positive but indeterminate impact on judicial awards for parties. For parties suing the entities building natural gas pipelines, summary judgment could result in an indeterminate effect on awards.

C. Government Sector Impact:

Section 1 and 18 Electronic submissions should have an indeterminate reduction in paper costs for the DEP.

Section 4 By expanding the definition of "phosphate related expenses," local governments may have more flexibility in how they spend phosphate related fees, taxes, and penalties.

Sections 5 and 24 The fees for special event fees are calculated based on the number of event days multiplied by the annual rent, or five percent of any revenue generated from the special event, whichever is greater. The loss of revenue would be approximately $187,000 annually, based on data from seven fiscal years. The lease term would exceed the standard term of five years.

Section 7 The DEP will see a reduction in lease fees from certain private docks and piers. The negative effect on revenues is estimated at $1.24 million to the Internal Improvement Trust Fund; however, recurring revenue currently exceeds recurring expenditures by over $2 million and this recurring revenue reduction should not impact the trust fund's ability to meet department's needs. Also, this provision would require enhancement of the department's database at a cost of $13,000.

Section 8 According to the DEP, there would be costs incurred due to the rulemaking requirement, estimated at $50,000 for mooring field expansion. After the general permits are developed, there would be a revenue loss in permit fees in the Permit Fee Trust Fund. The DEP is expected to absorb any minor negative impact to permit fees with existing resources.

Section 10 According to the DEP, local governments may avoid some transactional costs associated with a permit modification.

Section 11 The DEP or a WMD could saving funds on postage if notifications are sent via electronic mail.

Section 13 Local governments would lose any fees currently charged as part of a local government requirement for obtaining a local water well contractor license.

Section 14 The exemptions for farm ponds and wetlands apply to all of Part IV of Chapter 373, F.S. These exemptions would have an insignificant fiscal impact to the department's Permit Fee Trust Fund.

Sections 17, 21, and 27 Allow stormwater utilities to collect fees from specific beneficiaries and delinquent fees as of July 1, 2013.

Section 19

Effect on the DEP

According to the DEP, the bill would enable the agency to synchronize the federally required emissions computation and reporting obligation with the Title V air operation permit fee calculation requirement. This would save the department significant time that goes into reviewing and processing two separate calculations that serve the same underlying purpose - to identify emissions.

Pursuant to s. 403.0873, F.S., all permit fees received under the DEP's federally approved Title V permitting program are deposited in the Air Pollution Control Trust Fund. Those fees must be used for the sole purpose of paying the direct and indirect costs of the DEP's Title V permitting program, which are enumerated under 40 CFR part 70. The DEP estimates that those costs to be $5.3 million in Fiscal Year 2012-2013 and that they will decline to $4.9 million by Fiscal Year 2017-2018. The trust fund reserve balance for the Title V program was $4.1 million in July 2012. With the estimated $1.4 million annual reduction in fee receipts that would occur as a result of the bill, the DEP estimates that the fund balance will increase to $4.9 million by Fiscal Year 2017-2018. This increase is related to several efficiencies that have occurred in the DEP's air program. In the event that unforeseeable circumstances arise and program costs exceed revenues, the DEP can adjust its fee by rule as provided under s. 403.0872, F.S.

Effect on Local Governments

The Title V permit fees in the Air Pollution Control Trust Fund must be used for the sole purpose of paying the direct and indirect costs of the DEP's federally approved Title V permitting program. The DEP may contract with local governments (or any other public or private entity) to perform Title V program services on its behalf. The DEP currently contracts with seven local governments to perform certain Title V program services. The above agency impact projections accommodate the maintenance of the 2012 contracts with these entities, so there are no local government impacts.

Total Revenue Impacts by Fund[48]:

Internal Improvement Trust Fund	($1.4) million (sections 5 and 7)
Air Pollution Trust Fund	($1.4) million (section 19)
Permit Fee Trust Fund	($0.05) million (section 8)
Service Charge to General Revenue	($231,200)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 15 Provisions contained in the CS conflict with provisions contained in CS/SB 1416.

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 by Appropriations on April 23, 2013:

- For both counties and municipalities, the bill provides clarifying language regarding requests for additional information for pending development permits and stipulates

[48] Senate Subcommittee on General Government, *Senate Bill 1684 Fiscal Summary* (Apr. 18, 2013) (on file with Senate Committee on Environmental Preservation and Conservation).

that the limit on requests for additional information does not apply to building permits.
- Clarifies that marinas with slips that are open for rent to the public are able to receive a discount of 30 percent on their annual lease fees.
- Specifies that only seawater desalination plants are protected from having their water allocation reduced.
- Clarifies that it is the DEP or a WMD that has authority to deem an application for a water application complete.
- Allows for electronic mail notification of changes to a water permit during water shortage.
- Includes local county health departments in the list of entities that may have sole responsibility for issuing well permits if authorized by the DEP.
- Clarifies that manmade, excavated farm ponds may not be altered or maintained in a way that connects or expands that farm pond to an existing wetland.
- Exempts certain water control districts created before July 1, 2013 from wetland or water quality regulations.
- Provides certain requirements for testing procedures used when determining if a proposed discharge will lower the quality of receiving waters below what it is classified as.
- Clarifies that beneficiaries of stormwater utilities may be charged fees for those services and provides a cause of action for recovering those fees.
- Removes a 90 day processing deadline from the requirement for local governments to process recovered materials dealers registrations with the locality.
- Provides a cause of action for recovered materials dealers alleging a violation of the section regarding recovered materials dealers.
- Removes provisions related to a Department of Agriculture and Consumer Services regional water supply planning program.
- Ratifies certain leases by the Board of Trustees and states the legislative finding that the leases are in the public interest and not contrary to the public interest.

CS by Environmental Preservation and Conservation on April 2, 2013:
- Adds two sections related to the electronic submission of forms to the DEP, authorizing the DEP to adopt rules regarding electronic submission of forms to the DEP;
- Adds one section that expands the types of activities qualifying as "phosphate-related expenses";
- Regarding special events on sovereignty submerged lands, the bill expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The bill also provides that the lease or consent of use should include a lease fee (if applicable) based solely on the period and size of the preemption. The lease or consent of use should also include conditions to reconfigure temporary structures within the lease area;
- Rather than amend s. 403.814, F.S., as in the original bill, the bill creates s. 403.8141, F.S. The bill expands the allowable period of leases from 30 to 45 days. The bill also removes provisions from the original bill limiting the number of seagrass studies and

removes a provision requiring an excess of 25 percent of the preempted area from a previous lease to be added to a new lease to accommodate economic expansion;
- Removes a provision stipulating that dock lease fees for standard term leases are 6 percent of the annual gross dockage income;
- Adds a section relating to the lease of sovereignty submerged lands for private residential docks. The bill provides that lease fees are not required for private residential single-family docks or private residential multifamily docks, given certain circumstances;
- Removes an existing provision directing the DEP to adopt by rule one or more general permits for local governments to construct, operate, and maintain public marina facilities in s. 373.118, F.S. The bill also removes existing provisions from s. 373.118, F.S., that limit general permits for marinas and mooring fields authorized under the general permits described in that section of statute to an area of 50,000 feet or less and that require a marina or mooring field permitted under that section of statute to obtain Clean Marina Program status prior to opening for operation and to maintain it for the life of the facility;
- Adds a provision authorizing the Board of Trustees to delegate authority to the DEP to issue leases for mooring fields under the general permit described in s. 373.118, F.S.;
- Adds a section that limits the ability of a WMD to reduce existing permitted allocations of water for drought resistant water supplies, including water desalination plants;
- Adds a provision to the bill stating that the issuance of well permits is the sole responsibility of the WMDs. The bill adds that a local government may have the responsibility for permitting water wells delegated to it;
- Removes a section from the bill defining the term "mean annual flood line";
- Removes a provision from the bill exempting water control districts operating pursuant to ch. 298, F.S., from further wetland or water quality regulations imposed pursuant to chapters 125, 163, and 166, F.S., under certain conditions;
- Adds a section that provides that cooperative water planning efforts include utility companies, private landowners, water consumers and the DACS. It also encourages municipalities, counties and special districts to create multijurisdictional water supply entities;
- Adds a section that includes "self-suppliers" to the list of entities the WMDs must help with meeting water supply needs;
- Adds a provision directing the WMDs, in developing water supply plans, to describe any adjustment or deviation from information provided by the DACS regarding agricultural water demand projections and present the original data along with the adjusted data;
- Makes changes to section 18 of the bill to conform language to CS/SB 948, regarding agricultural water supply planning;
- Removes a section from the bill regarding testing procedures for measuring deviations from water quality standards;
- Adds a section defining the term "beneficiary," as it relates to what entities a local government can collect stormwater fees from; and

- Adds a section that prevents localities from competing with recovered materials dealers when a dealer submits a registration application with the locality and that locality has it under review. It also directs localities to process such applications within 90 days.

B. Amendments:

None.