

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 Environmental Preservation and Conservation

BILL: CS/SB 934

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Lee

SUBJECT: Stormwater Management Permits

DATE: March 25, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	Fav/CS
2.			CA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 934 requires the development of statewide environmental resource permit rules that provide for a conceptual permit for municipalities or counties that create a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas (CRAs). It specifies that the master plan becomes part of the conceptual permit and that the rules must 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 CS also provides requirements for the conceptual permit.

CS/SB 934 amends s. 373.4131 of the Florida Statutes.

II. Present Situation:

The Community Redevelopment Act of 1969

The Community Redevelopment Act of 1969¹ was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act

¹ See ch. 163, Part III, F.S.

provides a funding mechanism by which counties and municipalities may undertake community redevelopment.² It allows counties or municipalities to retain tax increment revenues from certain community taxing districts to fund redevelopment within a designated CRA. To obtain this revenue, a local government must create a community redevelopment agency, designate an area or areas to be a CRA, create a community redevelopment plan, and establish a trust fund to receive the tax increment revenues.³

The Growth Policy Act of 1999

The Growth Policy Act authorizes local governments to designate urban infill and redevelopment areas for the purposes of stimulating investment in distressed urban areas and strengthening urban centers.⁴ The act defines “urban infill and redevelopment area” as an area or areas where:

- Public services such as water and wastewater, transportation, schools, and recreation are already available or are scheduled to be provided within five years.
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress.
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government.
- More than 50 percent of the area is within a quarter of a mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation.
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment area or similar designation.⁵

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

Urban Stormwater Management

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

- Compaction of soil;
- Addition of impervious surfaces such as roads and parking lots;
- Alteration of natural landscape features such as natural depressional areas that hold water, floodplains and wetlands;
- Construction of highly efficient drainage systems that alter the ability of the land to assimilate precipitation; and
- Pollutant loading of receiving water bodies from stormwater discharge.⁶

² Section 163.353, F.S.

³ See *supra* note 1.

⁴ See ss. 163.2511 through 163.2523, F.S.

⁵ Section 163.2514(2), F.S.

⁶ DEP, *State Stormwater Treatment Rule Development Background*, available at <http://www.dep.state.fl.us/water/wetlands/erp/rules/stormwater/background.htm> (last visited Mar. 18, 2013).

Urbanization within a watershed decreases the amount of rainwater that seeps into the soil. Rainwater is critical for recharging aquifers, maintaining water levels in lakes and wetlands, and maintaining spring and stream flows. The increased volume, speed, and pollutant loading in stormwater discharged from developed areas leads to flooding, water quality problems and loss of habitat.⁷

In 1982, to manage urban stormwater and minimize impacts to natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment and design criteria for best management practices (BMPs) that will achieve the performance standard. It also included a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria would meet water quality standards.⁸ The performance standard was to reduce post-development stormwater pollutant loading of total suspended solids⁹ by 80 percent, or by 95 percent for Outstanding Florida Waters.¹⁰

In 1990, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).¹¹ This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of the DEP, the Water Management Districts (WMDs), and local governments. One of the primary goals of the program is to maintain the predevelopment stormwater characteristics of a site. The rule sets a minimum performance standard for stormwater treatment systems to remove 80 percent of the post development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards."¹²

The DEP and the WMDs jointly administer the environmental resource permit (ERP) program for activities that alter surface water flows.¹³ Alteration or construction of new stormwater management systems in urban redevelopment areas is regulated by the ERP program pursuant to s. 373.413, F.S., and must comply with all other relevant sections of ch. 373, Part IV, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Total Suspended Solids is listed as a conventional pollutant under s. 304(a)(4) of the federal Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

¹⁰ Rule 62-302.700, F.A.C., provides that an Outstanding Florida Water is a water body designated worthy of special protection because of its natural attributes. This special designation is applied to certain water bodies, and is intended to protect and preserve their existing states.

¹¹ See *supra* note 6. See also ch. 62-40, F.A.C.

¹² See *supra* note 6.

¹³ See ch. 373, Part IV, F.S. See also Florida Dep't of Environmental Protection, *Environmental Resource Permitting (ERP) Program*, available at <http://www.dep.state.fl.us/water/wetlands/erp/index.htm> (last visited Mar. 18, 2013).

Environmental Resource Permitting Rulemaking by DEP

The DEP is proposing statewide ERP rules in order to create a more certain regulatory process that is applied consistently across Florida.¹⁴ Currently, between the DEP and the WMDs, there are five different versions of the ERP rules. According to the DEP, a statewide rule will reduce the confusion of determining which of five different sets of criteria or requirements need to be followed and what type of permit, if any, is necessary.¹⁵ The rules being promulgated contain provisions for conceptual permits for stormwater management systems that are similar to the proposed legislation.

III. Effect of Proposed Changes:

Section 1 amends s. 373.4131, F.S., directing the DEP to initiate rulemaking regarding conceptual permits. The CS specifies that statewide rules regarding stormwater management systems must also allow for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or CRAs. When the master plan is approved by the appropriate agency, it becomes part of the conceptual permit. Additionally, the rules must 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 CS specifies several additional requirements for rule development for permits issued pursuant to an adopted rule:

- The conceptual permit and associated general permit must not conflict with the requirements of s. 403.0885, F.S., regarding the total maximum daily load program, and s. 403.067(7), F.S., regarding the development of basin management action plans.
- Prior to issuing the conceptual permit, the municipality or county must assert that stormwater discharges from the redevelopment area will not contribute to violations of water quality standards by demonstrating a net improvement in the quality of the discharged water. The net improvement baseline is the quality of the water on the date the conceptual permit is issued.
- The conceptual permit may not expire for at least 20 years unless a shorter duration is requested, and there must be an option to renew the permit.
- The conceptual permit must describe the rate and volume of stormwater discharges from the urban redevelopment area, including the maximum rate and volume of stormwater discharges as of the date the conceptual permit is approved.
- The conceptual permit must contain provisions regarding the use of stormwater BMPs and must ensure that systems constructed within the urban redevelopment area are operated and maintained in compliance with s. 373.416, F.S., regarding permits for maintenance and operation of stormwater management systems.

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

¹⁴ DEP, *ERP Statewide Rulemaking: Draft Rule & Related Documents Drafts*, available at <http://www.dep.state.fl.us/water/wetlands/swerp/drafts.htm> (last visited Mar. 25, 2013). The latest draft listed on the webpage is from Mar. 1, 2013.

¹⁵ DEP, *ERP Statewide Rulemaking*, available at <http://www.dep.state.fl.us/water/wetlands/swerp/rulemaking.htm> (last visited Mar. 25, 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:

None.

C. Government Sector Impact:

Local governments may have to expend funds to create or modify plans for stormwater management plans in urban redevelopment areas. It is expected that local governments can absorb these costs with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 21, 2013:

- Rather than create a section of law, as in the original bill, the CS amends s. 373.4131, F.S., which provides for statewide environmental resource permitting.
- The CS changed the phrase “stormwater adaptive management plan” to “stormwater management master plan.” This conforms the legislative language with the DEP’s draft statewide ERP rules.

- The CS states that the rules promulgated under the CS must provide for a general permit associated with the conceptual permit. Originally, the rules were required to provide for a noticed general permit. This conforms the legislative language with DEP's draft statewide ERP rules.
- The CS adds language that requires permitted entities to assert that what they are planning will result in a net improvement in water quality from the date the conceptual permit is approved. This conforms the legislative language with DEP's draft statewide ERP rules.
- The CS adds language that requires the conceptual permit to include provisions regarding the use of stormwater BMPs and that systems built within an urban redevelopment area are operated in compliance with s. 373.416, F.S.
- The CS changes the date at which the maximum rate and volume for stormwater management systems is set from the date the stormwater management plan is adopted to the date the conceptual permit is approved. This conforms the legislative language with DEP's draft statewide ERP rules.

B. Amendments:

None.