

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1149 Environmental Regulation

SPONSOR(S): Government Accountability Committee; Natural Resources & Public Lands Subcommittee; Payne

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 1 N, As CS	Moore	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 1 N	White	Pigott
3) Government Accountability Committee	16 Y, 7 N, As CS	Moore	Williamson

SUMMARY ANALYSIS

The bill revises policies relating to Florida's environmental regulation by:

- Requiring the Department of Environmental Protection (DEP) to revise the water resource implementation rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a consumptive use permit (CUP) or may be used to address additional water resource constraints imposed by the adoption of a recovery or prevention strategy;
- Requiring DEP or the water management district (WMD) to reissue an expired environmental resource permit to the original applicant or to a new property owner, if the applicant can demonstrate meeting certain criteria and no for more than three years have passed since the expiration of the original permit;
- Providing that the Legislature encourages the development of aquifer recharge for reuse implementation;
- Requiring DEP and the WMDs to develop and enter into a memorandum of agreement no later than December 1, 2018, that provides for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP, to be used solely at the permit applicant's request;
- Requiring local governments to address the contamination of recyclable material in contracts with residential recycling collectors for the collection or transportation of residential recyclable material and with recovered materials processing facilities for the processing of such material, and that such contracts:
 - Define the term "contaminated recyclable material" in a manner that is appropriate for the local community, taking into consideration available recyclable material markets, available waste composition studies, and other relevant factors; and
 - Include strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed, procedures for identifying, documenting, managing, and rejecting contaminated recyclable materials, and remedies;
- Providing applicability of these contract requirements in any local government contract with a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018;
- Prohibiting local governments from requiring a person claiming that a particular activity meets an ERP exception to provide further verification from DEP; and
- Revising the ERP exception for the replacement or repair of existing docks and piers to allow for the repair or replacement if it is within five feet of the same location, no larger than the existing dock or pier, and no additional aquatic resources are adversely and permanently impacted.

The bill has an insignificant negative fiscal impact on state government and a positive fiscal impact on local governments and the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1149e.GAC

DATE: 2/24/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reuse of Reclaimed Water

Present Situation

Reclaimed water is water from a domestic wastewater¹ treatment facility, which has received at least secondary treatment² and basic disinfection³ for reuse.⁴ Reuse is the deliberate application of reclaimed water for a beneficial purpose.⁵

The encouragement and promotion of the reuse of reclaimed water is a state objective and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment facilities permitted and operated under a reuse program approved by the Department of Environmental Protection (DEP) is environmentally acceptable and not a threat to public health and safety. The Legislature also finds that the reuse of reclaimed water is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. Accordingly, the Legislature encourages the development of incentive-based programs for reuse implementation.⁶

Reclaimed Water Permitting

The uses of reclaimed water and permitting requirements are contained in ch. 62-610, F.A.C. Permitted uses of reclaimed water include slow-rate land application systems for restricted public access; slow-rate land application systems for public access areas, residential irrigation, and edible crops; rapid-rate land application systems; groundwater recharge and indirect potable reuse systems; overland flow systems; and industrial uses.⁷

Consumptive Use Permitting

Before using waters of the state,⁸ a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD)⁹ or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that such use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.¹⁰ To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,¹¹ will not interfere with any presently existing legal use of water, and is consistent with the public interest.¹²

¹ Section 367.021(5), F.S., defines "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

² Rule 62-610.200(54), F.A.C., defines "secondary treatment."

³ Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

⁴ Section 373.019(17), F.S.; r. 62-610.200(48), F.A.C.

⁵ Rule 62-610.200(52), F.A.C.

⁶ Sections 373.250(1)(a), and 403.064(1), F.S.

⁷ Chapter 62-610, F.A.C.

⁸ Section 373.019(22), F.S., defines "water" or "waters of the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

⁹ Section 373.216, F.S.; see chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.

¹⁰ Section 373.219(1), F.S.; An individual solely using water for domestic consumption is exempt from CUP requirements.

¹¹ Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

¹² Section 373.223(1), F.S.

Recovery or Prevention Strategy

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs are responsible for identifying and establishing the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.¹³ This limit is the minimum flow¹⁴ or minimum level (MFL).¹⁵

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained. A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL. A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.¹⁶

Water Resource Implementation Rule

The water resource implementation rule (Rule), ch. 62-40, F.A.C., sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.¹⁷ The Legislature required DEP to initiate rulemaking by October 1, 2012, to revise the Rule to include:

- Criteria for the use of an impact offset derived from the use of reclaimed water when a WMD evaluates a CUP application; and
- Criteria for the use of substitution credits where a WMD has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.¹⁸

Within 60 days after final adoption by DEP, the WMDs are required to initiate rulemaking to incorporate these revisions to the Rule into the rules of the WMDs.¹⁹

Impact Offset and Substitution Credit

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur from other surface water or groundwater withdrawals.²⁰

A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, thereby allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by a recovery or prevention strategy.²¹

¹³ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Feb. 8, 2018).

¹⁴ Section 373.042(1)(a), F.S., provides that the minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

¹⁵ Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area.

¹⁶ Section 373.0421(2), F.S.

¹⁷ Sections 373.019(25), and 373.036, F.S.

¹⁸ Section 373.250(5)(a)1-2, F.S.

¹⁹ Section 373.250(5)(b), F.S.

²⁰ Section 373.250(5)(a)1, F.S.

²¹ Section 373.250(5)(a)2, F.S.

Rule Revisions

DEP's revisions to the Rule are found in rr. 62-40.416(7) and (8), F.A.C., respectively. With regard to impact offsets, the Rule requires a WMD to consider the degree to which the reclaimed water offsets harmful impacts otherwise caused by the withdrawal, including saltwater intrusion, wetland or other surface water impacts, groundwater impacts, impacts to existing legal uses, harm to existing offsite land uses, and other water resource impacts.²²

The Rule also provides that if an applicant meets the conditions for CUP issuance after consideration of the impact offset or substitution credit, the WMD must incorporate the impact offset or substitution credit into the CUP. The duration of an impact offset or substitution credit is limited to the duration of the CUP in which it is incorporated.²³ When reviewing an application for CUP renewal containing an impact offset or substitution credit, the WMD must renew the allocation on the continuation of the impact offset or substitution credit, provided the conditions for permit issuance are met.²⁴

With regard to substitution credits, the Rule provides that such credits recognized in a CUP cannot be transferred to other users, except in the same manner as the permit itself and in compliance with applicable WMD rules.²⁵

Underground Injection

DEP has general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.²⁶ Accordingly, DEP is charged with regulating the disposal of appropriately treated fluids through underground injection wells through its underground injection control (UIC) program. The UIC permitting program prevents degradation of the quality of aquifers adjacent to the injection zone.²⁷

Aquifer Recharge

Aquifer recharge (AR) is the underground injection and storage of water into an aquifer for beneficial purposes. It is primarily considered a water resource development and conservation strategy used to preserve and enhance water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.²⁸

AR wells are regulated as Class V injection wells. Class V injection wells inject non-hazardous fluids into or above formations that contain underground sources of drinking water. AR wells include the following wells:

- Recharger wells, which replenish, augment, or store water in an aquifer;
- Saltwater intrusion barrier wells, which inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells, which inject fluids into a zone which does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells, which connect two aquifers to allow interchange of water between those aquifers.²⁹

²² Rule 62-40.416(7)(a), F.A.C.

²³ Rules 62-40.416(7)(b), and (8)(c), F.A.C.

²⁴ Rules 62-40.416(7)(d), and (8)(f), F.A.C.

²⁵ Rule 62-40.416(8)(h), F.A.C.

²⁶ Section 403.062, F.S.

²⁷ DEP and WMD, *Florida's Water Permitting Portal*. <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 16, 2018); see ch. 62-528, F.A.C., for UIC permitting requirements.

²⁸ DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, pg. 83, <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan. 16, 2018).

²⁹ Rule 62-528.300(1)(e), F.A.C.

Effect of Proposed Changes

The bill amends s. 373.250(5), F.S., regarding the reuse of reclaimed water, to delete the obsolete rulemaking authority initially directing DEP to revise the Rule to develop criteria for the use of impact offsets and substitution credits.

The bill amends s. 373.250(5)(a)1, F.S., providing examples of reclaimed water use that may create an impact offset to include, but not be limited to, those that prevent or stop further saltwater intrusion, raise aquifer levels, improve the water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply.

The bill creates s. 373.250(5)(a)3, F.S., requiring DEP to revise the Rule to include criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

The bill amends s. 403.064(1), F.S., providing that the Legislature encourages the development of AR for reuse implementation.

The bill creates s. 403.064(17), F.S., requiring DEP and the WMDs to develop and enter into a memorandum of agreement (MOA) providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, a UIC permit, and a CUP no later than December 1, 2018. The bill requires the MOA to provide such coordinated review solely at the applicant's request. The bill provides that the goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Permits for Construction or Alteration

Present Situation

State law provides that a WMD or DEP may require an environmental resource permit (ERP) and impose reasonable conditions necessary to assure the construction or alteration of any stormwater management system,³⁰ dam,³¹ impoundment,³² reservoir,³³ appurtenant work,³⁴ or works³⁵ complies with state law and applicable rules promulgated thereunder, and will not be harmful to water resources.³⁶ A person proposing such construction or alteration must apply to the WMD or DEP for an ERP permit authorizing the construction or alteration. The application must contain the applicant's

³⁰ Section 373.403(10), F.S., defines "stormwater management system" to mean 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.

³¹ Section 373.403(1), F.S., defines "dam" to mean any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

³² Section 373.403(3), F.S., defines "impoundment" to mean any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

³³ Section 373.403(4), F.S., defines "reservoir" to mean any artificial or natural holding area which contains or will contain the water impounded by a dam.

³⁴ Section 373.403(2), F.S., defines "appurtenant works" to mean any artificial improvements to a dam, which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

³⁵ Section 373.403(5), F.S., defines "works" to mean all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

³⁶ Section 373.413(1), F.S.

name and address; the name and address of the owner of the land where the works are to be constructed; a legal description of the land; location of the work; sketches of construction; name and address of the person who prepared the plans and specifications of construction, and who will construct the proposed work; general purpose of the proposed work; and other information as DEP or the WMD may require.³⁷

Notice Requirements for ERP Applications and Intended Agency Action

DEP or the WMD must send a notice of receipt of permit application to any persons who have filed a written request for notification of any pending applications affecting the particular designated area. The notice must contain the applicant's name and address; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.³⁸

DEP or the WMD may also publish, or require an applicant to publish at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. DEP or the WMD must also provide notice of this intended agency action to the applicant and to persons who have requested a copy of the intended agency action for that specific application.³⁹

Types and Duration of ERPs

General permits are provided for certain activities that have been determined to have minimal adverse environmental effect to the water resources of the state when conducted in compliance with the terms and conditions of the permit.⁴⁰ Individual permits are required for activities that do not qualify for a general permit.⁴¹ Individual permits are issued for five years, but an applicant may request a longer permit duration by providing reasonable assurance that:

- The project cannot reasonably be expected to be completed within five years after commencement of construction; and
- The impacts of the activity, considering its nature, the size of the project, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the requested permit.⁴²

A permittee may also request to extend the duration of an individual permit. The request must be granted if:

- It is received by DEP or the WMD before the permit expires;
- The activity remains consistent with plans, terms, and conditions of the permit and rules of DEP or the WMD in effect when the permit was issued;
- The project cannot reasonably be expected to be completed within five years after commencement of construction; and
- The impacts of the activity, considering its nature, the size of the project, and any required mitigation, can be accurately assessed and offset where appropriate, and the terms of the permit can be met for the duration of the requested permit.⁴³

³⁷ Section 373.413(2), F.S.

³⁸ Section 373.413(3), F.S.

³⁹ Section 373.413(4), F.S.

⁴⁰ Section 403.814(1), F.S.

⁴¹ Rule 62-330.054(1), F.A.C.

⁴² Rule 62-330.320(2), F.A.C.; r. 62-330.010, F.A.C. - *Environmental Resource Permit Applicant's Handbook Volume I*, 6.1.2.2 (Oct. 1, 2013).

⁴³ Rules 62-330.320(6) and 62-330.315(1), F.A.C.; r. 62-330.010, F.A.C. - *Environmental Resource Permit Applicant's Handbook Volume I*, 6.1.3 (Oct. 1, 2013).

A request to extend the permit for up to five years is processed as a minor modification of the permit and is not subject to public notification requirements.⁴⁴

Prior Legislative ERP Extensions

In 2009, because of real estate market conditions, the Legislature extended and renewed any ERP issued by DEP or the WMD that had an expiration date of September 1, 2008, through January 1, 2012, for a period of two years following its expiration date. The extended permits were governed by the rules in effect at the time the permit was issued, unless there would be an immediate threat to public health or safety.⁴⁵ In 2010, the Legislature provided for these permits to be extended for another two years.⁴⁶ In 2011, the Legislature provided for these permits to be extended for another two years, however, if the permit had been extended for a total of four years, then the permit could no longer be extended, and provided an opportunity for permits with an expiration date from January 1, 2012, through January 1, 2014, to be extended and renewed for two years.⁴⁷ In 2012, the Legislature provided an opportunity for permits with an expiration date from January 1, 2012, through January 1, 2014, to be extended and renewed for two years, for a total of four years.⁴⁸ In 2014, the Legislature provided an opportunity for permits with an expiration date from January 1, 2014, through January 1, 2016, to be extended and renewed for a period of two years.⁴⁹

Transfer of ERP upon Change of Ownership or Control

A permittee of an individual permit must notify DEP or the WMD in writing within 30 days of any change in ownership or control of any portion of the real property where the permitted activity is to occur. A person who obtains an interest in or control of such real property must request transfer of the permit to become the new permittee or a co-permittee, or provide written documentation of the following:

- Certification that the permittee continues to retain sufficient real property interest over the land where the activities subject to the permit will be conducted; and
- Authorization for DEP or a WMD to enter, inspect, sample, and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.⁵⁰

The person requesting transfer of the permit must demonstrate that it has sufficient real property interest in or control over the land. The request is processed as a minor modification.⁵¹ Failure of the permittee to notify DEP or the WMD of a change in ownership or control will not, by itself, render a permit invalid. In such circumstances, DEP or the WMD will provide notice to the former permittee, at its last known address, advising of the permit transfer, together with a notice of rights under ch. 120, F.S.⁵²

Effect of Proposed Changes

The bill amends s. 373.413, F.S., relating to ERPs. The bill requires DEP or the WMD to reissue an expired individual permit to the original applicant or to a new property owner if the applicant can demonstrate:

- The applicant could not reasonably be expected to complete the original permitted activity within the original permit period;

⁴⁴ Rule 62-330.315(2), F.A.C.

⁴⁵ Chapter 2009-96, Laws of Fla.

⁴⁶ Chapter 2010-147, Laws of Fla.

⁴⁷ Chapter 2011-139, Laws of Fla.

⁴⁸ Chapter 2012-205, Laws of Fla.

⁴⁹ Chapter 2014-218, Laws of Fla.

⁵⁰ Rule 62-330.340(2), F.A.C.

⁵¹ Rule 62-330.340(3), F.A.C.

⁵² Rule 62-330.340(4), F.A.C.

- The applicant can meet the plans, terms, and conditions of the original permit for the duration of the reissued permit period;
- The site conditions or significant information regarding the site or activity have not changed since the original permit was issued to an extent that the permitted activity would create additional adverse impacts;
- No more than three years have passed since the expiration of the original permit; and
- If the applicant is a new property owner, sufficient evidence of ownership pursuant to DEP or WMD rule.

The bill requires an applicant for such reissuance to submit to the WMD or DEP:

- The applicant's name and contact information;
- The permit number;
- A clear statement explaining why the permitted activity could not be completed within the original permit period; and
- A certification from a professional registered in or licensed by the state and practicing under ch. 471, F.S., ch. 472, F.S., ch. 481, F.S., or ch. 492, F.S., that the:
 - Permitted activity remains consistent with plans, terms, and conditions of the original permit and rules of DEP or the WMD in effect when the original permit was issued; and
 - Site conditions or significant information regarding the site or activity have not changed since the original permit was issued to an extent that the permitted activity would create additional adverse impacts.

The bill allows DEP, in coordination with the WMDs, to adopt rules to administer this subsection.

Recyclable Materials and Contamination

Present Situation

Recycling is any process by which solid waste⁵³ or materials that would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.⁵⁴ Recyclable materials are materials that are capable of being recycled and would otherwise be processed or disposed of as solid waste.⁵⁵

Local Government Recycling Programs

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.⁵⁶ Recycling programs must recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility, to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash.

Local governments are also encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.⁵⁷

Recycling Goal

Each county must implement a recyclable materials recycling program with a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60

⁵³ Section 403.703(36), F.S., defines solid waste.

⁵⁴ Section 403.703(31), F.S.

⁵⁵ Section 403.706(30), F.S.

⁵⁶ Section 403.706(2)(a), F.S.

⁵⁷ Section 403.706(2)(g), F.S.

percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020 (recycling goal).⁵⁸ To assess the progress in meeting the recycling goal, counties are annually required to provide information to DEP regarding their annual solid waste management program and recycling activities.⁵⁹ The recycling goal for 2016 fell short, having achieved 56 percent.⁶⁰

Local Government Contracting for Solid Waste

A county or municipality may enter into a written agreement with other persons to fulfill some or all of its solid waste responsibilities.⁶¹ In developing and implementing recycling programs, counties and municipalities are required to consider the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their solid waste responsibilities.⁶²

Curbside Recyclable Materials Collection

In the development and implementation of a curbside recyclable materials collection program, a county or municipality is required to enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals (RFP) from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.⁶³

Contamination of Recyclable Material

Contamination of recyclable material occurs when residents place materials that are not recyclable into curbside recycling bins (e.g., plastic bags, styrofoam peanuts, and other increasingly popular thin plastics). While a material recovery facility is equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables and increased rejection and landfilling of unusable materials.⁶⁴

Effect of Proposed Changes

The bill creates s. 403.706(22), F.S., requiring counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material.

The bill provides that a residential recycling collector may not be required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with the subsection, and

⁵⁸ Section 403.706(2)(a), F.S.

⁵⁹ Section 403.706(7), F.S.

⁶⁰ DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).

⁶¹ Section 403.706(8), F.S.

⁶² Section 403.706(10), F.S.

⁶³ Section 403.706(9), F.S.

⁶⁴ DEP, *Florida and the 2020 75% Recycling Goal*, https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Jan. 25, 2018).

defines a “residential recycling collector” to mean a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP or other solicitation for the collection of residential recyclable material:

- Define the term “contaminated recyclable material” in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors;
- Include respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;
- Include remedies used if a container, cart, or bin contains contaminated recyclable material; and
- Provide education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill provides that a recovered materials processing facility⁶⁵ may not be required to process contaminated recyclable material, except pursuant to a contract consistent with the subsection. The bill requires that contracts between a recovered materials processing facility and a county or municipality for processing residential recyclable material and each RFP or other solicitation for processing residential recyclable material:

- Define the term “contaminated recyclable material” in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors;
- Include respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;
- Include procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and
- Include remedies used if a container or truck load contains contaminated recyclable material.

The bill provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018. The bill also provides that the use of the term “contaminated recyclable material” refers to recyclable material that is comingled or mixed with solid waste or other nonhazardous material. The term does not relate to contamination as that term or a derivation of that term is used in ch. 376, F.S., and other sections of ch. 403, F.S., including, but not limited to, brownfield site cleanup, water quality remediation, dry cleaning solvent contaminated site cleanup, petroleum contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

Verification of ERP Exceptions

Present Situation

Current law provides exceptions from ERP permitting⁶⁶ for certain types of projects.⁶⁷ Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.⁶⁸ These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees

⁶⁵ Section 403.703(29), F.S., defines a “recovered materials processing facility” to mean a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e), F.S.

⁶⁶ See chs. 373 and 403, F.S.; ch. 61-691, Laws of Fla., created the Southwest Florida WMD; chs. 25214 and 25270, 1949, Laws of Fla., created what is known today as the South Florida WMD.

⁶⁷ Section 403.803(1), F.S.

⁶⁸ Section 403.803(1)(a)-(v), F.S.

of the Internal Improvement Trust Fund or a WMD or from complying with local pollution control programs or other requirements of local governments.⁶⁹

A local government, as part of its permitting process, may require applicants to provide verification from DEP that the activity is exempt. To expedite this process, DEP developed an online self-certification process for individuals to verify whether the activity is exempt from regulation.⁷⁰ It appears as though there is no fee charged for such verification from DEP.⁷¹

Effect of Proposed Changes

The bill amends s. 403.813(1), F.S., prohibiting local governments from requiring a person claiming an exception to provide further verification from DEP that a particular activity meets an ERP permit exception.

Dock and Pier Replacement and Repair ERP Exception

Present Situation

Currently, an exception from ERP permitting applies for the replacement or repair of existing docks and piers if fill⁷² material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. The exception allows the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.⁷³

Other ERP permit exceptions that allow for repair or replacement also require the repair or replacement to be of the same configuration, location, length, and dimensions. These include the repair or replacement of stormwater pipes or culverts,⁷⁴ open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width,⁷⁵ and insect control impoundment dikes, which are less than 100 feet in length.⁷⁶ Another ERP exception, regarding the restoration of seawalls, allows for the restoration of the seawall to take place at the previous location or upland of, or within 18 inches waterward of the previous location.⁷⁷

Effect of Proposed Changes

The bill amends s. 403.813(1)(d), F.S., regarding the ERP exception for replacement or repair of existing docks or piers. The bill removes the requirement that a dock or pier replacement or repair remain in the same location and be of the same configuration and dimensions as the existing dock or pier. The bill provides that an ERP exception for the replacement or repair of an existing dock or pier is allowed if the replaced or repaired dock:

- Is within five feet of the same location;
- Is no larger in size than the existing dock or pier; and

⁶⁹ Section 403.813(1), F.S.

⁷⁰ DEP, Agency Analysis of House Bill 1149, p. 3 (January 22, 2018); DEP, *ERP e-Permitting*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-e-permitting> (last visited Feb. 7, 2018); DEP, *Submitting an ERP*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp> (last visited Feb. 7, 2018).

⁷¹ DEP, *Submitting an ERP*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/submitting-erp> (last visited Feb. 7, 2018); *but see* r. 62-4.050(4)(e)9, F.A.C., providing for a \$100 application fee.

⁷² Section 373.403(14), F.S., defines “filling” to mean the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1), F.S.

⁷³ Section 403.813(1)(d), F.S.

⁷⁴ Section 403.813(1)(h), F.S.

⁷⁵ Section 403.813(1)(l), F.S.

⁷⁶ Section 403.813(1)(p), F.S.

⁷⁷ Section 403.813(1)(e), F.S.

- There are no additional aquatic resources that are adversely and permanently impacted by the replacement or repair.

B. SECTION DIRECTORY:

- Section 1. Amends s. 327.250, F.S., relating to reuse of reclaimed water.
- Section 2. Amends s. 373.413, F.S., relating to ERPs.
- Section 3. Amends s. 403.064, F.S., relating to reuse of reclaimed water.
- Section 4. Amends s. 403.706, F.S., relating to local government solid waste responsibilities.
- Section 5. Amends s. 403.813, F.S., relating to ERP exceptions.
- Section 6. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant negative fiscal impact on DEP related to the rulemaking requirements of the bill; however, DEP has indicated that this impact can be absorbed within existing resources.⁷⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments when seeking issuance, renewal, or extension of a CUP resulting from further revisions to the Rule required by the bill; utilizing the coordinated review process for a reclaimed water project established by the MOA between DEP and the WMDs required by the bill; and if they are no longer required to collect, transport, or process contaminated recyclable material.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector when seeking issuance, renewal, or extension of a CUP resulting from further revisions to the Rule required by the bill and utilizing the coordinated review process for a reclaimed water project established by DEP and a WMD MOA required by the bill.

The bill may have a positive fiscal impact on the private sector in providing that residential recycling collectors are not required to collect or transport contaminated recyclable materials and recovered materials processing facilities are not required to process contaminated recyclable materials except pursuant to contract terms provided by the bill.

⁷⁸ DEP, Agency Analysis of House Bill 1149, p. 6 (January 22, 2018).

The bill may have a positive fiscal impact on the private sector by prohibiting a local government from requiring verification from DEP of a permit exception under s. 403.813, F.S. The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend 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:

The bill requires DEP to revise the Rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy. The WMDs will then also have to incorporate by reference the rules DEP adopts. The bill also allows DEP, in coordination with the WMDs, to adopt rules to administer the ERP extension provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

ERPs

The bill provides for an expired ERP to be reissued if certain criteria are met. It is unclear if the notice provisions of s. 373.413(3) and (4), F.S., would apply to an application for a reissued ERP. The bill is also unclear on the total number of years in which an expired ERP may no longer qualify for reissuance. For example, an ERP issued on January 1, 2009, with an expiration date of January 1, 2014, may have been extended for two years by ch. 2014-218, Laws of Florida, for an expiration date of January 1, 2016. It appears that this now expired ERP would be eligible for reissuance under the same rules of DEP or the WMD in effect at the time the original permit was issued in 2009, as long as such application was received by January 1, 2019. Over this 10 year period there may have been significant changes to ERP rules that would warrant a new review of the activity being permitted.

Dock and Pier Replacement and Repair ERP Exception

The bill does not require verification from DEP that a newly located dock or pier will not adversely and permanently impact additional aquatic resources. This is a requirement during the initial permit for a dock or pier from DEP.⁷⁹

⁷⁹ DEP, Agency Analysis of House Bill 1149, p. 4 (January 22, 2018).
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IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Natural Resources & Public Lands Subcommittee adopted one amendment and reported the bill favorable with committee substitute. The amendment removed and replaced section 3 of the bill, and:

- Required counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material, and with materials recovery facilities (MRFs) for processing of residential recyclable material;
- Required that the contracts define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material;
- Provided that a residential recycling collector is not required to collect or transport contaminated recyclable material;
- Defined a “residential recycling collector” to mean a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality;
- Required that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP for residential recyclable material include:
 - Respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;
 - Procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;
 - Remedies used if a container, cart, or bin contains contaminated recyclable material; and
 - Education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provided that a MRF is not required to process contaminated recyclable material;
- Required that contracts between a MRF and a county or municipality for processing residential recyclable material include:
 - Respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;
 - Procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and
 - Remedies used if a container or load contains contaminated recyclable material; and
 - Provided that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or MRF executed or renewed after the effective date of the act.

On February 22, 2018, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorable with committee substitute. The strike-all amendment:

- Required DEP or a WMD to reissue an expired ERP to the original applicant or to a new property owner if the applicant can demonstrate meeting certain criteria and no more than three years have passed since the expiration of the original permit;
- Removed legislative findings regarding reuse through AR as a critical component of meeting the state’s water supply needs and, instead, encouraged the development of AR for reuse implementation;
- Revised provisions relating to the contamination of recyclable material, as follows:
 - Provided that a residential recycling collector may not be required to collect or transport contaminated recyclable material, and a recovered materials processing facility may not be required to process contaminated recyclable material, except pursuant to contract terms;
 - Provided that the term “contaminated recyclable material” be defined in contracts taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors;
 - Required the provisions relating to contamination of recyclable material to be in each contract executed or renewed after July 1, 2018; and
 - Provided that the term “contaminated recyclable material” refers to recyclable material that is comingled or mixed with solid waste or other nonhazardous material, and does not relate to contamination as otherwise used in ch. 376, F.S., or other sections of ch. 403., F.S.;

- Provided that a local government may not require a person claiming an exception to provide further verification from DEP; and
- Required the replacement or repair of an existing dock or pier be within five feet of the same location as a condition for meeting the exception.

This analysis is drafted to the committee substitute passed by the Government Accountability Committee.