

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 956

INTRODUCER: Appropriations Committee; Community Affairs Committee; Environmental Preservation and Conservation Committee; and Senator Bean

SUBJECT: Coastal Management

DATE: April 24, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|------------|------------------|
| 1. | <u>Gudeman</u> | <u>Uchino</u> | <u>EP</u> | <u>Fav/CS</u> |
| 2. | <u>White</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/CS</u> |
| 3. | <u>Howard</u> | <u>DeLoach</u> | <u>AGG</u> | <u>Favorable</u> |
| 4. | <u>Howard</u> | <u>Kynoch</u> | <u>AP</u> | <u>Fav/CS</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 956 extends the expiration date by two years for any environmental resource permit issued by the Department of Environmental Protection (DEP) or a Water Management District (WMD) with an expiration date from January 1, 2014, through January 1, 2016. The bill limits the permit time extension to four years.

The bill authorizes the DEP to grant areawide and general permits for coastal construction activities. With respect to area-wide permits, the DEP must consult with the Florida Fish and Wildlife Conservation Commission (FWC) for each areawide permit proposed. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide and general permits.

The bill allows the DEP to receive gifts and donations for the administration, development, improvement, promotion, and maintenance of aquatic preserves, as well as for the future acquisition or development of aquatic preserves. In addition, the bill allows the DEP to promote the public use of aquatic preserves by authorizing privileges or concessions for visitor accommodations. The bill provides for transparency and public input regarding privileges and concessions.

The bill prohibits DEP from granting new concession agreements after May 1, 2014, in state parks that provide beach access and contain less than 7,000 linear feet of shoreline and the concession is available within 1,500 feet of the park's boundaries.

The DEP estimates a reduction in revenue from reduced permit fees of approximately \$66,000 in the Permit Fee Trust Fund. Since the fund currently collects over \$12 million annually, this reduction is insignificant. The state should realize an indeterminate positive fiscal impact from promoting the public use of aquatic preserves. The DEP will need additional resources for this purpose. See Section V. Fiscal Impact Statement.

II. Present Situation:

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

- Any permit issued by the DEP or a WMD pursuant to 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, 2012.¹

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. The notification was required to specify which permit was intended to be extended and the timeframe for acting on the authorization. Requests were due no later than December 31, 2009.²

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;
- For owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension; or
- 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 two years.³

¹ Chapter 2009-96, s. 14, Laws of Fla.

² *Id.*

³ *Id.*

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.⁴ Entities requesting an extension and renewal of the permit were required to notify the authorizing agency in writing.⁵

The law 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 types of permits. The permittee was required to request the extension in writing from the DEP no later than December 31, 2010. The request had to include the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.⁶

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 had to include the authorization the permittee intended to use the extension for and the timeframe for acting on the authorization.⁷

In 2011, the Legislature 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. Development of regional impact order extensions under s. 380.06(19)(c)2., F.S., 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.⁸

Coastal Construction Control Line

Florida's coastline spans more than 1,260 miles; 825 miles of which are considered sandy beaches fronting the Atlantic Ocean, the Gulf of Mexico and the Straits of Florida.⁹ Florida's beach and dune system are vital components of the delicate coastal ecosystem, providing habitat to hundreds of species of plants and animals. The beach and dune system is also critical in protecting uplands and coastal development during storm events.¹⁰ Florida's beaches are a primary tourist destination, attracting 38 million visitors in 2012 and providing \$55 billion in sales to the state's economy.¹¹

⁴ 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.

⁵ 2010-147, s. 47, Laws of Fla.

⁶ Chapter 2010-147, s. 46, Laws of Fla.

⁷ Chapter 2011-139, s. 46, Laws of Fla.

⁸*Id.*

⁹ DEP, *Statistical Abstract, Geographical Summary*, <http://www.dep.state.fl.us/secretary/stats/geographical.htm> (last visited Mar. 10, 2014).

¹⁰ DEP, *Beaches and Coastal Systems*, <http://dep.state.fl.us/beaches/> (last visited Mar. 10, 2014).

¹¹ Florida Shore and Beach Preservation Association, *Healthy Beaches Drive Florida's Economy*, available at <http://www.fsbpa.com/EconomicFactSheet.pdf> (last visited Mar. 10, 2014).

In 1965, the Legislature enacted the Florida Beaches and Shores Preservation Act (Act). The Act authorized the former Department of Natural Resources (DNR) to regulate construction and physical activity on or seaward of the state's beaches and required individuals, municipalities, and counties to obtain a permit for any coastal construction seaward of the mean high water line.¹²

In 1970, the Legislature established a setback line for coastal construction and excavation. The coastal construction setback line prohibited coastal construction and excavation within 50 feet of the mean high water line at any riparian coastal location fronting the Gulf of Mexico and Atlantic Ocean. The law provided waivers and variances for the setback requirement and provided an exemption for shore protection structures.¹³

Section 161.053, F.S., enacted in 1971, required setback lines on a county by county basis along the sandy beaches of the Atlantic Ocean and the Gulf of Mexico. The DNR was required to conduct a comprehensive engineering study and topographic survey to establish the setback lines necessary for the protection of upland properties and to control coastal erosion. The law required that a public hearing be held for each setback line established and that the established setback lines be recorded in the public records of the county and municipality affected.¹⁴

In 1978, s. 161.052, F.S., was amended to change the construction setback lines to Coastal Construction Control Lines (CCCL) and provided the DNR with authority to issue permits for construction activities that previously required a waiver or variance.

The CCCL requirements, established in s. 161.053, F.S., were significantly amended in 1996, to exempt proposed construction located seaward of the CCCL and landward of existing armoring from specific siting and design criteria. The law also allowed the DEP to grant areawide permits to local governments, governmental agencies, and utilities for specific activities, including, but not limited to, road repairs, utility repairs and replacements, beach cleaning, and emergency response. To qualify for an areawide permit, the statute requires that the activities "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."¹⁵ The DEP is authorized to establish rules and criteria to administer this section; however, rules have not been adopted for areawide permits.

Section 161.053, F.S., also provides the DEP with the authority to issue general permits. General permits may be issued where a general permit line has been established and the activity "will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites."¹⁶ Activities that may be authorized under a general permit include: dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures. A single-family habitable structure may qualify for a general permit as long as it does not advance the existing line of construction and

¹² Chapter 65-408, Laws of Fla.

¹³ Chapter 70-231, Laws of Fla.

¹⁴ Chapter 71-136, Laws of Fla.

¹⁵ Chapter 96-371, Laws of Fla.

¹⁶ Rule 62B-34.010(7), F.A.C., defines the general permit line as "the line that defines the seaward limit where General Permits can be issued for activities authorized by this rule chapter, is established pursuant to the provisions of s. 161.053(18), F.S., and is recorded in the official records of the county."

satisfies all siting and design requirements. Multi-family habitable structures do not qualify for a general permit. The DEP adopted Rule 62B-34, F.A.C., to establish the criteria and guidelines for the issuance of a general permit.

Florida State Parks

The DEP Division of Recreation and Parks (division) manages Florida's 161 state parks and 10 state trails that encompass approximately 800,000 acres and 100 miles of sandy white beaches. Florida's state parks provide valuable resources based recreational activities including fishing, diving, swimming, camping, and hiking. During Fiscal Year 2012-2013, more than 25 million people visited the state parks, providing over \$55 million in state revenue.¹⁷

Section 258.007(3), F.S., provides the division authority to grant privileges, leases, concessions, and permits for the use of state parks for the accommodation of visitors. Currently the division has entered into 86 concession agreements that generate approximately \$31.4 million in gross revenue, of which approximately \$4 million is paid to the state.¹⁸ Concession operations provide services such as merchandise sales, passenger ferry services, boat and land tours, food and beverage services, recreational equipment rentals, pier operations, campground operations, and recreational skills instruction.¹⁹

Aquatic Preserves

The Florida Aquatic Preserve Act was enacted in 1975 to set aside and protect state-owned submerged lands that have "exceptional biological, aesthetic, and scientific value."²⁰ There are 41 aquatic preserves protecting approximately 2.2 million acres in Florida.²¹

Aquatic preserves serve many valuable ecological and economic functions. The aquatic preserves provide nurseries for juvenile fish and other aquatic life, maintain water quality, and provide habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.²²

The DEP is responsible for managing the state's aquatic preserves by maintaining a healthy balance of resource protection and promoting public access to the preserves.²³ The DEP adopted Rule Chapters 18-18 and 18-20, F.A.C., which specify the additional resource protections, management criteria, and regulations related to human activity that are permitted within an aquatic preserve.

¹⁷ Florida Park Service, Florida State Parks, *About Florida State Parks and Trails*, <http://www.floridastateparks.org/resources/aboutus.cfm> (last visited Apr. 23, 2014).

¹⁸ Email from Amanda Marsh, DEP Office of Legislative Affairs (Apr. 23, 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁹ DEP, *Bureau of Operational Services, Concession Operations*, <http://www.dep.state.fl.us/Parks/bos/vsp/default.htm> (last visited Apr. 23, 2014).

²⁰ Sections 258.35-394, and 258.40-46, F.S.

²¹ DEP, *Florida's Aquatic Preserves*, <http://www.dep.state.fl.us/coastal/programs/aquatic.htm> (last visited Mar. 3, 2014).

²² DEP, *Florida's Aquatic Preserves, Protecting Our Most Valued Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf (last visited Mar. 3, 2014).

²³ Sections 258.35-258.394 and 258.40-258.46, F.S.

III. Effect of Proposed Changes:

Section 1 creates an undesignated 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 a 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 and the 2009, 2010, and 2011 extensions cannot exceed four years.

The bill extends the dates for commencement and completion for any required mitigation associated with a phased construction project. The extension 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 or authorization that would be out of compliance with a court order if extended.

The bill requires that permit extensions 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.

The bill authorizes a county or municipality to require 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 2 amends s. 258.007, F.S., to prohibit the division from granting new concession agreements after May 1, 2014, in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the concession is available within 1,500 feet of the park's boundaries. The bill specifies that the provision does not apply to concession agreements for accommodations offered on or before May 1, 2014.

Section 3 amends s. 161.053, F.S., to require the DEP to adopt rules for areawide and general permits. The bill expands the types of activities allowed under each type of permit.

For areawide permits, the bill authorizes construction of minor structures and specifies dune restoration and on-grade walkovers qualify under this type of permit. The DEP must consult with the FWC for each proposed areawide permit.²⁴

²⁴ Currently, the FWC is responsible for reviewing and commenting on administrative permits for coastal construction activities and reviewing beach lighting ordinances. This provision of the bill allows FWC to retain their involvement in the permitting process, which is of particular relevance with respect to swimming pools associated with single-family homes that produce an illuminating artificial light that may interfere with sea turtle nesting.

For general permits, the bill expands the types of activities to include dune restoration, construction of swimming pools associated with single-family habitable structures that do not advance the existing line of construction and comply with siting and design requirements, and minor reconstruction of existing coastal armoring structures.

Section 4 creates s. 258.435, F.S., promoting the use of aquatic preserves and their associated uplands. The bill allows the DEP to receive gifts and donations in order to promote the use of aquatic preserves. The funds received are to be deposited into the Land Acquisition Trust Fund for the administration, development, improvement, promotion, and maintenance of the preserves and their associated uplands. The gifts and donations may also be used for future acquisitions or development of aquatic preserves and their associated uplands.

The bill authorizes the DEP to grant a privilege or concession for the accommodation of visitors to an aquatic preserve as long as the privilege or concession does not interfere with the public's access to the preserve and is compatible with the preserve's management plan. It specifies that, in granting a concession, the DEP must base their decision on business plans, qualifications, approach, and specified expectations or criteria. A privilege or concession may not be assigned or transferred by the recipient without consent from the DEP. The public is afforded transparency and input measures, as the bill requires the DEP website to display proposed concession agreements, and allows for the public to comment on proposed concession agreements prior to execution of an agreement.

Section 5 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:

Under CS/CS/CS/SB 956, developers or other entities holding a development permit or other authorization may realize a positive fiscal impact from permits that are extended or renewed for two years.

The bill may reduce the number of individual permits needed by the private sector for coastal construction projects, which may result in lower permitting costs for such projects.²⁵

Private entities that enter into agreements with the DEP to provide vending services, accommodations, and recreational opportunities within an aquatic preserve will experience an indeterminate positive fiscal impact.²⁶

C. Government Sector Impact:

The DEP and other governmental entities that issue permits subject to the extensions authorized in this bill may experience a negative fiscal impact due to the loss of permit renewal fees.

The bill will reduce revenues from permit fees within the Permit Fee Trust Fund. Activities that currently require administrative permits may now qualify for general permits or areawide permits. The DEP estimates approximately \$66,000 in reduced revenues based on the number of permit applications and permit application fees from 2013.²⁷

Conversely, local governments that apply for coastal construction permits will realize a cost savings as the number of required individual permits will decrease.

The DEP will need additional funding to promote the public use of Florida's aquatic preserves. The department has requested \$250,000 in the agency's Fiscal Year 2014-2015 Legislative Budget Request to implement a targeted and creative ecotourism and marketing initiative. This issue has been included in both the Senate (SB 2500, as introduced) and House (HB 5001, as introduced) general appropriation bills.

The state will realize an indeterminate, positive fiscal impact from promoting the public use of aquatic preserves and their associated uplands. The DEP agency analysis includes examples of revenue generated from agreements with private entities. For example, at Little St. George Island, the DEP contracts with a concessionaire to provide an "all inclusive" primitive camping experience. The five year agreement allows the state to receive 13 percent of all gross receipts, excluding sales tax, providing approximately \$148,000 over five years. At St. Joseph Bay Aquatic Preserve, the DEP contracts with a private entity to provide kayak and paddle boat excursions. The five year agreement

²⁵ DEP, *Senate Bill 956 Agency Analysis*, 7 (Mar. 2014).

²⁶ *Id.* at 5-6.

²⁷ *Id.*

allows for the state to receive 10 percent of gross revenue per year, providing approximately \$50,000 over the next five years.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DEP to grant areawide permits for construction of minor structures, including dune restoration and on-grade dune walkovers, which expands the allowable activities under an areawide permit. The statute states an areawide permit may be granted to local governments, governmental agencies, and utility companies as long as the activity does “not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” The DEP has not defined “dune restoration” in statute or rule; therefore, it is unclear if this type of activity will cause measureable interference with the beach dune system and marine turtles. The bill requires the DEP to adopt rules to establish the criteria and guidelines for areawide permit applications, which may resolve this issue.

The bill allows swimming pools to be permitted under a general permit as long as they do not advance the existing line of construction and “will not cause measureable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites.” Rule 62B-33.002(60)(c) F.A.C., specifies a structure is considered a “major structure” if “as a result of design, location, or size [it] could cause an adverse impact to the beach and dune system.” Rule 62B-33.002(60)(c)1, F.A.C., clarifies a swimming pool is considered a “nonhabitable major structure.” The swimming pool provision in the bill could necessitate changes be made to the swimming pool criteria established in rule.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.053 and 258.007.

This bill creates section 258.435 of the Florida Statutes.

The bill creates an undesignated section 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/CS/CS by Appropriations on April 22, 2014:

- Extends the expiration date by two years for any environmental resource permit, local government-issued development order, or building permit issued by the DEP or a

²⁸ *Id.*

WMD with an expiration date from January 1, 2014, through January 1, 2016. The bill limits permit extensions to four years.

- Prohibits the division from granting new concession agreements after May 1, 2014, in a state park that provides beach access and contains less than 7,000 linear feet of shoreline if the concession is available within 1,500 feet of the park's boundaries. The bill specifies that the provision does not apply to concession agreements for accommodations offered on or before May 1, 2014.

CS/CS by Community Affairs on March 25, 2014:

Requires the DEP to consult with FWC on each proposed areawide permit. With respect to the granting of concessions and privileges in aquatic preserves, the DEP would consider specified criteria, post proposed concession agreements on the DEP website, and ensure that the public has the opportunity for input.

CS by Environmental Preservation and Conservation on March 13, 2014:

- Requires the DEP to adopt rules to establish criteria and guidelines for areawide and general permits;
- Allows the DEP to issue a general permit for dune reconstruction, construction of swimming pools associated with single family habitable structures, and minor reconstruction of existing coastal armoring structures; and
- Deletes the term "lease" from the types of agreements the DEP may grant for visitor accommodations to aquatic preserves.

B. Amendments:

None.