

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 589 Environmental Control

**SPONSOR(S):** State Affairs Committee; Agriculture & Natural Resources Appropriations Subcommittee; Agriculture & Natural Resources Subcommittee; Pigman and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1052

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Moore, R.	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 3 N, As CS	Helping	Massengale
3) State Affairs Committee	16 Y, 0 N, As CS	Moore, R.	Camechis

### SUMMARY ANALYSIS

The bill makes the following changes to chs. 373 and 403, F.S., regarding environmental control:

- Revises the licensure requirements for water well contractors;
- Provides that when the beneficial use of a constructed clay settling area (CSA) of a phosphate mine is extended, the rate of reclamation requirements and the financial responsibility requirements apply to the CSA when the beneficial use of the CSA is complete;
- Allows the use of land set-asides and land use modifications not otherwise required by state law or permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters to generate water quality credits for trading;
- Provides that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency;  
Expands the use of funds in the solid waste landfill closure account, removes the repeal date for the account, and allows the use of the Solid Waste Management Trust Fund to pay or reimburse additional expenses needed for performing or completing approved facility closure or long-term care under certain circumstances; and
- Requires a Florida registered professional to certify that a stormwater management system will meet additional requirements for a general permit, and requires the certification be submitted to the Department of Environmental Protection or a water management district before, rather than after, construction of the stormwater management system begins.

The bill appears to have a significant impact on the state, no fiscal impact to local governments, and a positive fiscal impact on the private sector (See Fiscal Analysis and Economic Impact Statement).

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Water Well Contractor Licensure**

###### Present Situation

The practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment.<sup>1</sup> The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors, and that to prevent contamination it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible.<sup>2</sup>

Every person who wishes to engage in business as a water well contractor must obtain a water well contractor license from the water management district (WMD).<sup>3</sup> Licensure by a WMD is the only water well contractor license required for the construction, repair, or abandonment of water wells in the state.<sup>4</sup>

Each person desiring to be licensed as a water well contractor must apply to take the licensure examination.<sup>5</sup> Application must be made to the WMD where the applicant resides or where his or her principal place of business is located.<sup>6</sup> A resident of another state must apply to the WMD where most of the business of the applicant will take place.<sup>7</sup> Application is made on forms provided by the WMD.<sup>8</sup>

In order to take the water well contractor licensure examination, an applicant must:

- Be at least 18 years of age;
- Have at least 2 years of experience in constructing, repairing, or abandoning water wells. Satisfactory proof of such experience must be demonstrated by providing:
  - Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency.
  - A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned within the preceding 5 years. Of these wells, at least seven must have been constructed, as defined in s. 373.303(2), F.S., by the applicant. The list must also include:
    - ❖ The name and address of the owner or owners of each well.
    - ❖ The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.
    - ❖ The approximate date the construction, repair, or abandonment of each well was completed.
- Have completed the application form and remitted a nonrefundable application fee.<sup>9</sup>

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<sup>1</sup> Section 373.302, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 373.323(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 373.323(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 373.323(3)(c), F.S.

## Effect of Proposed Changes

The bill amends the requirements for water well contractor licensure examination in s. 373.323(3)(b), F.S., by requiring applicants to demonstrate 2 years of experience in constructing, repairing, or abandoning water wells by a letter from a water well contractor or letter from a water well inspector employed by a governmental agency.

## **Phosphate Mining Reclamation**

### Present Situation

Currently, phosphate mining occurs primarily in the central Florida area, consisting of Polk, Hillsborough, Manatee, and Hardee counties.<sup>10</sup> The central Florida phosphate-mining region covers approximately 1.3 million acres of land known as the “Bone Valley.”<sup>11</sup> Currently, there are 27 phosphate mines covering more than 491,900 acres.<sup>12</sup> The smallest mine is approximately 5,000 acres and the largest is approximately 100,000 acres.<sup>13</sup> Of the commodities mined in Florida, mining phosphate is the most land intensive, disturbing between 5,000 to 6,000 acres annually, with approximately 25 to 30 percent of the lands consisting of isolated wetlands or wetlands connected to waters of the state.<sup>14</sup>

The extraction of phosphate is important to the economic well-being of Florida and to the needs of society.<sup>15</sup> It is primarily used to produce fertilizers for food production, but may also be used in animal feed supplements, food preservatives, and many industrial products.<sup>16</sup>

Since mining is a temporary land use that disturbs surface areas and produces waste materials, mined lands must be reclaimed<sup>17</sup> to a beneficial use in a timely manner and in a manner which recognizes the diversity among mines, mining operations, and types of lands which are mined.<sup>18</sup> Lands mined for phosphate on or after July 1, 1975, and lands initially used after July 1, 1984, as a clay settling area (CSA) or a dam for use with a CSA are subject to reclamation requirements.<sup>19</sup> Seventy-three percent of the lands mined or disturbed for phosphate since July 1, 1975, have been reclaimed.<sup>20</sup>

### *Financial Responsibility for Phosphate Mine Reclamation*

A mine operator must provide financial assurance to the state that the reclamation of lands will be completed in a timely manner.<sup>21</sup> A mine operator that is in compliance with the timing of reclamation<sup>22</sup> is deemed to have provided appropriate financial assurance to the state.<sup>23</sup> However, a mine operator who is not in compliance with the timing of reclamation is required to provide one or more of the following forms of security:

- A lien in favor of the state on unmined lands or on reclaimed and released real property owned in fee simple by the operator;
- A surety bond or letter of credit in either a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the security is purchased;

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<sup>10</sup> DEP’s Phosphate Mines, available at <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited Jan. 22, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Section 378.202(1), F.S.

<sup>16</sup> DEP’s Phosphate Mines, available at <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited Jan. 22, 2016).

<sup>17</sup> Section 378.203(9), F.S., defines “reclamation” as the reshaping of lands in a manner that meets the reclamation criteria and standards of the Phosphate Land Reclamation Act, Part II, ch. 378, F.S.

<sup>18</sup> Section 378.202(1), F.S.

<sup>19</sup> Section 378.204, F.S.

<sup>20</sup> DEP’s Rate of Reclamation Report July 1, 1975 through December 31, 2013, available at <http://www.dep.state.fl.us/water/mines/docs/ROR-Report-2013.pdf>. (last visited Jan. 22, 2016).

<sup>21</sup> Section 378.208(1), F.S.

<sup>22</sup> Provided in s. 378.209, F.S.

<sup>23</sup> Section 378.208(1), F.S.

- A donation of land acceptable to the state whereby every acre donated would relieve the company of the obligation to bond or otherwise provide security for the reclamation of acres mined, based on a ratio of 1 acre donated to cover the financial responsibility for 10 or more acres of mined lands. However, donation would not relieve the operator of the obligation to reclaim;
- A cash deposit or trust fund payable to the state in a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the cash deposit or trust fund is established; or
- Any combination of these financial assurance methods.<sup>24</sup>

The form of security provided is the operator's option, but must cover the number of acres for which the operator is delinquent in reclaiming and the number of acres the operator is to reclaim in the current 5-year period.<sup>25</sup> The security, other than the donation of land, is to be released upon completion of reclamation of delinquent acres.<sup>26</sup>

The amount of financial responsibility is established by the Department of Environmental Protection<sup>27</sup> (DEP) and must not exceed \$4,000 per acre for each reclamation program, adjusted annually by the appropriate inflationary index for construction.<sup>28</sup> In establishing the amount of financial responsibility, DEP must consider:

- The amount and type of reclamation involved;
- The probable cost of proper reclamation;
- Inflation rates; and
- Changes in mining operations.<sup>29</sup>

#### *Timing of Reclamation*

Reclamation should be completed within 2 years after the completion of mining operations, exclusive of a growing season required to ensure establishment of vegetation.<sup>30</sup> Completion of reclamation occurs when initial revegetation is completed, not at the time of final release of the reclamation area.<sup>31</sup> For the purposes of financial responsibility requirements,<sup>32</sup> the schedule for complete reclamation is as follows:

- July 1, 1975, to December 31, 1980, for existing mines or the first 5-year period of mining for new mines, reclamation may not be required, and any reclamation that is completed must be credited forward;
- January 1, 1981, to December 31, 1985, for existing mines or the second 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 15 percent of the acres mined during the period July 1, 1975, to December 31, 1980, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- January 1, 1986, to December 31, 1990, for existing mines or the third 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 60 percent of the acres mined during the period January 1, 1981, to December 31, 1985, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward;
- January 1, 1991, to December 31, 1995, for existing mines or the fourth 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 75 percent of the acres mined during the period January 1, 1986, to December 31,

<sup>24</sup> Section 378.208(2)(a)-(f), F.S.

<sup>25</sup> Section 378.208(2), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 378.208(3), F.S., requires the Office of Insurance Regulation of the Financial Services Commission to be available to assist DEP in making this determination.

<sup>28</sup> Section 378.208(3), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Section 378.209(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 378.208, F.S.

1990, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward; and

- January 1, 1996, to December 31, 2000, for existing mines or the fifth 5-year period of mining for new mines, and each 5-year period thereafter, reclamation of acres mined must be completed at the rate of an acreage equivalent of 100 percent of acres mined during the immediately preceding 5-year period. Reclamation in excess of the required percentage must be credited forward.<sup>33</sup>

The rate of mining during any 5-year period is to be determined solely by the operator and not the state.<sup>34</sup> The time periods and reclamation rates may be modified or waived for experimental reclamation programs to take into account the effect of temporary shutdown of mining operations or other physical restraints, for unreasonable delays in the processing of reclamation applications by DEP, or to relieve or prevent extreme economic hardship on the operator.<sup>35</sup>

### *Clay Settling Areas*

The phosphate ore layer (matrix) comprises nearly equal parts of sand, clay, and phosphate minerals.<sup>36</sup> Separation of the matrix results in large quantities of sand and phosphatic clay. For instance, extracting one ton of phosphate rock creates one ton of phosphatic clay.<sup>37</sup> In Florida, approximately 100,000 tons of phosphatic clay is generated every day.<sup>38</sup>

Phosphatic clay is highly plastic, or moldable, and retains large quantities of water. The high moisture-induced shrink-swell characteristics of phosphatic clay make them unsuitable foundations for structures.<sup>39</sup> The low hydraulic conductivity of phosphatic clay leads to ponding.<sup>40</sup> Without drainage, wet phosphatic clays are difficult to traverse with most standard farm equipment, making them impractical for crop production.<sup>41</sup> Due to the properties and quantities of phosphatic clay, the conversion of phosphatic clay to a beneficial use following mining is likely the most significant problem in the reclamation of Florida phosphate mined lands.<sup>42</sup>

CSAs are the dominant method of storing phosphatic clay in Florida.<sup>43</sup> CSAs comprise 40 percent of the post-mining landscape, have dam walls between 20 and 60 feet in height, and remain irreclaimable for many years during active use. When no additional clays are to be added, CSAs must undergo a protracted process of draining and clay drying.<sup>44</sup>

DEP has encouraged prolonged use of CSAs to minimize the total acreage used for CSAs, reduce reclamation delays in areas of the mine that are not used as a CSA, and reduce the number of dams that are built.<sup>45</sup> Changes in mining practices to utilize CSAs for longer periods of time have resulted in delays in reclamation of these areas, which has resulted in the requirement for mine operators to provide financial assurance to the state to ensure that reclamation is completed in a timely manner.<sup>46</sup>

### Effect of Proposed Changes

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<sup>33</sup> Section 378.209(1)(a)-(e), F.S.

<sup>34</sup> Section 378.209(2), F.S.

<sup>35</sup> Section 378.209(3), F.S.

<sup>36</sup> *Sand-Clay Mix in Phosphate Mine Reclamation: Characteristics and Land Use*, available at <https://edis.ifas.ufl.edu/ss636>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>46</sup> *Id.*

The bill creates subsection 378.209(4), F.S., regarding the timing of reclamation for CSAs. The bill provides that when the beneficial use of a constructed CSA is extended, the rate of reclamation requirements<sup>47</sup> and the financial responsibility requirements<sup>48</sup> apply to the constructed CSA when the beneficial use of the area is complete.

Exempting CSAs from the rate of reclamation requirements will encourage mine operators to prolong the use of CSAs, minimize the construction of new CSAs, reduce reclamation delays in areas of the mine that are not used for clay settling, reduce the number of dams that need to be built, and decrease DEP's administrative process involved with variances for projects where the rate of reclamation is not being met due to extended use of CSAs.<sup>49</sup>

## **Water Quality Credit Trading**

### Present Situation

Water quality credit trading (WQCT, sometimes referred to as "pollutant trading") is a voluntary, market-based approach to promote the protection and restoration of Florida's rivers, lakes, streams, and estuaries.<sup>50</sup> Trading is based on the fact that businesses and industries, wastewater treatment facilities, urban stormwater systems and agricultural sites that discharge the same pollutants to a waterbody or a basin, watershed, or other defined geographic area, may face substantially different costs to control pollutants.<sup>51</sup> WQCT allows pollutant reductions to be environmentally valued in the form of credits,<sup>52</sup> which can then be traded on a local market to promote cost-effective water quality improvements, which results in better water quality protection for less money.<sup>53</sup>

The WQCT program is authorized statewide<sup>54</sup> as provided in s. 403.067(8), F.S., and:

- Requires WQCT to be consistent with federal law and regulation;
- Requires WQCT to be implemented through permits, including WQCT permits, other authorizations, or other legally binding agreements established by DEP rule;
- Requires DEP to establish the pollutant load reduction value of credits and provides that DEP is responsible for authorizing their use;
- Provides that DEP may not participate in the establishment of credit prices;
- Requires a person who acquires credits (buyer) to timely submit to DEP an affidavit, signed by the buyer and the credit generator (seller), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generated the credits;
- Provides that sellers of credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of DEP's authorization, and any trading agreements entered;
- Provides that buyers are responsible for complying with the terms of their DEP permit;
- Requires DEP to take action to address the failure of a seller to fulfill its obligations, including deeming the seller's credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time;
- Provides that if DEP determines credits to be invalid, in whole or in part, which causing the buyer to be unable to timely meet its pollutant reduction obligations, DEP must issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a

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<sup>47</sup> Section 378.209(1)(a)-(e), F.S.

<sup>48</sup> Section 378.208, F.S.

<sup>49</sup> DEP's analysis of HB 589 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>50</sup> DEP's *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature* (Oct. 2010), available at <http://dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan . 22, 2016).

<sup>51</sup> *Id.*

<sup>52</sup> Rule 62-306.200(3), F.A.C., defines "credit" as the amount of an entity's nutrient load reduction below the baseline that will be available for trading purposes, measured in units of pounds per year or kilograms per year.

<sup>53</sup> *Id.*

<sup>54</sup> Chapter 2013-146, Laws of Florida, expanded the original WQCT pilot program in the St. Johns River BMAP established in ch. 2008-189, Laws of Florida.

reasonable schedule for completing the actions. Provides that the invalidation of credits does not, in and of itself, constitute a violation of the buyer's permit;

- Provides that DEP may authorize WQCT in adopted basin management action plans (BMAP) and that participation in WQCT is voluntary; and
- Requires entities that participate in WQCT to timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits.<sup>55</sup>

Activities that are potentially eligible to generate credits include:

- Installation or modification of water pollution control equipment or activities that are not required to meet technology-based effluent levels, water quality based effluent levels, or other pollution control obligations, and reduce nutrient loads below the baseline;
- Operational changes or the modification of a process or process equipment that reduces the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrients discharged. Credits may be generated when a permitted surface water discharge facility closes its operations or ceases discharging to surface waters, but the credits will only be valid while the permit remains in effect;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing by the Department of Agriculture and Consumer Services to reduce nutrient loads below the baseline;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below the baseline established in a BMAP or remedial action plan (RAP); or
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below the baseline land use in the total maximum daily load, BMAP or RAP.<sup>56</sup>

### Effect of Proposed Changes

The bill amends s. 403.067(8), F.S., regarding WQCT, to allow certain activities to generate credits. Specifically, the bill allows the use of land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, which reduce nutrient loads into nutrient impaired surface waters to be used to generate credits for use in WQCT.

### **Variations**

#### Present Situation

Upon application to DEP, a variance from the requirements of ch. 403, F.S., the Florida Air and Water Pollution Control Act (Act), or the rules and regulations adopted pursuant to the Act, may be granted, but only for the following circumstances:

- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirement(s) will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time; however, a variance granted for this reason must prescribe a timetable for the taking of the measures required; or
- To relieve or prevent hardship other than what is provided above.<sup>57</sup>

Variations must be limited to 24 months, unless the variance is granted pursuant to part II of the Act, the Florida Electrical Power Plant Siting Act, which may be for the life of the permit or certification.<sup>58</sup>

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<sup>55</sup> Section 403.067(8)(a)-(h), F.S.

<sup>56</sup> Rule 62-306.400(1)(a)-(g), F.A.C.

<sup>57</sup> Section 403.201(1)(a)-(c), F.S.

<sup>58</sup> Section 403.201(1), F.S.

However, DEP cannot grant a variance for discharges of waste into waters of the state or hazardous waste management if it results in less stringent requirements than those required by federal law.<sup>59</sup> There is one exception for when DEP issues a research, development and demonstration permit to a solid waste management facility or hazardous waste management facility that proposes to use an innovative and experimental solid waste treatment technology or process where permit standards have not been promulgated.<sup>60</sup>

A moderating provision is a condition in a permit authorized under state and federal law and applied when natural conditions prevent attainment of the criterion or when existing technology is not available to achieve the criterion.<sup>61</sup>

### Effect of Proposed Changes

The bill amends s. 403.201(2), F.S., to provide that the limitation on the granting of a variance does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

The bill reenacts s. 373.414(17), F.S., to incorporate the proposed changes to s. 403.201, F.S. made by the bill.

## **Closure and Long-term Care of Solid Waste Management Facilities**

### Present Situation

An owner or operator<sup>62</sup> of a landfill,<sup>63</sup> or any other solid waste management facility,<sup>64</sup> must provide financial assurance to DEP for closure of the facility.<sup>65</sup> Financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with closure requirements.<sup>66</sup> An owner or operator must estimate costs to the satisfaction of DEP.<sup>67</sup>

Section 403.709(5), F.S.,<sup>68</sup> provides for a solid waste landfill closure account within the Solid Waste Management Trust Fund (SWMTF) for the closure and long-term care<sup>69</sup> of certain solid waste management facilities. DEP may use funds from the solid waste landfill closure account to contract with a third party for the closure 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 closure in the form of an insurance certificate;

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<sup>59</sup> Section 403.201(2), F.S.

<sup>60</sup> *Id.*; Section 403.70715, F.S.

<sup>61</sup> DEP's Water Quality Q & A, available at [http://www.dep.state.fl.us/evergladesforever/restoration/quality\\_qa.htm](http://www.dep.state.fl.us/evergladesforever/restoration/quality_qa.htm) (last visited Jan. 22, 2016).

<sup>62</sup> Section 403.7125(1), F.S., defines an "owner or operator" as any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

<sup>63</sup> Section 403.7125(17), F.S., defines a "landfill" as any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707, F.S., and which receives solid waste for disposal in or upon land. It does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

<sup>64</sup> Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. It does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.

<sup>65</sup> Sections 403.707(9) and 403.7125(3), F.S.; Rule 62-701.630, F.A.C.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Section 53, ch. 2015-222, Laws of Florida, created s. 403.709(5), F.S., in order to implement Specific Appropriation 1689A of the 2015-2016 General Appropriations Act.

<sup>69</sup> Rule 62-701.620, F.A.C., provides for the long-term care of solid waste management facilities.



- The facility is deemed abandoned or was ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing the closure insurance policy will provide or reimburse the funds required to complete the closure and long-term care of the facility.<sup>70</sup>

DEP is required to deposit funds received from an insurance company as reimbursement for the costs of closing or long-term care of the facility into the solid waste landfill closure account.<sup>71</sup> The solid waste landfill closure account is scheduled for repeal on July 1, 2016.<sup>72</sup>

For Fiscal Year 2015-2016, \$2.34 million in nonrecurring funds were appropriated to DEP from the solid waste landfill closure account within the SWMTF for the closing and long-term care of solid waste management facilities.<sup>73</sup> DEP is using these funds to enter into contracts with a third party to close the following facilities:

- Williams Road (Hillsborough County);
- Coyote Navarre (Santa Rosa County);
- Coyote East (Walton County);
- Coyote West (Walton County); and
- Cerny Road (Escambia County).<sup>74</sup>

### Effect of Proposed Changes

The bill expands the areas in which DEP can use funds from the solid waste landfill closure account within the SWMTF on closure and long-term care, as follows:

- Allows the use of funds from the account on a facility that was not required to obtain a DEP permit to operate;
- Allows a permittee, where required by rule or permit, to provide proof of financial assurance for closure by using an alternative form of financial assurance; and
- Allows DEP to accept sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care.

The bill requires DEP to deposit funds received from an insurer or other party for reimbursement into the solid waste landfill closure account. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance, DEP may use funds from the SWMTF to pay for or reimburse the additional expenses needed for performing or completing the facility closure or long-term care. The bill deletes the account's repeal date of July 1, 2016.

## **“10/2” General Permit for Stormwater Management Systems**

### Present Situation

A general permit may be obtained for the construction, alteration, and maintenance of a stormwater management system<sup>75</sup> serving a total project area of up to 10 acres.<sup>76</sup> When the stormwater

<sup>70</sup> Section 403.709(5)(a), F.S.

<sup>71</sup> Section 403.709(5)(b), F.S.

<sup>72</sup> Section 403.709(5)(c), F.S.; Due to implementation of the section through the Implementing Bill.

<sup>73</sup> DEP's analysis of SB 922 (2016), on file with the Agriculture & Natural Resources Subcommittee.

<sup>74</sup> *Id.*

<sup>75</sup> Sections 373.403(10) and 403.031(16), F.S., define “stormwater management system” as a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

<sup>76</sup> Section 403.814(12), F.S.

management system is designed, operated, and maintained in accordance with rules adopted pursuant to part IV of ch. 373, F.S.,<sup>77</sup> there is a rebuttable presumption that the discharge for the stormwater management system will comply with state water quality standards.<sup>78</sup> The construction of the stormwater management system may proceed without any further agency action by DEP or a WMD if, within 30 days after construction begins, an electronic self-certification is submitted to DEP<sup>79</sup> or a WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area involves less than 10 acres and less than 2 acres of impervious surface;<sup>80</sup>
- No activities will impact wetlands<sup>81</sup> or other surface waters<sup>82,83</sup>;
- No activities are conducted in, on, or over wetlands or other surface waters;<sup>84</sup>
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;<sup>85</sup>
- The project is not part of a larger common plan, development, or sale;<sup>86</sup> and
- The project does not:
  - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
  - Cause adverse impacts to existing surface water storage and conveyance capabilities;
  - Cause a violation of state water quality standards; or
  - Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, F.S.,<sup>87</sup> or a work of the district<sup>88</sup> established pursuant to s. 373.086, F.S.<sup>89</sup>

### Effect of Proposed Changes

The bill amends s. 403.814(2), F.S., regarding the general permit for stormwater management systems, to require a Florida registered professional certify that the stormwater management system will meet additional requirements for a general permit, and require the certification be submitted to DEP or a WMD before, rather than after, construction of the stormwater management system begins.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 373.323, F.S., regarding licensure of water well contractors.

Section 2. Amends s. 378.209, F.S., regarding timing of reclamation.

Section 3. Amends s. 403.067, F.S., regarding water quality credit trading.

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<sup>77</sup> Section 403.814(12), F.S.; Part IV of ch. 373, F.S., regard the management and storage of surface waters.

<sup>78</sup> Section 373.403(11), F.S., defines “state water quality standards” as water quality standards adopted pursuant to ch. 403, F.S.; *See* s. 403.067, F.S., and chs. 62-302, 62-4, and 62-303, F.A.C.

<sup>79</sup> DEP’s ERP e-Permitting 10/2 Self-Certification, available at <http://www.dep.state.fl.us/water/wetlands/erp/epermitting.htm> (last visited Feb. 18, 2016).

<sup>80</sup> Section 403.814(12)(a), F.S.

<sup>81</sup> Section 373.019(27), F.S., defines “wetlands” as areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto; *See also* s. 373.421, F.S.

<sup>82</sup> Section 373.019(21), F.S., defines “surface water” as water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs are classified as surface water when it exits from the spring onto the earth’s surface.

<sup>83</sup> Section 403.814(12)(b), F.S.

<sup>84</sup> Section 403.814(12)(c), F.S.

<sup>85</sup> Section 403.814(12)(d), F.S.

<sup>86</sup> Section 403.814(12)(e), F.S.

<sup>87</sup> Section 373.042, F.S., provides minimum flows and levels.

<sup>88</sup> Section 373.019(28), F.S., defines “works of the district” as those projects and works, including, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the WMD as works of the district.

<sup>89</sup> Section 373.086, F.S., provides for WMD works; s. 403.814(12)(f)1.-4., F.S.

Section 4. Amends s. 403.201, F.S., regarding variances.

Section 5. Amends s. 403.709, F.S., regarding the Solid Waste Management Trust Fund.

Section 6. Amends s. 403.814, F.S., regarding a general permit for stormwater management systems.

Section 7. Reenacts s. 403.414(17), F.S., to incorporate the changes made to s. 403.201, F.S.

Section 8. Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Current law, and the bill, provides for reimbursement of funds expended from the solid waste landfill closure account within the SWMTF. The bill specifies that if the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care, and DEP has used all funds from the insurance policy or alternative form of financial assurance, then DEP can use funds from the SWMTF.

DEP estimates \$1 million in funds from the SWMTF will be needed to continue closure of the 5 sites currently under contract (See **Closure and Long-term Care of Solid Waste Management Facilities**) and has identified one additional site for closure (Joyner, in Santa Rosa, County).<sup>90</sup> The Fiscal Year 2016-2017 House proposed General Appropriations Act includes \$1 million from the SWMTF for the closure and long-term care of solid waste management facilities.

The bill also removes the expiration date of the solid waste landfill closure account, allowing DEP to continue contracting with third parties for the closure and long-term care of solid waste management facilities.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on the private sector by extending the rate of reclamation and financial responsibility requirements of CSAs until the beneficial use of the CSA is complete, and by allowing land-set asides and land use modifications that reduce nutrient loads into impaired surface waters to be included in WQCT.

The bill removes the expiration date on the solid waste landfill closure account within the SWMTF, allowing DEP to continue to contract with private entities for the closure and long-term care of solid

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<sup>90</sup> Florida Fiscal Portal, *Environmental Protection - Agency Legislative Budget Request for Fiscal Year 2016-2017*, <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13845&DocType=PDF>, (Last visited Feb. 9, 2016).

waste management facilities. The bill also allows DEP to spend additional funds from the SWMTF for the same purpose.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that rate of reclamation and financial responsibility requirements apply to a CSA when the "beneficial use" of the CSA is completed; however, there is no provision in statute or rule that defines what "beneficial use" is in relation to a CSA for purposes of implementing the meaning of the bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute removed the following sections from the bill:

- Section 1. – Amending s. 373.227, F.S., regarding water conservation;
- Section 3. – Amending s. 373.467, F.S., regarding the Harris Chain of Lakes Restoration Council;
- Section 4. – Amending s. 373.705, F.S., regarding water resource development;
- Section 6. – Amending s. 403.061, F.S., creating a specific surface water classification; and
- Section 10. – Amending s. 403.861, F.S., creating certain powers and duties of the DEP.

In addition, the proposed committee substitute amended s. 403.709(2), F.S., relating to the SWMTF, s. 378.209(4), F.S., regarding timing of reclamation, to provide that if the beneficial use of a constructed CSA is extended, the rate of reclamation requirements and the financial responsibility requirements do not apply to the constructed CSA until the beneficial use of the area is complete, and s. 403.713(2), F.S., regarding ownership and control of solid waste and recovered material, to provide that counties and municipalities may implement a flow control ordinance for resource recovery only after it owns, and actively uses, a resource recovery facility and the county or municipality proves the necessity of implementing flow control to ensure sufficient material for that resource recovery facility. The bill also provides that a flow control ordinance does not limit other entities and districts to contract for waste management services.

On February 9, 2016, the Agriculture & Natural Resources Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The two amendments:

- Expanded the use of funds in the solid waste landfill closure account, removed the repeal date for the account, and allowed the use of the SWMTF to pay or reimburse additional expenses needed for performing or completing approved facility closure or long-term care under certain circumstances; and
- Removed an unnecessary appropriation.

On February 18, 2016, the State Affairs Committee adopted a strike-all amendment and amendment and reported the bill favorably as a committee substitute. The amendments:

- Made conforming changes to sections 2 and 5 of the bill to be in line with SB 1052;
- Removed provisions related to solid waste and recovered materials flow control ordinances; and
- Added provisions related to the “10/2” general permit for stormwater management systems.

This analysis is drafted to the committee substitute to the committee substitute to the committee substitute as approved by the State Affairs Committee.