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:	SB 1464
INTRODUCER:	Senator Simpson
SUBJECT:	Environmental Regulation
DATE:	March 24, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Pre-meeting**
2.			CA	
3.			AP	
4.			RC	

I. Summary:

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

- Prohibits counties from requiring duplicative regulations for agriculture activities;
- Provides voting requirements for the adoption or transmittal of a comprehensive plan or plan amendment;
- Prohibits local governments from rescinding prior land use approvals for certain agricultural lands;
- Exempts multi-family dock owners from a permit fee;
- Prohibits local governments from requiring authorizations or permits for certain water structure and infrastructure projects;
- Authorizes consumptive use permits for 50 years for certain landowners and 30 years for a development of regional impact;
- Requires local governments to adhere to specific well construction criteria;
- Revises the application requirements for well contractor licensure;
- Amends the financial responsibility requirements for mitigation bank permit applicants and requires the DEP to adopt rules;
- Requires a dependent water control district to get an environmental resource permit or other authorization from the local government and provides mitigation requirements;
- Amends requirements for a regional water supply plan;
- Clarifies that moderating provisions are to be issued for discharging waste or hazardous waste management;
- Creates a solid waste landfill closure account;
- Provides an exemption for a certain tents from the Fire Prevention Code; and
- Extends and renews 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

Agriculture in Florida (Section 1)

The Right to Farm Act was passed by the Legislature in 1979. The act protects farmers from burdensome lawsuits that are intended to end or prevent farming operations and discourage agricultural investments.[1]

In 2000, the Right to Farm Act was amended, eliminating duplicative regulations on farming activities. Specifically, if the activity of a bona fide farm operation on agricultural land is regulated through best management practices (BMPs) or interim measures that are developed by the Department of Environmental Protection (DEP) or the Department of Agriculture and Consumer Services (DACS), then a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, or limits the activity.[2]

In 2003, the Legislature passed the Agricultural Lands and Practices Act. The act prohibits counties from adopting any duplicative ordinance, resolution, regulation, rule, or policy that limits activity of a bona fide farm or farm operation on agricultural land as long as the activity is conducted using:[3]

- BMPs;
- Interim measures; or
- Existing state or regional regulatory programs developed by the DEP, DACS, or a water management district (WMD).

In 2011, the Legislature passed HB 7103, providing additional provisions for the duplication of regulations. The legislation allows local governments to enforce wetlands, springs protection, or stormwater ordinances adopted before July 1, 2003, or to enforce regulations pertaining to the Wekiva River Protection Area. The legislation also allows a county to enforce ordinances, regulations, or rules as directed by law, or implemented consistent with the requirements of a program operated under a delegation agreement from a state agency or WMD.[4]

Effect of Proposed Changes

Section 1 amends s. 163.3162, F.S., prohibiting the enforcement of any modification, readoption, or amendment of local wetland, springs, or stormwater ordinances, regulations, or rules, even if the ordinance was adopted before July 1, 2003.

[1] See s. 823.14, F.S.
[2] *Id*.
[3] Chapter 2003-162, Laws of Fla.
[4] Chapter 2011-139, s. 5, Laws of Fla.

State Coordinated Review Process (Section 2)

Section 163.3184, F.S., provides the process for review of comprehensive plans and most plan amendments.[5] 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.[6]

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.[7]

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.[8]

Effect of Proposed Changes

Section 2 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.

Land Use Planning (Section 3)

Florida has one of the most comprehensive land use planning programs in the county. Local governments are responsible for establishing and implementing comprehensive planning programs used to guide and control future development.[9] In 1985, the Local Government Comprehensive Planning and Land Development Regulation Act was enacted. It requires all local governments to adopt a comprehensive plan to encourage the most appropriate use of land, water, and resources and is consistent with the public interest.[10]

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[5] 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.
[6] Section 163.3184(3), F.S.
[7] Section 163.3184(4), F.S.
[8] *Id*.
[9] Tony Arrant, *Florida County Government Guide, Planning and Growth Management*, *available at* http://www.fl-counties.com/docs/pdfs/pages-from-florida-county-government-guide---growth-management.pdf?sfvrsn=2 (last visited Mar. 23, 2014).
[10] Section 163.3161, F.S.

Section 163.3161, F.S., provides the legal status of comprehensive plans. Before a county can issue a development order, adopt a local ordinance that relates to the development of property, or take action related to a development order, the county must first confirm the action is consistent with the provisions of the comprehensive plan. If the development is not consistent with the comprehensive plan, the plan must be amended. Section 163.3194(5), F.S., specifies that the tax-exempt status of lands classified as agricultural are not affected by a comprehensive plan adopted under that section, as long as the land meets the agricultural lands classification criteria in s. 193.461, F.S.[11]

Effect of Proposed Changes

Section 3 amends 163.3194, F.S., prohibiting a local government from rescinding a comprehensive plan land use approval for land that is primarily used for a bona fide agricultural purpose and qualifies for the ad valorem agricultural classification.

Lease of Sovereignty Submerged Lands (Section 4)

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.[12] 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.[13]

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.[14] 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.[15]

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.[16]

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[11] See s. 193.461, F.S.
[12] 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.
[13] Section 253.03, F.S.
[14] Section 253.141(1), F.S.
[15] Rule 18-21.005, F.A.C.
[16] 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).

Effect of Proposed Changes

Section 4 amends s. 253.0347, F.S., exempting private residential multi-family dock owners from paying a permit fee for a preempted area that is less than or equal to the 10:1 preempted ratio.

Water Control Districts (Section 5)

Water control districts are special districts that have the authority to manage the water needs of the district they serve, as specified in their creation documents.[17] In 1913, the Legislature passed the General Drainage Act (now codified in ch. 298, F.S.), to establish one procedure for creating drainage districts.[18] In 1978, the Legislature amended ch. 298, F.S., to designate the water management districts in this section, as water control districts. There are 86 drainage and water control districts that are subject to the provisions in ch. 298, F.S.[19]

Pursuant to s. 298.225, F.S., any reclamation plan, water management plan, or improvement plan that is developed and implemented by a water control district is considered a "water control plan." If applicable, the water control plan must contain:

- The descriptions of the district's statutory authority;
- A map delineating all boundaries of the district and sub districts;
- The description of all land and facility uses;
- The engineering description of the facility's ability to manage and store surface and potable water;
- A description of the environmental or water quality program that has been implemented;
- A map of the area outside the district where the district provides service;
- A detailed description of facilities proposed in the next five years; and
- A description of the administrative structure of the district.

The water control plan or plan amendment is adopted pursuant to s. 298.301, F.S., which specifies the board of supervisors must:

- Adopt a resolution to consider the water control plan or plan amendment before it can be adopted;
- Notice the public hearing in a newspaper of general circulation once a week for three consecutive weeks;
- Mail individual notices to landowners, the jurisdictional water management district, the county commission, and any municipality in which the district is located; and
- Submit the plan or plan amendment to the jurisdictional water management district, which must be reviewed within 60 days of submittal.

[17] Florida House of Representatives, Comm. On Urban and Local Affairs, Review of Special Districts, A White Paper (Jan. 2008), *available at* http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Announcements/interim_projects/documents/A%20Review%20of%20Special%20Districts.pdf (last visited Mar. 23, 2014).
[18] F.T. Izuno, University of Florida, *A Brief History of Water Management in the Everglades Agricultural Area*, 5, *available at* http://edis.ifas.ufl.edu/pdffiles/AE/AE37500.pdf (last visited Mar. 23, 2014).
[19] Chapter 78-153, Laws of Fla.

Section 298.255(6), F.S., specifies that the review or approval of the water control plan by the applicable water management district does not constitute the authorization of any permit necessary for the construction or operation of any water control district work. The review or approval of the water control plan is not considered as future agency action on a permit application.

Effect of Proposed Changes

Section 5 amends s. 298.225, F.S., specifying that additional authorizations from the local government are not required to implement, construct, or maintain 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.

Consumptive Use Permits for the Development of Alternative Water Supplies (Section 6)

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.[20]

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.[21]

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.[22]

Section 373.019(1), F.S., defines "alternative water supplies" as "salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan."

[20] Section 373.219, F.S.
[21] Section 373.223(1)(a)-(c), F.S.
[22] Section 373.236, F.S.

CUPs issued for the development of AWS prior to July 1, 2013, F.S., must be issued for at least 20 years. If the permittee issues bonds to finance construction of the AWS project, the permit must be extended to expire upon retirement of the bonds if the permittee requests an extension during the term of the permit and the issuing WMD's governing board determines the use will continue to meet the CUP's conditions. Compliance reports may also be required every 10 years for CUPs issued for AWS projects. WMDs generally issue CUPs with a maximum term of 20 years for the development of AWS, although some 30-year CUPs for AWS projects have been issued.[23]

A CUP approved on or after July 1, 2013, must be issued for at least 30 years, if reasonable assurance is provided that the conditions of the permit will be met. If, within seven years from the issuance of the permit, the permitee issues bonds to finance the project, completes the project, and requests an extension of the CUP duration, the CUP must be extended for a maximum of seven years. This will allow the entity that develops the AWS project to operate the AWS project for 30 years after construction in order to repay 30-year bonds.[24] A 30-year CUP is subject to the compliance reports issued pursuant to s. 373.236(4), F.S.

In 2009, the Legislature amended s. 373.236, F.S., recognizing the need for AWS development projects in order to meet future water supply needs. To encourage landowners to participate in water projects, the DEP and the WMDs may issue CUPs for up to 50 years to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly or privately owned utilities who have entered into an agreement with a private landowner. The 50 year CUP does not include publicly or privately owned utilities that have been created for or by a private landowner after April 1, 2008.[25]

Effect of Proposed Changes

Section 6 amends s. 373.236, F.S., allowing the WMDs and the DEP to issue 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. The bill also allows the WMDs and the DEP to issue a 30 year CUP for a development of regional impact that is located in an area of critical economic concern.

Programs Regulating Water Wells (Section 7)

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.

[23] Sections 373.236(5)(a), and 373.236(4), F.S.
[24] Section 373.236(5)(b)1., F.S.
[25] Chapter 2009-243, Laws of Fla.

Effect of Proposed Changes

Section 7 amends s. 373.308, F.S., requiring local governments to adhere to well construction criteria and standards adopted by the DEP or the WMD. The bill preempts local governments' well construction regulations.

Licensure of Water Well Contractors (Section 8)

Section 373.323(11), F.S., requires that any person wishing 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 in the form of a letter from three of the following:
  - A water well contractor;
  - A water well driller;
  - A water well parts and equipment vendor; or
  - A water well inspector employed by a governmental agency.[26]

Effect of Proposed Changes

Section 8 amends s. 373.323, F.S., to remove a water well driller and a water well parts and equipment vendor from the list of people who may provide a letter of reference for an applicant.

Mitigation Bank Permits (Sections 9 and 10)

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."[27] Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.[28]

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.[29] 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;

[26] Section 373.323, F.S.
[27] 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).
[28] *Id*. at 103.
[29] Chapter 93-213, s. 29, Laws of Florida.

- 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.[30]

A "banker" is an entity that creates, operates, manages or maintains a mitigation bank.[31] A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.[32] 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.[33] 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.[34]

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.

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.[35] The applicant is required to provide proof of financial responsibility for the construction and management of the mitigation bank.[36]

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[30] 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.
[31] Rule 62-342.200(1), F.A.C.
[32] *Id*.
[33] DEP, *Mitigation and Mitigation Banking*, http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (last visited Mar. 23, 2014).
[34] *Id*.
[35] Section 373.414, F.S.
[36] Section 373.4136(1)(i), F.S., and Rule 62-342.700, F.A.C.

Effect of Proposed Changes

Sections 9 and 10 amend 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. The DEP is required to adopt rules to implement this section.

Activities in Surface Waters and Wetlands (Section 11)

Section 373.414, F.S., requires applicants to provide the governing board of a WMD or the DEP with reasonable assurance that the proposed activity will not violate state water quality standards, is not contrary to the public interest, or is clearly in the public interest. The DEP or the governing board must determine if activities outside of Outstanding Florida Waters are not contrary to the public interest by determining:

- If the activity will adversely affect:
  - The public health, safety, or welfare of others;
  - The conservation of fish and wildlife, including threatened or endangered species;
  - Navigation or the flow of water or cause harmful erosion;
  - Fishing or recreational values or marine productivity;
- If the activity will be temporary or permanent in nature;
- If the activity will adversely affect or enhance historical or archeological resources; and
- The current condition and value of the area affected by the activity.

In the event the applicant cannot meet the public interest requirements specified in s. 373.414, F.S., the governing board or the DEP may consider any mitigation proposed by the applicant to offset the impacts. The applicant is responsible for proposing the type of mitigation and may include onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks.[37]

Effect of Proposed Changes

Section 11 amends s. 373.414, F.S., requiring a water control district (as discussed on page 6 of this analysis) to obtain an environmental resource permit and the applicable permit or authorization from the applicable general purpose government for facilities, structures, or improvements. The local government authorization must apply the same mitigation criteria and costs that are applied in ch. 298, F.S.

Regional Water Supply Planning (Section 12)

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,

[37] Section 373.4136, F.S.

multijurisdictional water supply entities, self-suppliers, reuse utilities, the DEP, DACS, and other affected parties.[38]

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.[39]

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.[40]

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.[41]

[38] *Id*.
[39] *Id*.
[40] DEP, Regional Water Supply Planning, http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm, (last visited Mar. 23, 2014)
[41] Section 163.3245, F.S.

Master Plan Development Order

A development of regional impact is a development that, because of its character, magnitude, and location, would have a substantial effect on 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.[42] 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.[43]

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.[44]

Effect of Proposed Changes

Section 12 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 and exempting them from the requirements of the water supply plan.

Variances (Section 13)

The Florida and Water Pollution Control Act was enacted in 1967.[45] 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."[46]

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

[42] Section 186.502, F.S.
[43] See s. 380.06, F.S.,
[44] Section 380.06, F.S. See also Rule 73C-40, F.A.C.
[45] Chapter 67-436, Laws of Fla.
[46] Section 403.21, F.S.

- 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.[47]

A moderating provision may be included in a permit when the natural conditions of the impacted area result in limits that exceed what is authorized in the permit.[48] A water quality variance is example of moderating provisions that may be applied to a permit.[49]

Effect of Proposed Changes

Section 13 amends s. 403.201, F.S., specifying that nothing in the section prohibits the issuance of a moderating provision under state law.

Solid Waste Management Trust Fund (Section 14)

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.[50] 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.[51]

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 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

[47] Section 403.201, F.S.
[48] DEP, *Water Quality Q&A*, http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm (last visited Mar. 23, 2014).
[49] Rule 62-4, F.A.C.
[50] See s. 403.705, F.S.
[51] See s. 403.706, F.S.

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 14 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.

Florida Fire Prevention Code (Section 15)

Section 633.202, F.S., requires the State Fire Safety Marshall to adopt the Florida Fire Prevention Code by rule and incorporate by reference all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of firesafety laws and rules.

Effect of Proposed Changes

Section 15 amends s. 633.202, F.S., exempting a tent up to 30 feet by 30 feet from the Fire Prevention Code, including the national codes that are incorporated by reference.

Two-year Time Extensions for Building and Development Permits (Section 16)

In 2009, the Legislature passed SB 360, providing a retroactive two-year extension and renewal from the date of expiration for:[52]

- 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.[53]

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.[54]

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.[55] Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.[56]

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

[52] Chapter 2009-96, 14, Laws of Fla.
[53] *Id*.
[54] *Id*.
[55] 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.
[56] 2010-147, 47, Laws of Fla.

the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.[57]

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.[58]

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.[59]

Effect of Proposed Changes

Section 16 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 2012 through January 2015. 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 five 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.

[57] 2010-147, 46, Laws of Fla.
[58] Chapter 2011-139, s. 46, Laws of Fla
[59] *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 17 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.

D. Other:

Sections 5 and 11 are specific to the Ranger Drainage District and may violate the provisions of Article III, sections 10 and 11(a)(21) of the Florida Constitution which apply to special laws. In addition, s. 298.76, F.S., specifically states, "[T]here shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to this chapter."

Additionally, section 15 of the bill, regarding the fire code, may violate the single subject requirement of Article III, section 6 of the Florida Constitution, which requires that "every law shall embrace but one subject and matter properly connected therewith."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Prohibiting the enforcement of any modification, readoption, or amendment of local wetland, springs, or stormwater ordinances, regulations, or rules, even if the ordinance was adopted before July 1, 2003, will have an indeterminate but positive fiscal impact on agriculture producers.

Landowners and the private sector may have a positive fiscal impact from the issuance of 50-year and 30-year CUPs.

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

Developers will have an indeterminate positive fiscal impact from being exempt for the water supply plan analysis requirements.

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.

The private sector will have an indeterminate positive fiscal impact by not having to comply with fire code for tents up to 30 feet by 30 feet.

C. Government Sector Impact:

In general, where this bill reduces duplication or preempts or limits local government oversight and permitting, those local governments this bill applies to will lose revenues from permit and application fees. The amount is indeterminate.

The Ranger Drainage District may have less permitting and regulatory expenses because it would not have to comply with local government regulations. In addition, district may benefit from uniform mitigation criteria if those criteria require less mitigation than currently required by the local government.

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.

Local governments may experience a negative fiscal impact from the reduced revenue of well construction permit fees, however that amount is indeterminate.

The DEP may incur costs associated with the rule development process for the mitigation bank provision.

VI. Technical Deficiencies:

On line 125, it appears that the intent of the legislation is to exempt lease holders from paying the lease processing fee for new leases, renewals, or modifications, not to exempt them from paying the permit processing fees. The proposed legislation references ch.253, F.S., which is one of the statutes that governs the use of sovereign submerged lands. Chapter 253, F.S., does not govern the regulation of the construction and alteration of docking facilities. That authority is contained in Part IV of ch. 373, F.S. If this section is revised to include the lease processing fee, there will be a fiscal impact to the DEP.

On lines 345-346, regarding landfill closure accounts, there is no indication whether all of the requirements must be met or only one of the five.

On lines 380-382, it is not clear if the 30 foot by 30 foot tent must be on property classified for ad valorem purposes as agricultural, or if it applies to any tent of such a size.

VII. Related Issues:

Sections 5 and 11 are specific to the Ranger Drainage District. It is unclear whether the language in these sections could apply to more than just the Ranger Drainage District and, therefore, constitute and open class. As noted in Section IV of this analysis, there may be constitutional questions regarding the validity of including language specific to this one district.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3162, 163.3184, 163.3194, 253.0347, 298.225, 373.236, 373.308, 373.323, 373.4136, 373.414, 373.709, 403.201, 403.709, and 633.202.

IX. Additional Information:

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

None.

B. Amendments:

None.