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/SB 1684
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Altman
SUBJECT:	Environmental Regulation
DATE:	April 20, 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	**Pre-meeting**
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/SB 1684 makes changes to environmental regulation and permitting statutes.

The bill has significant fiscal impacts 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. Lastly, it allows a permittee to request the application be finalized if he or she believes the request for additional information is not supported by any legal authority.
- 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 when there are competing consumptive use permit (CUP) applications, a water management district (WMD) or the DEP must have also issued an affirmative proposed agency action for each application before the DEP or WMD has the right to 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 and other drought resistant water sources.
- Provides that the issuance of well permits is the sole responsibility of the WMDs and prohibits government entities from imposing requirements and fees associated with the installation and abandonment of a groundwater well.
- 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.
- Provides a statement of policy for working on water supply issues cooperatively.
- Provides that "self-suppliers" are to be included in the planning process to meet future water supply needs and defining "self-suppliers".
- Requires the WMDs to coordinate and cooperate with the Department of Agriculture and Consumer Services (DACS) in its regional water supply planning process.
- 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.
- 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 that local governments may not compete with recovered materials dealers while an application for engaging in business is pending with the locality and provides a time limit of 90 days for processing the application.
- 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.

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, 373.308, 373.323, 373.406,

373.701, 373.703, 373.709, 376.313, 403.031, 403.061, 403.0872, 403.7046, 403.813, 403.973, 570.076, and 570.085.

The bill creates sections 253.0346 and 403.8141 of the 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 19 amend ss. 20.255 and 403.061, F.S., relating to the electronic submission of forms to the EP.

Present Situation

Section 20.255, F.S., creates the DEP and provides for the 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, or fee required for an application for a permit 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), 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

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

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.

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

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 23 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]

[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.

- 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 creates s. 253.0346, F.S., relating to the lease of sovereignty submerged lands for marinas, boatyards and marine retailers and amends s. 253.0347, F.S., relating to regarding the lease of sovereignty submerged lands for private residences, respectively.

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

[5] Rule 18-21.005(1)(d)11., F.A.C.
[6] Rule 18-21.0082(2)(c), F.A.C.
[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.

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 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.:

[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.
[14] Rule 18-21.008(1)(b)4., F.A.C.
[15] Rule 18-21.003(51), 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]

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:

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

- 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 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 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.

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.

[20] Section 373.223(1)(a-c), F.S.

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]

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]

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

Effect of Proposed Changes

The bill amends s. 373.233, F.S., to provide that where there are competing CUP applications and the governing board of 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.

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 or other sources that are resistant to drought, unless the reductions are conditions 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. 373.308, 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 or a delegated local government, and 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 12 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 13 amends s. 373.406, F.S., relating to surface water management and storage.

[28] Section 373.323, F.S.

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 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; and
- 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.

Section 14 amends s. 373.701, F.S., relating to cooperative water planning efforts.

Present Situation

Section 373.701, F.S., provides that it is the policy of the Legislature to:

- Promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
- Provide that those waters be managed on a state and regional basis; and
- Provide that cooperative efforts between municipalities, counties, WMDs, and DEP are mandatory in order to meet the water needs.

Effect of Proposed Changes

The bill amends s. 373.701, F.S., to provide that cooperative water planning efforts include utility companies, private landowners, water consumers, and the DACS. The bill also encourages municipalities, counties, and special districts to create multijurisdictional water supply entities.

Section 15 amends s. 373.703, F.S., relating to water supply planning duties or the WMDs.

Present Situation

Section 373.703, F.S., provides for certain powers and duties of the governing board of a WMD which include, but are not limited to, the following:

- To engage in planning to assist counties, municipalities, special districts, publicly owned and privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.
- To assist counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.
- To join with one or more other water management districts, counties, municipalities, special districts, publicly owned or privately owned water utilities, multijurisdictional water supply entities, or regional water supply authorities for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance.

Effect of Proposed Changes

The bill amends s. 373.703, F.S., to add "self-suppliers" to the list of entities the governing boards of WMDs must engage in planning in order to assist in meeting water supply needs. The bill also adds self-suppliers to the list of entities the governing boards must assist in meeting water supply needs. In addition, the bill adds self-suppliers to the list of entities the governing boards can join with for the purpose of carrying out its powers, and can contract with to finance acquisitions, construction, operation, and maintenance, provided such contracts are consistent with the public interest. The bill defines the term "self-supplier" to mean persons who obtain surface or groundwater from a source other than a public water supply.

Sections 16 and 26 amend ss. 373.309 and 570.085, F.S., respectively, relating to agricultural water supply planning.

Present Situation

The WMDs are required to conduct water supply needs assessments. If a WMD determines that existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period for a particular water supply planning region, it must prepare a regional water supply plan.[29] Regional water supply plans must be based on at least a 20-year planning period.[30] The plan must contain:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy;
- The impacts on the public interest, costs, natural resources, etc.;
- Technical data and information;
- Any minimum flows and levels (MFLs) established for the planning area;
- The water resources for which future MFLs must be developed; and
- An analysis of where variances may be used to create water supply development or water resource development projects.[31]

Regional water supply plans include projected water supply needs for all users, including agriculture. The WMDs employ different methods in making such projections for agricultural users and use a combination of common and unique data sources. The DACS participates in the regional water supply planning process and can provide input regarding agricultural water supply demand projection, but has no formal role in determining future water supply needs for agriculture.[32]

[29] Section 373.709(1), F.S.
[30] Section 373.709(2), F.S.
[31] *Id.*
[32] DACS, *Senate Bill 1684 Analysis* (Mar. 13, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

The regional water supply plans typically list water resource development and water supply development options that can meet the projected reasonable-beneficial needs of the water supply region. The plans normally include a mix of traditional and alternative water supply options.[33] Traditional water supplies come from surface water sources, such as lakes and rivers, and from groundwater withdrawals. Alternative water supplies include activities such as treating wastewater for agricultural use, desalination of saltwater or brackish water to produce drinking water, and surface and rain water storage. Water consumers either purchase or self-supply water. Self-supplied water often comes from on-site wells or through surface water retention, among other methods.

Pursuant to s. 570.085, F.S., the DACS must establish an agricultural water conservation program that includes:

- A cost-share program between the U.S. Department of Agriculture and other federal, state, regional, and local agencies for irrigation system retrofit and the application of mobile irrigation laboratory evaluations for water conservation;
- The development and implementation of voluntary interim measures of best management practices that provide for increased efficiencies in the use and management of water for agricultural production. In the process of developing and adopting rules for interim measures or best management practices, the DACS must consult with the DEP and the WMDs; and
- Provide assistance to the WMDs in the development and implementation of a consistent methodology for the efficient allocation of water for agricultural irrigation.

Effect of Proposed Changes

Section 16 of the bill amends s. 303.709, F.S., providing that a WMD must include the DACS in its regional water supply planning process. The WMD must also include the agricultural demand projections used for determining the needs of agricultural self-suppliers based on the best available data in the water supply development component of its regional water supply plan. In determining the best available data for agricultural self-supplied water needs, the WMD must use the data indicative of future water supply demands provided by the DACS pursuant to s. 570.085, F.S., which is amended by this bill, directing the DACS to establish a water supply planning program.

The bill directs the WMDs to describe any deviation or adjustment of the data provided by the DACS and present the original data along with the adjusted data.

Section 26 of the bill amends s. 570.085, F.S., directing the DACS to establish an agricultural water supply planning program that includes the following:

- The development of data indicative of future agricultural water supply demands which must be:
  - Based on at least a 20-year planning period;
  - Provided to each WMD; and

[33] DEP, *Regional Water Supply Planning*, www.dep.state.fl.us/water/waterpolicy/rwsp.htm (last visited Mar. 30, 2013).

    - Considered by each WMD when developing WMD water management plans.
- The data on future agricultural water supply demands, which are provided to each WMD, must include, but is not limited to, the following:
    - Applicable agricultural crop types or categories;
    - Historic, current, and future estimates of irrigated acreage for each applicable crop type or category, spatially for each county, including the historic and current methods and assumption used to generate the spatial acreage estimates and projections;
    - Crop type or category water use coefficients for a 1-in-10 year drought average used in calculating historic, current, and future water demands, including data, methods, and assumptions used to generate the coefficients. Estimates of historic and current water demands must take into account actual metered data when available. Projected future water demands must incorporate appropriate potential water conservation factors based upon data collected as part of the DACS's agricultural water conservation program pursuant to s. 570.085(1), F.S.; and
    - An evaluation of significant uncertainties affecting agricultural production which may require a range of projections for future agricultural water supply needs.
- In developing the data of future agricultural water supply needs, the DACS must consult with the agricultural industry, the University of Florida's Institute of Food and Agricultural Sciences, the DEP, the WMDs, the National Agricultural Statistics Service, and the U.S. Geological Survey.
- The DACS must coordinate with each WMD to establish a schedule for provision of data on agricultural water supply needs.

Section 17 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 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.

Section 18 amends s. 403.031, F.S., regarding the definition of the term "beneficiary."

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

The bill creates s. 403.031(22), 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. This definition will make clear the entities from which a local government can collect stormwater fees.

Section 20 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.[34]

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.[35] 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.[36] All major stationary sources (power plants, pulp mills, and other facilities) emitting certain air pollutants are required to obtain operating permits.

[34] EPA, *Summary of the Clean Air Act*, http://epa.gov/regulations/laws/caa.html (last visited Mar. 29, 2013).
[35] *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).
[36] *Id.*

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.
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.[37]

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.

[37] Section 403.0872(11)(a)1.-9., 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 Apri 1. If the fee is not postmarked by April 1, the DEP will impose an additional fee.

Section 21 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.[38]

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.[39]

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

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 must act on the application within 90 days and that while it is under review, the locality may not use the registration information to unfairly compete with the applicant.

Section 22 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 24 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 25 amends s. 570.813, F.S., to conform a cross-reference.

Section 27 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 23 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 11 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 12 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 13 The bill will ease some of the regulatory requirements for activities covered by the bill. This will result in a positive but indeterminate affect on the private sector.

Sections 16 and 26 The DACS intends to contract out the work needed to develop agricultural demand projections. The bill may have a positive effect on the private sector to the extent contracts are awarded to the private sector.

Section 17 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., they have 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.

Section 20 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 21 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 24 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 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 23 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 6 Based on leases that qualify for the discount, a negative fiscal impact of $2.7 million is estimated by the DEP for the Internal Improvement Trust Fund.

The reduction in lease fees will also have a $175,500 negative fiscal impact to both state sales tax and county discretionary taxes.

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. 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 marina and 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 12 Local governments would lose any fees currently charged as part of a local government requirement for obtaining a local water well contractor license.

Section 13 The exemptions for farm ponds and wetlands apply to all of Part IV of Chapter 373, F.S. These exemptions would have a significant negative fiscal impact to the department's Permit Fee Trust Fund. This negative impact is indeterminate. For the

FY 2013-2014 fiscal year, recurring expenditures exceed recurring revenue. Permit fee revenues are estimated to be $12 million annually and recurring expenditures are $12.8 million annually. Revenue reductions could negatively impact future program operations.

Sections 16 and 26 The WMDs would have a reduced workload from having the DACS provide demand projections for agricultural water use. The sections also authorize the DACS to establish an agricultural water supply planning program. The Fiscal Year 2013-2014 Senate General Appropriations Bill, SB 1500 (First Engrossed), provides $1 million in funding from nonrecurring general revenue for the establishment of a water supply planning program within the DACS.

Section 20

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:

Internal Improvement Trust Fund	($4.1) million (sections 5, 6 and 7)
Air Pollution Trust Fund	($1.4) million (section 20)
Permit Fee Trust Fund	($0.05) million (section 8)
	Indeterminate impact (section 13)

Service Charge to General Revenue ($330,160)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 6 According to the DEP, the bill language does not state the requirement to rent slips in order to receive the discount which leaves an open interpretation of which facilities would qualify for the 30 percent discount.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

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 CS expands the allowable period of a lease under that section of law from 30 days or less to 45 days or less. The CS 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 CS creates s. 403.8141, F.S. The CS expands the allowable period of leases from 30 to 45 days. The CS 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 CS 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 CS 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 CS 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.