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 1464
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Simpson
SUBJECT:	Environmental Regulation
DATE:	March 28, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.			CA	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB1464 amends statutes related to environmental regulation and permitting. The bill:

- Provides voting requirements for the adoption or transmittal of a comprehensive plan or plan amendment;
- Exempts multi-family dock owners from lease renewal fees;
- Authorizes consumptive use permits for 30 years for a development of regional impact;
- Encourages counties to create a Water Well Construction Advisory Board;
- Amends the financial responsibility requirements for mitigation bank permit applicants and requires the DEP to adopt rules;
- Requires water related needs identified in a long-term master plan or a master plan development order to be included in a regional water supply plan;
- Authorizes the Department of Environmental Protection (DEP) to approve the use of additional safety and warning devices at public beaches;
- Clarifies that relief mechanisms may be granted in federally delegated permitting programs or approved permitting programs;
- Creates a solid waste landfill closure account; and
- Extends and renews certain permit expiration dates.

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

State Coordinated Review Process (Section 1)

Section 163.3184, F.S., provides the process for review of comprehensive plans and most plan amendments.[1] Most plan amendments are reviewed under the "expedited state review process," which requires two public hearings, one during proposal and one during adoption. Following the first public hearing, the local government is required to transmit the amendment or amendments along with supporting data, to the reviewing agencies within 10 days. The local governing body must also transmit the amendments and supporting data to any other local government or government agency that has filed a written request. Reviewing agencies provide comments on the proposed plan amendment to the local government.[2]

The state coordinated review process is designed for new comprehensive plans and for amendments that require a more comprehensive review. Amendments that are required to follow a state coordinated review process include amendments:

- For an area of critical state concern;
- To propose a rural land stewardship area;
- To propose a sector plan;
- To update a comprehensive plan based on an evaluation and appraisal review; and
- For new plans for newly incorporated municipalities.[3]

The state coordinated review process also requires two public hearings. A proposed plan or plan amendment is transmitted to the reviewing agencies within 10 days after the initial public hearing.[4]

Effect of Proposed Changes

Section 1 amends s. 163.3184, F.S., prohibiting a super majority vote to affirm the transmittal and adoption of a proposed comprehensive plan or plan amendment under the expedited state review process or the state coordinated review process. The bill specifies this prohibition does not apply to a county that has approved a charter provision in a countywide election that requires a greater than simple majority vote.

[1] Section 163.3187, F.S., provides the review process for small-scale amendments, and s. 163.3246, F.S., provides the review process for local governments eligible for the Local Government Comprehensive Planning Certification Program.
[2] Section 163.3184(3), F.S.
[3] Section 163.3184(4), F.S.
[4] *Id*.

Lease of Sovereignty Submerged Lands (Section 2)

The Board of Trustees of the Inland Protection Trust Fund (BOT) is responsible for the administration and disposition of the state's sovereignty submerged lands.[5] Waterfront landowners must receive the BOT's authorization to build docks and related structures on sovereignty submerged lands. The DEP administers all staff functions on the BOT's behalf.[6]

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.[7] Riparian landowners must obtain a sovereignty submerged lands authorization in the form of a letter of consent, consent by rule, or lease for installation and maintenance of docks, piers, and boat ramps on sovereignty submerged land. A dock that preempts more than the 10:1 preemption ratio, which is the ratio of the preempted area in square feet to the number of linear feet of shoreline owned by the applicant, requires a lease.[8]

A lease agreement, a landlord-tenant relationship between the state and the property owner, transfers the use, possession, and control of a sovereignty submerged lands to the property owner for up to 10 years. The annual lease fees for a standard term lease 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. A private residential multi-family dock that is designed to moor up to the number of units within the multi-family development is not required to pay a lease fee for a preempted area that is less than the 10:1 preempted ratio.[9]

Section 253.0347, F.S., and Rule 18-21, F.A.C., require that the DEP inspect each private residential single-family dock or pier, private residential multifamily dock or pier, private residential multislip dock, or other private residential structure under lease at least once every 10 years to determine compliance with the terms of the lease. In addition, each lessee is assessed a processing fee for the renewal of the lease every 10 years. The processing fee is increased annually based on the average change over five years in the Consumer Price Index. The current lease renewal processing fee is $619 for multi-family dock owners, which is paid by the condominium association or the homeowners association.

Effect of Proposed Changes

Section 2 amends s. 253.0347, F.S., exempting private residential multi-family dock owners from paying a lease renewal fee for a preempted area that is less than or equal to the 10:1 preempted ratio.

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[5] 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.
[6] Section 253.03, F.S.
[7] Section 253.141(1), F.S.
[8] Rule 18-21.005, F.A.C.
[9] Rule 18-21, F.A.C. See also DEP, *Construction Criteria for Docks, Piers, and Marinas-Not in an Aquatic Preserve*, http://publicfiles.dep.state.fl.us/dwrm/slerp/erphelp/mergedProjects/docksguide/Not_in_AP/Private_Multi_Family_or_Multi_Slip.htm (last visited Mar. 23, 2014).

Consumptive Use Permits for Developments of Regional Impact (Section 3)

Section 373.236(5), F.S., authorizes consumptive use permits (CUPs) for the development of alternative water supply (AWS) projects. A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn from the source. A WMD or the DEP may impose reasonable conditions as necessary to assure that the use is consistent with the overall objectives of the issuing WMD or the DEP and is not harmful to the water resources of the area.[10]

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(16), F.S.;
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[11]

CUPs must be granted for 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 the DEP may determine the duration of permits based upon a reasonable system of classification according to the water source, the type of use, or both.[12]

Section 380.06, F.S., defines "developments of regional impact" as "any development which, because of its character, magnitude or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Florida's regional planning councils coordinate the multi-agency review of proposed developments of regional impact. They are recognized as Florida's only multipurpose regional entity that plans for and coordinates intergovernmental solutions to growth-related problems on greater-than-local issues, provides technical assistance to local governments, and meets other needs of the communities in each region.[13] The Department of Economic Opportunity reviews land use decisions related to developments of regional impact for compliance with state law and to identify regional and state impacts.[14]The criteria used to evaluate a proposed development of regional impact are:

- The extent to which the development would create or alleviate environmental problems such as air, water, or noise pollution;
- The amount of pedestrian or vehicular traffic likely to be generated;
- The number of persons likely to be residents, employees, or otherwise present;
- The size of the site to be occupied;
- The likelihood that additional or subsidiary development will be generated;

[10] Section 373.219, F.S.
[11] Section 373.223(1)(a)-(c), F.S.
[12] Section 373.236, F.S.
[13] Section 186.502, F.S.
[14] See s. 380.06, F.S.,

- The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments; and the unique qualities of particular areas of the state.

Section 288.0656, F.S., recognizes that rural communities face challenges in their effort to improve their economies and provides legislative intent to encourage and facilitate the location and expansion of major economic development projects. A rural area of critical economic concern is defined as "a rural community, or a region composed or rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique development opportunity of regional impact."

Effect of Proposed Changes

Section 3 amends s. 373.236, F.S., allowing the WMDs and the DEP to issue a 30 year CUP for a development of regional impact that is located in a rural area of critical economic concern.

Programs Regulating Water Wells (Section 4)

Section 373.308, F.S., authorizes the WMDs to implement programs for the issuance of well permits. The well permits are the responsibility of the WMDs and the local governments, or the local county health department; however, the DEP may require minimum standards for the location, construction, repair, and abandonment of groundwater wells. The statute prohibits other local governments from imposing duplicative regulations or fees for activities associated with groundwater wells.

Effect of Proposed Changes

Section 4 amends s. 373.308, F.S., encouraging a county that imposes additional or more stringent water well design construction criteria, standards, or fees than the DEP or the WMDs to establish a Water Well Construction Advisory Board. The Water Well Construction Advisory Board is to coordinate and implement well construction criteria and standards, permitting, and aquifer protection programs. The bill requires the board to include licensed water well contractors, county health department staff, WMD staff, and a representative of the Florida Ground Water Association.

Mitigation Bank Permits (Sections 5 and 6)

Environmental mitigation, as it relates to wetlands regulatory programs, is generally defined as, "the creation, restoration, preservation or enhancement of wetlands to compensate for permitted wetlands losses."[15] Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.[16]

[15] John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 101 (1994).
[16] *Id*. at 103.

Section 373.4135, F.S., as part of the Environmental Reorganization Act of 1993, directs the DEP and WMDs to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation.[17] The rules, codified in s. 373.4136, F.S., address the following:

- The establishment of mitigation banks by governmental, nonprofit, or for-profit entities;
- Requirements to ensure the financial responsibility of nongovernmental entities proposing to develop mitigation banks;
- The appropriateness or desirability of mitigation banking when onsite mitigation is determined not to have the comparable long-term viability and ecological value of a mitigation bank;
- A framework for determining the value of a mitigation bank through the issuance of credits;
- Criteria for withdrawal of mitigation credits by projects within or outside the regional watershed where the bank is located;
- Measurements to ensure the long-term management and protection of mitigation banks; and
- Criteria governing the contribution of funds or land to an approved mitigation bank.[18]

A "banker" is an entity that creates, operates, manages or maintains a mitigation bank.[19] A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.[20] Mitigation banks are permitted by the DEP or one of the WMDs that has adopted rules based on the location of the bank and activity-based considerations, such as whether the ecological benefits will preserve wetlands losses resulting from development or land use activities or will offset losses to threatened and endangered species.[21] The mitigation bank permit authorizes the establishment and operation of the mitigation bank and sets forth the rights and responsibilities, including financial responsibilities, of the banker and the DEP for its implementation, management, maintenance, and operation.[22]

The requirements for a mitigation bank permit are contained in s. 373.4136, F.S., and Rules 62-342.450 and 62-342.700, F.A.C. Mitigation banks are also subject to the federal permitting process administered by the United States Army Corps of Engineers. In order to obtain a mitigation permit, the applicant must provide reasonable assurance that the proposed mitigation bank will:

- Improve the ecological conditions of the watershed;
- Provide sustainable ecological and hydrological functions for the mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the viability of the mitigation bank.

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[17] Chapter 93-213, s. 29, Laws of Florida.
[18] In 1996, the Florida Legislature revised the statutes on mitigation banking and the substantive sections of the rules were placed in s. 373.4136, F.S. *See* the "Legal Authority" section of the DEP, *Mitigation and Mitigation Banking*, http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (last visited Mar. 23, 2014). Rule 62-342, F.A.C., was revised in May 2001 providing specific financial assurance requirements.
[19] Rule 62-342.200(1), F.A.C.
[20] *Id*.
[21] DEP, *Mitigation and Mitigation Banking*, http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (last visited Mar. 23, 2014).
[22] *Id*.

The mitigation bank applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, abandonment, or removal of a surface water management system will meet the requirements of statute and rule. The applicant must also have sufficient legal or equitable interest in the property to ensure protection and management of the land within the mitigation bank.[23] The applicant is required to provide proof of financial responsibility for the construction and management of the mitigation bank.[24]

Effect of Proposed Changes

Section 5 amends s. 373. 4136, F.S., allowing mitigation bank permit applicants to submit proof of insurance on a form approved by the DEP or a WMD as proof of financial responsibility for mitigation banks.

Section 6 creates an unnumbered section of Florida law directing the DEP to adopt rules to implement changes made to s. 373.4136(1), F.S., made by this bill.

Regional Water Supply Planning (Section 7)

Section 373.709, F.S., requires the governing board of a WMD to conduct water supply planning for a water supply planning region within the district where it is determined that existing sources of water are not adequate to:

- Supply water for future and reasonable beneficial use; and
- Sustain the water resources and related natural system for the planning period.

The planning must be conducted in an open public process, in coordination and cooperation with local governments, a regional water supply authority, public and private wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, the DEP, DACS, and other affected parties.[25]

The regional water supply plan must be based on at least a 20-year planning period and include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy for water resource development projects;
- A funding strategy;
- Consideration of the public interest;
- Technical data and information applicable to the planning region;
- Minimum flows and levels established for the planning area;
- Reservations of water adopted by rule within each planning region;
- Identification of water resources for future MFLs; and
- Analysis of the areas where variances may be used to create water supply or resource development projects.[26]

[23] Section 373.414, F.S.
[24] Section 373.4136(1)(i), F.S., and Rule 62-342.700, F.A.C.
[25] *Id*.
[26] *Id*.

In 1998, the water management districts prepared water supply assessments to determine existing and future water needs and evaluate the adequacy of existing and potential sources to meet the reasonable-beneficial needs for the next 20 years. The regional water plans identified traditional and alternative water supply options including:

- Further development of fresh groundwater and surface water;
- Demineralization of brackish groundwater;
- Desalination of seawater;
- Reuse of reclaimed water; and
- Water conservation.[27]

Long-Term Master Plan

Section 163.3245, F.S., authorizes local governments, or combinations of local governments, to adopt a sector plan into their comprehensive plan. A sector plan promotes long-term planning for conservation, development, and agriculture by facilitating the protection of resources and avoiding duplication of data and analysis. Sector planning includes the adoption of a long-term master plan as part of the comprehensive plan and adoption by local development order of two or more detail specific areas that implement the long-term master plan.

The water needs, sources, and resource development projects identified in the long-term master plan are incorporated into the applicable regional or district water supply plans. A CUP may also be issued for the duration of the long-term master plan or detailed specific area plan. Consideration must also be given to the contribution of the master plan to the availability of the regional water supply and the importance of maximizing the reasonable-beneficial use of the water resource.[28]

Master Plan Development Order

A master development approval is required for a development project that includes two or more developments of regional impact and is planned for an extended period of time. The agreement is entered into by the developer, the regional planning agency, and the jurisdictional local government. The development order provides the requirements for incremental submittal of information throughout the development process and addresses the anticipated regional impacts.[29]

Effect of Proposed Changes

Section 7 amends s. 373.709, F.S., requiring that the water needs, sources, and resource development projects that are identified in a long-term master plan or a master plan development order must be included in the regional water supply plan.

[27] DEP, Regional Water Supply Planning, http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm, (last visited Mar. 23, 2014).
[28] Section 163.3245, F.S.
[29] Section 380.06, F.S. See also Rule 73C-40, F.A.C.

Coastal Safety Warning Devices (Section 8)

In 2002, the Legislature created s. 380.276, F.S., relating to the display of uniform warning and safety flags on public beaches. The Legislature recognized that because the varying natural conditions of Florida's public beaches and coastal areas pose significant risks to the safety of tourists and the general public, it is important to inform the public of the need to exercise caution. The DEP, through the Florida Coastal Management Program, was directed to coordinate the uniform warning and safety flag program.

The DEP program encourages the display of uniform warning and safety flags on all public beaches along the coast and the placement of uniform notification signs that provide the meaning of the flags displayed. The DEP coordinates the implementation of the uniform warning and safety flag program with local governing bodies and the Florida Beach Patrol Chiefs Association. Participation in the program is open to any governmental entity having jurisdiction over a public beach along the coast, whether or not the beach has lifeguards.

The DEP's beach warning flag program uses the colors adopted by the International Lifesaving Federation, with symbols added to clarify the meaning of the flags.[30] The program also includes the placement of interpretive signs along the beach to explain the meaning of each flag used in the warning system.

The uniform warning and safety flag program requires the following provisions:
- Posted notification of the meaning of each of the warning and safety flags at all designated public access points;
- The uniform notification signs be posted in a conspicuous location and be clearly legible; and
- The DEP establish the standard size, shape, color, and definition for each warning and safety flag.[31]

Effect of Proposed Changes

Section 8 amends 380.276, F.S., authorizing the DEP to approve the use of additional safety and warning devices to be used in conjunction with the display of uniform warning and safety flags at public beaches.

Variances (Section 9)

The Florida and Water Pollution Control Act was enacted in 1967.[32] The legislative declaration states "[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water."[33]

[30] International Life Saving Federation, *Beach Safety and Information Flags*, *available at* http://www.ilsf.org/sites/ilsf.org/files/filefield/beach-safety-and-information-flags-updated-100727.doc (last visited Mar. 27, 2014).
[31] Section 380.276, F.S
[32] Chapter 67-436, Laws of Fla.
[33] Section 403.21, F.S.

The act provides the DEP with authority to control and prohibit the pollution of water and air and to establish rules to carry out the act. Section 403.201, F.S., allows the DEP to grant a variance from the provisions of the act or the rules and regulations that have been adopted. A variance may be granted for any of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required; or
- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.

A variance is prohibited for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. Research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.[34]

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level/treatments techniques;
- A variance from other permitting standards or conditions;
- A major exemption for an aquifer; or
- A minor exemption for an aquifer.[35]

Effect of Proposed Changes

Section 9 amends s. 403.201, F.S., specifying the DEP may grant relief mechanisms in federally delegated or approved permitting programs if the action is not inconsistent with the implemented federal program.

Solid Waste Management Trust Fund (Section 10)

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides the guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.[36] Counties are responsible for operating solid waste disposal facilities, which are permitted through the DEP, in order to meet the needs of the incorporated and unincorporated areas of the county.[37]

Rules 62-701-722, F.A.C., establish the standards for the construction, operation, and closure of a solid waste management facility. Landfills or solid waste disposal sites that close require a

[34] Section 403.201, F.S.
[35] Rule 62-4.050, F.A.C.
[36] See s. 403.705, F.S.
[37] See s. 403.706, F.S.

closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A design plan;
- A closure operation plan;
- A long term care plan; and
- Proof of financial assurance, which may include closure insurance, for long-term care and cost estimate for closure pursuant to Rule 62-701.630, F.A.C.

Section 403.7125, F.S., provides the statutory requirement that the owner or operator of a landfill is responsible for the closure of the landfill and is liable for its improper closure. The owner or operator is required to establish a fee to ensure the financial resources are available for the closure of the landfill. Section 403.707(9), F.S., requires the same financial assurance responsibilities for the owner or operator. Sections 403.7125 and 403.707(9), F.S., allow the DEP to establish acceptable financial mechanisms that cover the cost of closure; however, neither section specifies that closure insurance is allowed.

Section 403.709, F.S., creates the, which is administered by the DEP. The trust fund requires that, of the money deposited:

- Up to 40 percent must be used for solid waste activities;
- Up to 4.5 percent must be for research and training programs;
- Up to 11 percent must be used for DACS mosquito control;
- Up to 4.5 percent for Department of Transportation litter prevention control programs; and
- A minimum of 40 percent for funding a solid waste management grant program for activities related to recycling and waste reduction.

Effect of Proposed Changes

Section 10 amends s. 403.709, F.S., creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities. The bill authorizes the DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate;
- The permittee provided proof of financial assurance for the closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with the closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete the closing and long-term care of the facility.

Currently there are no existing resources for the DEP to access in order to enter into contracts for the closure work before the contractor or the DEP can be reimbursed by insurance companies for the allowable closure costs covered by the financial assurance insurance policy.

Two-year Time Extensions for Building and Development Permits (Section 11)

In 2009, the Legislature passed SB 360, providing a retroactive two-year extension and renewal from the date of expiration for:[38]

- Any permit issued by the DEP or a WMD under Part IV of ch. 373, F.S.;
- Any development order issued by the Department of Community Affairs pursuant to s. 380.06, F.S.; and
- Any development order, building permit, or other land use approval issued by a local government that expired on or after September 1, 2008, but before January 1, 2012.

The extension applied to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S., for development orders and land use approvals, including but not limited to certificates of concurrency and development agreements.

Those requesting an extension were required to notify the authorizing agency in writing of the permit for which the extension was for and the timeframe for acting on the authorization. Requests were due no later than December 31, 2009.[39]

The extension did not apply to a permit or authorization:

- Under a programmatic or regional general permit issued by the United States Army Corps of Engineers;
- Owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension; and
- That would delay or prevent compliance with a court order if extended.

The rules in place at the time the initial permit or authorization was issued applied to the extension. Modifications to the permits and authorizations were also governed by rules in place at the time the permit or authorization was issued; however, a modification could not extend the time limit beyond the two years.[40]

In 2010, the Legislature passed SB 1752, which reauthorized the two-year time extension granted in 2009 because the underlying law was being challenged in court.[41] Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.[42]

SB 1752 also extended and renewed the expiration date for permits that expired between September 1, 2008, and January 1, 2012. This extension was in addition to the extension granted in 2009 and applied to the same type of permits. The permittee was required to request the extension in writing from the DEP no later than December 31, 2010. The request was to include

[38] Chapter 2009-96, 14, Laws of Fla.
[39] *Id*.
[40] *Id*.
[41] Chapter 2009-96, Laws of Fla., was being challenged in court, see *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010); therefore, the Legislature reauthorized the permit extension granted in ch. 2009-96. Laws of Fla., in order to protect those who relied on the extension.
[42] 2010-147, 47, Laws of Fla.

the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.[43]

In 2011, the Legislature extended and renewed the permits that were previously extended in 2009 and 2010 for an additional two years. The permittee was required to request the extension in writing from the DEP no later than December 31, 2011. The request was to include the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.[44]

In 2011, the Legislature also passed HB 7207, to extend and renew a building permit or environmental resource permit that had an expiration date of January 1, 2012, through January 1, 2014. The extension included any development order or building permit issued by a local government, including certificates or levels of services. The extension was in addition to any existing permit extension. The development of regional impact order extensions were not eligible for this extension and any permit that received a cumulative extension of four years due to previous extension was not eligible for this extension.[45]

Effect of Proposed Changes

Section 11 creates an unnumbered section of Florida law to extend and renew the permit extensions from previous years. The bill extends the expiration date by two years for any environmental resource permit issued by the DEP or WMD with an expiration date from January 1, 2014 through January 1, 2016. The extension includes local government-issued development orders or building permits, including certificates of level of service. The bill does not prohibit the conversion from the construction phase to the operation phase upon completion of construction. The extension is in addition to any existing permit extensions; however, the total permit extension time for this bill or the 2009, 2010, and 2011 extensions cannot exceed four years.

The bill requires that the dates for commencement and completion for any required mitigation associated with a phased construction project are also extended.

The extension provided by the bill does not apply to:

- A permit or authorization under a programmatic or regional permit issued by the United States Army Corps of Engineers;
- A permit or authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization; or
- A permit authorization that would be out of compliance with a court order if extended.

The bill requires that permits extended under this section are subject to the rules in effect at the time the permit was issued, unless the rules would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit. A modification cannot extend the time limit beyond two additional years.

[43] 2010-147, 46, Laws of Fla.
[44] Chapter 2011-139, s. 46, Laws of Fla.
[45] *Id*.

The bill does not prevent a county or municipality from requiring a property owner that has requested an extension to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws.

Section 12 provides an effective date of July 1, 2014.

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:

Landowners and the private sector may have a positive fiscal impact from the issuance of 30-year CUPs for developments of regional impacts in rural areas of critical economic concern.

Applicants who are seeking mitigation bank permits and can satisfy the financial requirements with proof of insurance will have an indeterminate cost savings.

Multi-family property owners will experience a positive fiscal impact from the exemption of the lease renewal fee. The lease renewal fee is assessed every 10 years and is currently $619. This amount is increased annually by the average change in the Consumer Price Index over the previous five-year period.

Developers or other entities holding a development permit or other authorization may have a positive fiscal impact from permits that are extended or renewed for two years.

C. Government Sector Impact:

The DEP will experience a negative fiscal impact from the exemption from lease renewal fee. There are currently 731 multifamily facilities. The reduction in revenue deposited into the Internal Improvement Trust Fund over the next 10-year period is approximately $452,000, with an annual reduction of $45,200.

Local governments will incur an expense if they choose to purchase additional safety and warning devices.

The landfill closure account will have a positive fiscal impact on the DEP; however DEP did not provide an agency analysis for this section, therefore the fiscal impact is indeterminate.

The DEP may incur costs associated with the rule development process for the mitigation bank provision; however, the DEP has not provided an estimate of the cost at this time.

VI. Technical Deficiencies:

On lines 191-202, regarding landfill closure accounts, there is no indication whether all of the requirements must be met or only one of the five.

VII. Related Issues:

The intent on line 255 of the bill is to include laws passed during the 2014 Regular Session and future legislative sessions. As written, the bill applies to all laws in effect as of July 1, 2014.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184, 253.0347, 373.236, 373.308, 373.4136, 373.709, 380.276, 403.201, and 403.709.

This bill creates two unnumbered sections of Florida Law.

IX. 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 26, 2014:

- Deletes the provision prohibiting counties from requiring duplicative regulations for agricultural activities;
- Allows charter counties to retain greater than simple majority voting requirements if approved by a countywide election;
- Deletes the provision prohibiting local governments from rescinding prior land use approvals for certain agricultural lands;
- Exempts multi-family dock owners from paying a lease processing fee;
- Deletes the provision that prohibits local government from requiring additional authorizations for a water control structure or water control infrastructure that is included within a water control plan and incorporated in a plat of the county or municipality in which the water control district lies and has been issued an environmental resource permit or a federal Clean Water Act permit;

- Deletes the provisions authorizing a CUP for up to 50-years to landowners that make land available for dispersed water projects that provide water resource benefits and AWS development;
- Encourages counties to create a Water Well Construction Advisory Board;
- Deletes the provision that revises the application requirements for well contractor licensure;
- Deletes the provision that requires a water control district to obtain an environmental resource permit and the applicable permit or authorization from the applicable general purpose government for facilities, structures, or improvements;
- Deletes the provision that requires local government authorizations to apply the same mitigation criteria and costs that are applied in ch. 298, F.S;
- Deletes the provision that provides an exemption from the requirements of a population analysis of a water supply plan;
- Allows state agencies and local governments to use additional safety warning devices at public beaches;
- Specifies that the DEP may grant relief mechanisms in federally delegated or approved permitting programs if the action is not inconsistent with the implemented federal program;
- Deletes the provision that exempts certain tents from the Fire Code Prevention Code;
- Extends the expiration date by two years for any environmental resource permit issued by the DEP or WMD with an expiration date from January 1, 2014, through January 1, 2016;
- Specifies the total permit extension time for this bill or the 2009, 2010, and 2011 extensions cannot exceed four years;
- Deletes the provision that allows the time extensions granted in the bill to be self-executing; and
- Requires that permits that are extended are subject to the rules in effect at the time of the extension, unless the rule is superseded by laws in effect after July 1, 2014.

B. Amendments:

None.