HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 183 Stormwater Management Permits
SPONSOR(S): Agriculture & Natural Resources Subcommittee and Raulerson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Renner	Blalock
2) State Affairs Committee	16 Y, 0 N	Renner	Camechis

SUMMARY ANALYSIS

The bill provide that the rules for a statewide environmental resource permit must provide for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas created under chapter 163, F.S. Upon approval by DEP or WMD, the master plan must become part of the conceptual permit issued by DEP or WMD. The rules must additionally provide for an associated general permit for the construction and operation of urban redevelopment projects that meet the criteria established in the conceptual permit. The conceptual permit and associated general permit must not conflict with the requirements of a federally approved National Pollutant Discharge Elimination System (NPDES) program or with the implementation of total maximum daily loads and basin management action plans.

The bill also provides that the conceptual permit must include:

- Provisions for the rate and volume of stormwater discharges from the urban redevelopment area to continue up to the maximum rate and volume of stormwater discharges as of the date that the conceptual permit is approved.
- A presumption that stormwater discharges from the urban redevelopment area do not cause or contribute to violations of water quality standards, after making a demonstration of net improvement of the quality of the discharged water that existed as of the date the conceptual permit is approved.
- Provisions for the use of stormwater best management practices to the maximum extent practicable.
- Provisions to ensure that stormwater management systems constructed within the urban redevelopment area are operated and maintained in compliance with s. 373.416, F.S.
- A duration of 20 years unless a shorter duration is requested by the applicant, with an option to renew.

There may be an insignificant fiscal impact on those local governments that have already established either a community redevelopment area or an urban infill and redevelopment area. Those local governments would have to amend those plans if they want to obtain a conceptual permit. However, there may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Growth Policy Act

In 1999, the Florida Legislature enacted the Growth Policy Act[1] (Act) in order to provide incentives to promote urban infill and redevelopment. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage infill and redevelopment within urban centers. The Act defines an urban infill and redevelopment area as an area where:

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided in the 5-year schedule of capital improvements;
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress;[2]
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government;
- More than 50 percent of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation; and
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community program or similar program.[3]

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries. Section 163.2520, F.S., provides that a local government with an adopted urban infill and redevelopment plan or plan employed in lieu thereof can issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of the plan.

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969 (Redevelopment Act), was enacted in order to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The Redevelopment Act authorizes a county or municipality to create community redevelopment areas (CRAs) by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.[4] CRAs are not permitted to levy or collect taxes; however, the local government is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated CRA to finance redevelopment projects within that area. To obtain this revenue, in addition to establishing a trust fund, a local government must create a community redevelopment agency,[5] designate an area or areas to be a CRA, and approve a community

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[1] Sections 163.2511-163.2523, F.S.
[2] Section 290.0058, F.S., provides the definition for "general distress."
[3] Section 163.2514(2), F.S.
[4] Section 163.340(7), F.S., provides the definition for "slum area" and s. 163.340(8), F.S., provides the definition for "blighted area."
[5] Section 163.356, F.S.

redevelopment plan.[6] Once this is accomplished, the CRA can direct the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation, or redevelopment of the CRA.

Stormwater

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to the compaction of soil; the addition of impervious surfaces such as roads and parking lots; alteration of natural landscape features such as natural depressional areas which hold water, floodplains and wetlands; construction of highly efficient drainage systems; and the addition of pollutants from everyday human activities. These alterations within a watershed decrease the amount of rainwater that can seep into the soil to recharge aquifers, maintain water levels in lakes and wetlands, and maintain spring and stream flows. Consequently, the increased volume, speed, and pollutant loading in stormwater that runs off developed areas lead to flooding, water quality problems, and the loss of habitat.[7]

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment, design criteria for best management practices (BMPs) that will achieve the performance standard, and a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will meet water quality standards. The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids (TSS)[8] by 80 percent or by 95 percent for Outstanding Florida Waters.[9]

In 1990, in response to legislation, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[10] The rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of DEP, the water management districts (WMDs), and local governments. The rule provides that one of the primary goals of the program is to maintain, to the highest degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80 percent of the post-development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards." This performance standard is significantly different than the one used in DEP and WMD stormwater treatment rules of the 1980s.

Statewide Environmental Resource Permit

In 2012, HB 7003 was signed into law. The bill directed the DEP, in coordination with the WMDs, to adopt statewide environmental resource permit (ERP) rules.[11] The bill provided that, upon adoption of the rules, the WMDS must implement the rules without the need for further rulemaking. The rules must provide for statewide consistency and include: criteria and thresholds for requiring permits; permit types; procedures governing the review of applications; duration and modification of permits, operational requirements, emergency provisions, and provisions for abandonment and removal of

[6] *See* ch. 163, part III, F.S.
[7] National Resources Defense Council. *Stormwater Strategies*, May 1999 report, *available at*: http://www.nrdc.org/water/pollution/storm/stoinx.asp .
[8] Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 304(a)(4) of the Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.
[9] Rule 62-302.700 F.A.C., provides that an Outstanding Florida Water (OFW), is a water designated worthy of special protection because of its natural attributes. This special designation is applied to certain waters and is intended to protect existing good water quality.
[10] Chapter 62-40 F.A.C.
[11] Draft Rule 62-330, F.A.C., is supposed to take effect this year according to DEP's statewide ERP rulemaking website. *See* http://www.dep.state.fl.us/water/wetlands/swerp/timeline.htm

systems; exemptions and general permits; conditions for issuance; standardized fee categories; application, notice, and reporting forms; and an applicant's handbook.

Effect of Proposed Changes

The bill amends s. 373.4131, F.S., to provide that the proposed rules for a statewide environmental resource permit must provide for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas created under chapter 163, F.S. Upon approval by DEP or WMD, the master plan must become part of the conceptual permit issued by DEP or WMD. The rules must additionally provide for an associated general permit for the construction and operation of urban redevelopment projects that meet the criteria established in the conceptual permit. The conceptual permit and associated general permit must not conflict with the requirements of a federally approved National Pollutant Discharge Elimination System program pursuant to s. 403.0885, F.S., or with the implementation of s. 403.067(7), F.S., regarding total maximum daily loads and basin management action plans.

The bill also provides that the conceptual permit must include:

- Provisions for the rate and volume of stormwater discharges from the urban redevelopment area to continue up to the maximum rate and volume of stormwater discharges as of the date that the conceptual permit is approved.
- A presumption that stormwater discharges from the urban redevelopment area do not cause or contribute to violations of water quality standards, after making a demonstration of net improvement of the quality of the discharged water that existed as of the date the conceptual permit is approved.
- Provisions for the use of stormwater best management practices to the maximum extent practicable.
- Provisions to ensure that stormwater management systems constructed within the urban redevelopment area are operated and maintained in compliance with s. 373.416, F.S.
- A duration of 20 years unless a shorter duration is requested by the applicant, with an option to renew.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.4131, F.S., requiring statewide environmental resource permitting rules to provide for a conceptual permit for certain stormwater management master plans and an associated general permit for the construction and operation of certain urban redevelopment projects; providing requirements for such permits.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 183 favorably as a committee substitute (CS). The amendment provides that the rules for a statewide environmental resource permit require a local government to designate a community redevelopment area or urban infill and redevelopment area under chapter 163, F.S., and then develop a stormwater management master plan to serve the entire redevelopment area. The master plan must be reviewed and approved by either the DEP or a WMD, and once approved, individual projects within the designated redevelopment area will only need a general permit to proceed.