Agriculture & Natural Resources Subcommittee

Tuesday, March 15, 2011
12:30 PM
Reed Hall (102 HOB)

REVISED

Dean Cannon
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Tuesday, March 15, 2011 12:30 pm

End Date and Time: Tuesday, March 15, 2011 02:30 pm

Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 125 Sexual Activities Involving Animals by Kiar
HB 389 Surface Water Improvement and Management Plans and Programs by Glorioso
HB 949 Pest Control by Smith
HB 991 Environmental Permitting by Patronis

Consideration of the following proposed committee substitute(s):

PCS for HB 239 -- Numeric Nutrient Water Quality Criteria

Pursuant to Rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, March 14, 2011.

NOTICE FINALIZED on 03/11/2011 16:25 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Sexual Activities Involving Animals
SPONSOR(S): Kiar
TIED BILLS: None **IDEN./SIM. BILLS:** SB 344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser	Blalock AFB
2) Criminal Justice Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A 1971 Florida Supreme Court decision[1] voided the existing law[2] covering bestiality on the grounds that the law's vagueness violated the state constitution. As a result, current Florida law[3] does not specifically prohibit sexual activity involving an animal and a person.

The bill creates specific language prohibiting persons from knowingly engaging in sexual conduct or sexual contact with an animal for the purpose of sexual gratification or arousal of the person. The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing such acts for commercial or recreational purposes.

Violations are a first degree misdemeanor punishable by a $1,000 fine and up to one year in jail, plus applicable administrative fees and court costs.

The bill provides exemptions for animal husbandry (the agricultural practice of breeding and raising livestock), conformation judging practices, and accepted veterinary medical practices.

The mandates provision appears to apply because the bill provides that violations are a first degree misdemeanor; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

It is impossible to forecast how many violations might occur, thus the fiscal impact on local government is unknown. (See Fiscal Comments section for additional details)

The bill's effective date is October 1, 2011.

[1] *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)
[2] Section 800.01, F.S.
[3] Section 828.12, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to the Humane Society of the United States (HSUS), animal sexual abuse, often referred to as bestiality, is the sexual molestation of an animal by a human. This type of animal abuse includes a wide range of behaviors that may result in killing or injuring an animal for sexual gratification.

Not all cases of animal sexual abuse involve physical injury to the animal, but sexual molestation of an animal by a human is classified as abuse. Psychologists have found that bestiality is harmful even in cases when physical harm to an animal does not occur. [4]

Research indicates a connection between animal sexual abuse and other types of violent crimes. Forty percent of the perpetrators of sexually motivated homicides who had been sexually abused as children also reported that they sexually abused animals.[5]

In 2007, a sexual behavior research project[6] found that individuals who participated in sexually problematic behaviors such as bestiality, fetishism, voyeurism, having affairs, and using pornography had an elevated likelihood of starting to sexually abuse children. The study found bestiality as the strongest predictor of child sexual abuse. According to the study, the younger a person is when they begin having sex with animals, the greater the risk that they will start to sexually abuse children at a later point in time.

Generally, state laws prohibiting sexual activities involving animals are very old. Many of these laws have been repealed on the grounds that the wording is no longer relevant to society or understandable to the average citizen. A 1971 Florida Supreme Court decision[7] invalidated the then-existing law[8] covering bestiality on the grounds that its vagueness violated the state constitution. The statute, which was drafted in 1868, read as follows:

> "Whoever commits the abominable and detestable crime against nature, either with mankind or with beast, shall be punished by imprisonment in the state prison not exceeding twenty years."

The court ruling stated that the language was vague, thus providing entrapment to unsuspecting citizens.

As a result, current Florida law[9] does not specifically prohibit sexual activities involving animals and people. It only prohibits a person from intentionally committing an act to an animal that results in injury or excessive or repeated infliction of pain. Consequently, people who are caught in the act of sexual intercourse with an animal generally cannot be charged with or convicted of a sex-related crime. Such defendants must be charged with crimes like disorderly conduct, trespassing or indecent exposure. However, these crimes are sometimes difficult to prove.

Effect of Proposed Changes

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[4] Ascione, Frank R., Ph.D.; (1993). Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychology. Anthrozoos, 6 (4): 226-247.
[5] Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. Journal of Interpersonal Violence, 1: 273-287.
[6] Association for the Treatment of Sexual Abusers, 26th Annual Conference, San Diego, California; Sexual Behavior Predictors of Sexual Abuse of Children
[7] *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)
[8] Section 800.01, F.S.
[9] Section 828.12, F.S.

The bill creates section 828.126, F.S., prohibiting persons from knowingly engaging in "sexual conduct" or "sexual contact" with an animal for the purpose of sexual gratification of the person. [10]

The bill prohibits aiding or abetting another person in committing such acts, in permitting such acts to be conducted, and in organizing, promoting, or performing acts for commercial or recreational purposes.

Violations of the provisions of this bill constitute a first degree misdemeanor punishable by a $1,000 fine and up to one year in jail plus applicable administrative fees and court costs.

Animal husbandry[11], conformation judging practices, or accepted veterinary medical practices are not subject to the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Creates s. 828.126, F.S.; provides definitions; prohibits sexual contact with an animal; prohibits specified related activities; provides penalties; and provides exemptions.

Section 2: Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides that violations are a first degree misdemeanor. According to Florida statute[12], misdemeanor terms of imprisonment may only be served in a county correctional facility, thus requiring

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[10] Sexual conduct means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person. Sexual contact means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

[11] The agricultural practice of breeding and raising livestock

[12] Section 775.08, F.S.

the county to spend related funds. However, because it is impossible to forecast how many violations might occur, the fiscal impact on local governments is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

According to the State Constitution, a bill imposes a mandate if the substance of the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduces the authority that counties or municipalities have to raise revenues in the aggregate, or reduces the percentage of a state tax shared with counties or municipalities.[13]

The mandates provision appears to apply because the bill provides that violations are a first degree misdemeanor. According to s. 775.08, F.S., misdemeanor terms of imprisonment may only be served in a county correctional facility, thus requiring the county to spend related funds; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[13] Article VII, Section 18; Florida Constitution

A bill to be entitled

An act relating to sexual activities involving animals; creating s. 828.126, F.S.; providing definitions; prohibiting knowing sexual conduct or sexual contact with an animal; prohibiting specified related activities; providing penalties; providing that the act does not apply to certain husbandry, conformation judging, and veterinary practices; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 828.126, Florida Statutes, is created to read:

828.126 Sexual activities involving animals.—

(1) As used in this section, the term:

(a) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.

(b) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

(2) A person may not:

(a) Knowingly engage in any sexual conduct or sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or

(d) Knowingly organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(3) A person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) This section does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.

Section 2. This act shall take effect October 1, 2011.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative(s) Kiar offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 828.02, Florida Statutes, is amended to read:

828.02 Definitions.—

(1) In this chapter, and in every law of the state relating to or in any way affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty" shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations, and the knowledge and

acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation.

(2) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal for the purpose of sexual gratification or arousal of the person.

(3) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any penetration, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any penetration of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or sexual arousal of the person.

Section 2. Subsections (5)-(8) are added to section 828.12, Florida Statutes, to read:

828.12 Cruelty to animals.—

(5) A person may not:

(a) Knowingly engage in any sexual conduct or sexual contact with an animal;

(b) Knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; or

(d) Knowingly organize, promote, conduct, advertise, aid, abet, participate in as an observer, or perform any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(6) A person who violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Subsection (5) does not apply to accepted animal husbandry practices, conformation judging practices, or accepted veterinary medical practices.

(8) For the purposes of subsection (5), the term "animal" means any living or dead dumb creature.

Section 3. This act shall take effect October 1, 2011.

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to animal cruelty; amending s. 828.02, F.S.; providing definitions; creating s. 828.126, F.S.; prohibiting knowing sexual conduct or sexual contact with an animal; prohibiting specified related activities; providing penalties; providing that the act does not apply to certain husbandry, conformation judging, and veterinary practices; providing a definition; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 389 Surface Water Improvement and Management Plans and Programs
SPONSOR(S): Glorioso
TIED BILLS: None **IDEN./SIM. BILLS:** SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte	Blalock AFB
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1999, the Florida Legislature enacted the Growth Policy Act[1]. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers[2]. The Act defines an urban infill and redevelopment area as an area where:

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government
- More than 50% of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available; and
- The area includes or is adjacent to a community redevelopment area, brownfield, enterprise zone, or Main Street program, or has been designated as a federal empowerment zone, enterprise community, or brownfield showcase community.

The Community Redevelopment Act of 1969[3] was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community redevelopment

The bill requires Water Management Districts (WMDs) to establish permitting programs for urban redevelopment projects located in community redevelopment areas created under s. 163, F.S., or urban infill and redevelopment areas designated under s. 163.2517, F.S. Further, a jurisdiction with one of these areas may develop a stormwater adaptive management plan to address stormwater quantity discharge allowing that discharge may not exceed historic levels. The stormwater discharge from one of these areas must meet state water quality standards and may not degrade impaired waters by 10% from predevelopment conditions.

There may be an insignificant negative fiscal impact on WMDs for creating and implementing the permitting program for urban redevelopment projects. There may also be an insignificant fiscal impact on those local governments that have established either a Community Development Area or an urban infill and redevelopment area. Those local governments would have to amend those plans.

[1] Chapter 163, Part II, F.S.
[2] Office of Program Policy Analysis and Government Accountability Februrary, 2004 report. On file with staff.
[3] Chapter 163, Part III, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Growth Management

In 1999, the Florida Legislature enacted the Growth Policy Act. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of stimulating investment in distressed urban areas and strengthening urban centers. The Act defines an urban infill and redevelopment area as an area where:

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress
- The proportion of properties that are substandard, overcrowded, dilapidated, vacant or abandoned, or functionally obsolete is higher than the average for the local government
- More than 50% of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available
- The area includes or is adjacent to a community redevelopment area, brownfield, enterprise zone, or Main Street program, or has been designated as a federal empowerment zone, enterprise community, or brownfield showcase community.

Pursuant to s. 163.2517, F.S., the Act requires local governments that want to designate an urban infill and redevelopment area to develop a plan that describes redevelopment objectives and strategies, or to amend an existing plan. Local governments must also adopt their urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries.

The Community Redevelopment Act of 1969[4] was developed to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The act provides a funding mechanism by which counties and municipalities may undertake community redevelopment[5]. It allows counties or municipalities to retain tax increment revenues from certain community taxing districts. To obtain this revenue, a local government must create a community redevelopment agency[6], designate an area or areas to be a Community Redevelopment Area (CRA), create a community redevelopment plan, and establish a trust fund. Once this is accomplished, the CRA can direct the tax increment revenues from within the CRA to accrue to the local government and to be used for the conservation, rehabilitation, or redevelopment of the CRA.

Stormwater

Unmanaged urban stormwater creates a wide variety of effects on Florida's surface and ground waters. Urbanization leads to the compaction of soil; the addition of impervious surfaces such as roads and parking lots; alteration of natural landscape features such as natural depressional areas which hold water, floodplains and wetlands; construction of highly efficient drainage systems; and the addition of pollutants from everyday human activities. These alterations within a watershed decrease the amount of rainwater that can seep into the soil to recharge aquifers, maintain water levels in lakes and wetlands, and maintain spring and stream flows. Consequently, the increased volume, speed, and

[4] Chapter 163, Part III, F.S.
[5] Section 163.353, F.S.
[6] Section 163.356, F.S.

pollutant loading in stormwater that runs off developed areas is leading to flooding, water quality problems, and loss of habitat.[7]

In 1982, to manage urban stormwater and minimize impacts to our natural systems, Florida adopted a technology-based rule requiring the treatment of stormwater to a specified level of pollutant load reduction for all new development. The rule included a performance standard for the minimum level of treatment, design criteria for best management practices (BMPs) that will achieve the performance standard, and a rebuttable presumption that discharges from a stormwater management system designed in accordance with the BMP design criteria will meet water quality standards. The performance standard was to reduce post-development stormwater pollutant loading of Total Suspended Solids (TSS)[8] by 80%, or by 95% for Outstanding Florida Waters.[9]

In 1990, in response to legislation, the Department of Environmental Protection (DEP) developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[10] This rule sets forth the broad guidelines for the implementation of Florida's stormwater program and describes the roles of DEP, the water management districts, and local governments. The rule provides that one of the primary goals of the program is to maintain, to the degree possible, during and after construction and development, the predevelopment stormwater characteristics of a site. The rule also provides a specific minimum performance standard for stormwater treatment systems: to remove 80% of the post-development stormwater pollutant loading of pollutants "that cause or contribute to violations of water quality standards." This performance standard is significantly different than the one used in the DEP and Water Management District (WMP) stormwater treatment rules of the 1980's.

In 1999, the Florida Watershed Restoration Act,[11] was enacted leading to the implementation of Florida's water body restoration program and the establishment of Total Maximum Daily Loads (TMDLs). Since the program began, over 2000 impairments have been verified in Florida's surface waters with nutrients identified as the major cause of impairments.

Effect of Proposed Changes

The bill requires WMDs to establish permitting programs for urban redevelopment projects located in community redevelopment areas created under Chapter 163, F.S., or urban infill and redevelopment areas designated under s. 163.2517, F.S. Further, a jurisdiction with one of these areas may develop a stormwater adaptive management plan to address stormwater quantity discharge allowing that discharge may not exceed historic levels. The stormwater discharge from one of these areas must meet state water quality standards and may not degrade impaired waters by 10% from predevelopment conditions.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.453, F.S., requires water management districts to establish permitting programs for urban redevelopment projects located in specified redevelopment areas; provides for the development of stormwater adaptive management plans to address water quantity discharge for such redevelopment areas; provides for certain discharge rates in such redevelopment areas; requires stormwater discharges in such redevelopment areas to meet state water quality standards; provides water quality criteria for such discharges.

Section 2. Provides an effective date of July 1, 2011.

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[7] NRDC 1999 Report "*Stormwater Strategies.*" http://www.nrdc.org/water/pollution/storm/stoinx.asp

[8] Total Suspended Solid (TSS) is listed as a conventional pollutant under sec. 304(a)(4) of the Clean Water Act. A conventional pollutant is a water pollutant that is amenable to treatment by a municipal sewage treatment plant.

[9] Rule 62-302.700 F.A.C. provides that an Outstanding Florida Water, (OFW), is a water designated worthy of special protection because of its natural attributes. This special designation is applied to certain waters, and is intended to protect existing good water quality.

[10] Chapter 62-40 F.A.C.

[11] Section 403.067, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   There may be an insignificant fiscal impact on WMDs for creating and implementing the permitting program for urban redevelopment projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   There may be an insignificant fiscal impact on those local governments that have established either a Community Development Area or an urban infill and redevelopment area. Those local governments would have to amend those plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Department of Community Affairs analysis, the impact is not determinable at this time.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

By requiring WMDs to establish permitting programs for urban redevelopment projects, the WMDs would have to be given rulemaking authority to implement the permitting programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not authorize rulemaking authority to the WMDs to implement the permitting programs for urban redevelopment projects. Furthermore, the bill doesn't provide specific permitting programs to be established. Lastly, the bill amends s. 373.453, F.S., relating to surface water improvement and management (SWIM) plans. Establishing permitting programs for urban redevelopment projects is not appropriate under this section as SWIM addresses non-point sources of pollution in surface waters as an entire system as opposed to an isolated waterbody.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to surface water improvement and management plans and programs; amending s. 373.453, F.S.; requiring water management districts to establish permitting programs for urban redevelopment projects located in specified redevelopment areas; providing for the development of stormwater adaptive management plans to address water quantity discharge for such redevelopment areas; providing for certain discharge rates in such redevelopment areas; requiring stormwater discharges in such redevelopment areas to meet state water quality standards; providing water quality criteria for such discharges; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 373.453, Florida Statutes, to read:

373.453 Surface water improvement and management plans and programs.—

(7)(a) Each water management district shall establish a permitting program for urban redevelopment projects located within a community redevelopment area created under chapter 163 or an urban infill and redevelopment area designated under s. 163.2517.

(b) A jurisdiction with a community redevelopment area or an urban infill and redevelopment area may develop a stormwater adaptive management plan to address stormwater quantity

discharge for the redevelopment area. Effective July 1, 2011, the rate of stormwater discharge from a redevelopment area under this subsection may not exceed the maximum rate of stormwater discharge within the area as of that date.

(c) Stormwater discharge from a community redevelopment area or an urban infill and redevelopment area into waters of the state must meet state water quality standards at the point of discharge. If numeric criteria for pollutants of concern are not established for a water body, any stormwater discharge under this subsection into such a water body may not degrade the water body beyond its existing classification. Any discharge of stormwater under this subsection into an impaired water body is authorized only to the extent that the discharge reduces the daily loading for pollutants of concern by 10 percent from the predevelopment condition of the water body to its postdevelopment condition.

Section 2. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative(s) Glorioso offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 373.4131, Florida Statutes, is created to read:

373.4131. Urban Redevelopment Projects. -

(1) A city or county that has created a community redevelopment area or an urban infill and redevelopment area pursuant to chapter 163 may adopt a stormwater adaptive management plan that addresses the quantity and quality of stormwater discharges for the redevelopment or infill area and obtain a conceptual permit from the water management district or department. Urban redevelopment projects that meet the criteria established in the conceptual permit will qualify as a Noticed General Permit that shall authorize construction and operation for the duration authorized in the conceptual permit.

(2) The conceptual permit established in subsection (1) must allow for the rate and volume of stormwater discharge for stormwater management systems of urban redevelopment projects located within a community redevelopment area created under part III of chapter 163 or an urban infill and redevelopment area designated under s. 163.2517 to continue up to the maximum rate and volume of stormwater discharge within the area as of the date the plan was adopted.

(3) The conceptual permit must also allow for stormwater discharges for stormwater management systems of urban redevelopment projects located within a community redevelopment area created under part III of chapter 163 or an urban infill and redevelopment area designated under s. 163.2517 that demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan was adopted for any applicable pollutants of concern in the receiving water body. Stormwater discharges that demonstrate such net improvement shall be presumed not to cause or contribute to violations of water quality criteria.

(4) The conceptual permit established by a water management district, in consultation with the Department of Environmental Protection, pursuant to this section may not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in this section.

(5) A conceptual permit issued pursuant to this section shall be for a duration of 20 years, unless a shorter duration is requested by the applicant.

Section 2.. This act shall take effect July 1, 2011.

T I T L E A M E N D M E N T

Remove the entire title and insert:

An act relating to urban redevelopment projects; creating s. 373.4131, F.S.; providing that a city or county that has created a community redevelopment area or an urban infill and redevelopment area may adopt stormwater adaptive management plans and obtain a conceptual permit; provides that urban redevelopment projects that meet the criteria of the conceptual permit will qualify as a Noticed General Permit; requires the conceptual permit to allow for the rate and volume of stormwater discharge for stormwater management systems of urban redevelopment projects to continue up to the maximum rate and volume of discharge within the areas as of the date the plan was adopted; requires the conceptual permit to allow for stormwater discharges fof urban redevelopment projects to demonstrate a net improvement of the quality of the discharged water that existed as of the date the plan was adopted for pollutants of concern; provides the conceptual permit may not prescribe additional or more stringent limitations than provided in this section; provides conceptual permits may be issued for a duration of 20 years; provides an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 949 Pest Control
SPONSOR(S): Smith
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (department) regulates pest control businesses in the state.

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving phone calls and soliciting business.

The bill authorizes the Department of Agriculture of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee[1] and biennial renewal fee.[2]

The bill also establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents.[3] The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

The bill increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992. And lastly, the bill expands the methods by which a pest control licensee may contact the department regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

The bill will generate $21,000 in FY 2011-12, $15,000 in FY 2012-13, and $21,200 in FY 2013-14 from fees generated through the pest control customer contact centers and through the limited certification category for commercial wildlife management personnel. Expenditures associated with these programs are estimated to be $16,957 in FY 2011-12, $16, 359 in FY 2012-13, and $17,455 in FY 2013-14. The bill does not appear to have a fiscal impact on local governments.

[1] The biennial license fee must be at least $600 and not more than $1,000.
[2] The renewal fee must be at least $600 and not more than $1,000.
[3] As defined in s. 482.021(23), F.S., rodents include rats, mice, squirrels, or flying squirrels or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Coverage

Current Situation

The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Effect of Proposed Changes

The bill increases:

- Bodily injury from $100,000 to $250,000 per person, $300,000 to $500,000 per occurrence; and,
- Property damage from $50,000 to $250,000 per occurrence, $100,000 to $500,000 in the aggregate.

For wood-destroying organism inspection licenses, the professional liability insurance limits are increased from $50,000 to $250,000 in the aggregate, $25,000 to $250,000 per occurrence, and the alternative of demonstrating equity or net worth is revised to increase the amount from $100,000 to $500,000.

Pest Control Customer Contact Centers

Current Situation

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving phone calls and soliciting business.

Effect of Proposed Changes

The bill authorizes the Department of Agriculture of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee[4] and biennial renewal fee.[5] The department is authorized to deny or refuse to renew a license if:

- The pest control business licensees for whom it solicits business are not owned in common by a person or business entity recognized by the state.
- The applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that has gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.
- A person who solicits pest control services or provides customer service in a licensed customer contact center performs pest control services such as: the use or application of a device or application to prevent or control any pest in, on, or under a structure, lawn, or ornamental; the identification of or inspection for infestation in, on, or under a structure, lawn, or ornamental; the use of pesticides, poisons, or devices for preventing or controlling insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental; or performing any phase of fumigation.

[4] The license fee must be at least $600 and not more than $1,000.
[5] The renewal fee must be at least $600 and not more than $1,000.

The department is given rule-making authority for implementing provisions related to the recordkeeping and monitoring of pest control customer contact centers. The bill also provides criteria for disciplinary action against a pest control customer contact center or a pest control business licensee of the contact center.

Certification for Commercial Wildlife Management Personnel

Current Situation

For several years, the Florida Fish and Wildlife Conservation Commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years and the permitting was discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

Effect of Proposed Changes

The bill establishes a limited certification category within the department authorizing persons to use nonchemical methods for controlling rodents.[6] The certification process includes submitting an application, successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

Certification does not allow the use of pesticides or chemicals to control rodents; operation of a pest control business; or, supervision of an uncertified person using non-chemical methods to control rodents.

The bill authorizes the department to set fees for the program through the rule-making process. Persons who are certified through this program, and follow accepted pest control methods, are immune from liability regarding animal cruelty.

Fumigation Notice

Current Situation

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide notice by means of a telephone call and then follow up with a written confirmation providing the required information.

Effect of Proposed Changes

The bill allows a licensee to contact the department regarding the location where fumigation will be taking place by facsimile or another form of electronic communication, as well as by telephone.

B. SECTION DIRECTORY:

Section 1: Amends s. 482.051, F.S.; allows pest control operators to provide certain emergency notice to the Department of Agriculture and Consumer Services (department) by facsimile or other electronic means.

Section 2: Amends s. 482.071, F.S.; increases financial responsibility requirements on certificates of insurance for licensees.

Section 3: Amends s. 482.072, F.S.; authorizes the department to license pest control customer contact centers ; requires biennial renewal of license; establishes a license/renewal fee for pest control customer contact centers; establishes a grace period for renewal of license; establishes a late renewal charge; provides for expiration of license at time certain; provides for relicensure; provides for license expiration upon address change; establishes fee for relicensure; provides criteria for issuing pest

[6] As defined in s. 482.021(23), F.S., rodents include rats, mice, squirrels, or flying squirrels or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure.

control customer contact center license; provides criteria for denying and refusing to renew license; clarifies need for employee identification card; authorizes rule-making authority; and , provides criteria for discipline of pest control customer contact center licensee and/or pest control business licensee for misactions of employees.

Section 4: Amends s. 482.157, F.S.; establishes certification for individual commercial wildlife management personnel; prescribes methods of removal of wildlife; requires examination and fee for certification; requires proof of insurance by employer of person applying for certification; provides for annual recertification with fee; authorizes rule-making authority; provides for grace period for recertification; provides for late fee; and, provides criteria on certification.

Section 5: Amends s. 482.226, F.S.; increases limits for financial responsibility insurance coverage for persons with wood-destroying organism inspection licenses.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	2011-12	2012-13	2013-14
Customer Contact Center License*	$ 6,000	-	$ 6,000
Limited Certification Wildlife			
Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	-	7,500	7,500
	$ 21,000	$15,000	$ 21,000

*Based on 10 licenses issued per year at $600 each, renewing biennially.
**Based on 100 exams the first year, 50 the second and third years, at $150 each.
***Based on 100 renewals at $75 each.

2. Expenditures:

Inspections*	$ 15,860	$ 15,860	$ 15,860
License Issuance**	1,097	499	1,595
	$ 16,957	$ 16,359	$ 17,455

*FY 09-10 unit cost per inspection, 20 inspections at $793.
**FY 09-10 unit cost per license, 110 inspections at $9.97 the first year, 50 inspections the second year, and 160 inspections the third year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

3. Revenues:

None

4. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Pest control businesses that choose to obtain the pest control customer contact center license or the limited certification for commercial wildlife management personnel license will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

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 or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is authorized to adopt rules relating to the licensing of pest control customer contact centers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services has identified some inconsistencies that need to be corrected in the bill.

- Line 100 of the bill should read "business licensees for whom the customer contact center solicits business is owned in common by a"
- Line 169 of the bill should read "(c) Supervision of an uncertified person using non-chemical methods to control rodents."
- Line 181 of the bill should read "no less than $500,000 ~~$50,000~~ in the aggregate and $250,000"

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pest control; amending s. 482.051, F.S.; providing rule changes that allow operators to provide certain emergency notice to the Department of Agriculture and Consumer Services by facsimile or electronic means; amending s. 482.071, F.S.; increasing the minimum bodily injury and property damage insurance coverage required for pest control businesses; creating s. 482.072, F.S.; providing for licensure by the department of pest control customer contact centers; providing application requirements; providing for fees, licensure renewal, penalties, licensure expiration, and transfer of licenses; creating s. 482.157, F.S.; providing for the certification of commercial wildlife trappers; providing certification requirements, examination requirements, and fees; limiting the scope of work permitted by certificate holders; clarifying that licensees and certificateholders who practice accepted pest control methods are immune from liability for violating laws prohibiting cruelty to animals; amending s. 482.226, F.S.; increasing the minimum financial responsibility requirements for licensees that perform certain inspections; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 482.051, Florida Statutes, is amended to read:

482.051 Rules.—The department has authority to adopt rules

pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(4) That a licensee, before performing general fumigation, notify in writing the department inspector having jurisdiction over the location where the fumigation is to be performed, which notice must be received by the department inspector at least 24 hours in advance of the fumigation and must contain such information as the department requires. However, in an authentic and verifiable emergency, when 24 hours' advance notification is not possible, advance telephone, facsimile, or any other form of acceptable electronic communication ~~or telegraph~~ notice may be given; but such notice must be immediately followed by written confirmation providing the required information.

Section 2. Subsection (4) of section 482.071, Florida Statutes, is amended to read:

482.071 Licenses.—

(4) A licensee may not operate a pest control business without carrying the required insurance coverage. Each person making application for a pest control business license or renewal thereof must furnish to the department a certificate of insurance that meets the requirements for minimum financial responsibility for bodily injury and property damage consisting of:

(a) Bodily injury: $250,000 ~~$100,000~~ each person and $500,000 ~~$300,000~~ each occurrence; and property damage: $250,000 ~~$50,000~~ each occurrence and $500,000 ~~$100,000~~ in the aggregate; or

(b) Combined single-limit coverage: $400,000 in the aggregate.

Section 3. Section 482.072, Florida Statutes, is created to read:

482.072 Pest control customer contact centers.—

(1) The department may issue a license to operate a customer contact center from which to solicit pest control business or provide services to customers for one or more business locations licensed under s. 482.071. A person may not operate a customer contact center for a pest control business which is not licensed by the department.

(2)(a) Before operating a customer contact center, and biennially thereafter, on or before a renewal date set by the department, a pest control business must apply to the department for a license or license renewal for each customer contact center location it operates. An application must be submitted in the format prescribed by the department.

(b) The department shall establish a licensure fee of at least $600, but not more than $1,000, and a renewal fee of at least $600, but not more than $1,000, for a customer contact center license. However, until renewal fee rules are adopted, the initial license and renewal fees are each $600. The department shall establish a grace period, not to exceed 30 days after the renewal date, and shall assess a late fee of $150, in

addition to the renewal fee, for a license that is renewed after the grace period.

(c) A license automatically expires if it is not renewed within 60 days after the renewal date and may be reinstated only upon reapplication and payment of the license renewal fee and late fee.

(d) A license automatically expires if a licensee changes its customer contact center business location. The department shall issue a new license upon payment of a $250 fee, which must be renewed by the renewal date for the former location's license. A new license that is not renewed within 60 days after the renewal date of the license for the former business location automatically expires.

(e) The department may not issue or renew a license to operate a customer contact center unless the pest control business for which it solicits business is owned in common by a person or business entity recognized by this state.

(f) The department may deny a license or refuse to renew a license if the applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that meets the conditions in s. 482.071(2)(g).

(g) Sections 482.091 and 482.152 do not apply to a person who solicits pest control services or provides customer service in a licensed customer contact center unless the person performs the pest control work as defined in s. 482.021(22)(a)-(d), executes a pest control contract, or accepts remuneration for

such work.

(h) Section 482.071(2)(e) does not apply to a license issued under this section.

(3)(a) The department shall adopt rules establishing requirements and procedures for recordkeeping and monitoring customer contact center operations to ensure compliance with this chapter and rules adopted hereunder.

(b) Notwithstanding any other provision of this chapter:

1. A customer contact center licensee is subject to disciplinary action under s. 482.161 for a violation of this chapter or a rule adopted hereunder committed by a person who solicits pest control services or provides customer service in a customer contact center.

2. A pest control business licensee may be subject to disciplinary action under s. 482.161 for a violation committed by a person who solicits pest control services or provides customer service in a customer contact center operated by the licensee if the licensee participates in the violation.

Section 4. Section 482.157, Florida Statutes, is created to read:

482.157 Limited certification for commercial wildlife management personnel.—

(1) The department shall establish a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods, including traps, glue boards, mechanical or electronic devices, or exclusionary techniques to control rodents.

(2) The department shall issue a limited certificate to an

applicant who:

(a) Submits an application and examination fee, set by departmental rule, of not more than $300 or less than $150. The department shall provide examination reference materials and offer the examination at least quarterly or as necessary in each county;

(b) Passes the departmental examination; and

(c) Provides proof, including a certificate of insurance, showing that the applicant has met the minimum financial bodily injury and property damage requirements in s. 482.071(4).

(3) An application for recertification must be made annually and be accompanied by a recertification fee of not more than $150 or less than $75, as established by rule. The application also must be accompanied by proof of completion of the required 4 classroom hours of acceptable continuing education and the required proof of insurance. After a grace period not exceeding 30 days after the recertification renewal date, a late fee of $50 shall be assessed in addition to the renewal fee. A certificate automatically expires 180 days after the recertification date if the renewal fee has not been paid. After expiration, a new certificate shall be issued only upon successful reexamination and payment of the examination and late fees.

(4) Certification under this section does not authorize:

(a) The use of pesticides or chemical substances, other than adhesive materials, to control rodents or other nuisance wildlife in, on, or under structures;

(b) Operation of a pest control business; or

(c) Supervision of a certified person.

(5) Persons licensed under this chapter who practice accepted pest control methods are immune from liability under s. 828.12.

Section 5. Subsection (6) of section 482.226, Florida Statutes, is amended to read:

482.226 Wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.—

(6) Any licensee that performs wood-destroying organism inspections in accordance with subsection (1) must meet minimum financial responsibility in the form of errors and omissions (professional liability) insurance coverage or bond in an amount no less than $250,000 ~~$50,000~~ in the aggregate and $250,000 ~~$25,000~~ per occurrence, or demonstrate that the licensee has equity or net worth of no less than $500,000 ~~$100,000~~ as determined by generally accepted accounting principles substantiated by a certified public accountant's review or certified audit. The licensee must show proof of meeting this requirement at the time of license application or renewal thereof.

Section 6. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Smith offered the following:

Amendment

Remove line 100 and insert:

business licensees for whom it solicits business are owned in common by a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 949 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Smith offered the following:

Amendment

Remove line 169 and insert:

(c) Supervision of an uncertified person using non-chemical methods to control rodents.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 949 (2011)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Smith offered the following:

Amendment

Remove line 181 and insert:

no less than $500,000 ~~$50,000~~ in the aggregate and $250,000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Environmental Permitting
SPONSOR(S): Patronis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte	Blalock AFB
2) Rulemaking & Regulation Subcommittee			
3) Economic Affairs Committee			
4) Appropriations Committee			
5) State Affairs Committee			

SUMMARY ANALYSIS

The bill creates, amends, and revises numerous provisions relating to development, construction, operating, and building permits; permit application requirements and procedures, including waivers, variances and revocation; local government comprehensive plans and plan amendments; programmatic general permits and regional general permits; permits for projects relating to coastal construction, surface water management systems, dredge and fill activities, inland multimodal facilities, commercial and industrial development, biofuel and renewable energy facilities, and mining activities. The bill revises requirements for demonstrating injury in order to seek relief under Environmental Protection Act. Specifically the bill:

- Authorizes an executive agency to provide a notice of rights of the procedure to obtain an administrative hearing or judicial review, via a link to a publicly available Internet website
- Provides that an application for a license must be approved or denied within 60 rather than 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law
- Directs local governments to define the construction and operation of a bio-fuel processing facility as a valid industrial/agricultural/silviculture use permitted within land use categories in local comprehensive plans; directs local governments to establish expedited review process of comprehensive plan amendments should a biomass facility not be found in original comp plan
- Prohibits a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency
- Allows applicants 90 days to respond to requests for additional information (RAIs)
- Redefines the term "affected person" to require persons affected by local government comprehensive plans to demonstrate that their substantial interests will be affected in order to challenge comprehensive plan changes.
- Redefines the term "aggrieved or adversely affected party" to require that any local government or person must demonstrate that their substantial interest will be affected in order to be granted standing to challenge the development order.
- Prohibits a municipality from requiring an applicant to obtain state and federal permits as a condition of approval for development permits
- Expands the use of Internet-based self-certification services for exemptions and general permits
- Expands the process for submitting RAIs.
- Provides for an expanded state programmatic general permit
- Provides for incentive-based environmental permitting
- Requires certain counties/municipalities with certain populations to apply for delegation of authority by June 1, 2012, for environmental resource permitting
- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action
- Provides expedited permitting for inland multimodal facilities; clarifies creation of regional action teams for expedited permitting for certain businesses; establishes a limited exemption from the strategic intermodal system adopted level-of-service standards for certain projects
- Clarifies mitigation requirements for impacts related to transportation projects

The bill has a significant negative fiscal impact. See Fiscal Comments Section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 120.569, F.S. providing a notice of rights via internet.

Current Situation

Chapter 120, F.S., is known as the Florida Administrative Procedures Act. It sets forth the procedures by which executive branch agencies must adopt their respective agency administrative rules that are used to implement and carry out statutory duties and responsibilities. Under s. 120.569, F.S., a party whose substantial interest are being determined by an agency is entitled to an administrative hearing to determine whether an agency has applied an administrative rule erroneously. This section also provides that parties must be notified of any order arising out of an administrative hearing. The notice must indicate the procedure that must be followed to obtain the hearing or judicial review.

Effect of Proposed Changes

The bill amends s. 120.569, F.S., to provide that the notice described above, including any items required by the uniform rules adopted pursuant to s. 120,54(5), F.S.[1], may be provided via a link to a publicly available Internet website. The bill also provides that for any proceeding arising under Chapters 373[2], 378[3], or 403[4], F.S., if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence.

Section 2. Amends s. 120.60, F.S. providing authority for license applicants to require an agency to process pending applications.

Current Situation

Under current law (s. 120.60, F.S.), upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request addition information (RAI). The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Changes

The bill provides that an application for a license must be approved or denied within 60 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

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[1] Section 120.54(5), F.S., provides that the Administration Commission shall adopt one or more sets of uniform rules of procedure for agencies to comply with. These rules shall establish procedures that comply with the requirements of Chapter 120. The uniform rules shall be the rules of procedure for each agency subject to Chapter 120 unless the Administration Commission grants an exception to the agency.

[2] Chapter 373, F.S., directs the DEP or WMDs to issue environmental resource permits for activities involving the alteration of surface water flows.

[3] Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.

[4] Chapter 403, F.S., establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.

Section 3 creates s. 125.0112 and Section 9 creates s.166.0447, F.S. relating to biofuels and renewable energy.

Current Situation

Section 125.01, F.S., establishes the powers and duties of county governments. These powers and duties include the power to prepare and enforce comprehensive plans for development of the county and to establish, coordinate, and enforce zoning and business regulations as necessary to protect the public. Section 166.021, F.S., establishes the powers of municipalities. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law. Municipal purpose is defined as any activity or power which may be exercised by the state or its political subdivisions. Accordingly, municipalities may adopt and enforce land use regulations.

To make biofuel processing and biomass generating facilities economically feasible, the facilities must often be sited on or near the land from which the feedstock for the facility is produced. Costs to transport the feedstock can reduce the cost-effectiveness of these facilities. Currently, local land use plans may require a property owner to obtain an amendment to the local comprehensive plan, a special exemption, or some similar relief to allow the combination of industrial, agricultural, and/or silvicultural land uses on a site that the owner intends to use for purposes of biofuel processing or biomass generation.

Effect of Proposed Changes

The bill creates ss. 125.0112 and 166.0447, F.S., to provide that construction and operation of a biofuel processing facility or renewable energy generating facility[5], and the cultivation and production of bioenergy, are each a valid industrial, agricultural, and silvicultural use permitted within such land use categories of a local comprehensive land use plan. If a local comprehensive plan does not specifically allow for the construction of the above facilities, the local government must establish a review process that may include expediting local review of any necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. The expedited review does not obligate a local government to approve such proposed use. The comprehensive plan shall, if approved by the local government, be eligible for the alternative state review process in s. 163.32465, F.S.[6]

Section 4. amends s. 125.022, F.S. and Section 8 amends s. 166.033, F.S. prohibiting a county or municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Current Situation

Some in the development community say there have been instances when the approval of a local government development permit was conditioned on the applicant first acquiring permit approval from a

[5] The bill references s. 366.91(2)(d), F.S., which defines renewable energy as "electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations." Biomass is defined in s. 366.91(2)(a), F.S., as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food process, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[6] This statute states that "The Legislature finds and declares that this state's urban areas require a reduced level of state oversight because of their high degree of urbanization and the planning capabilities and resources of many of their local governments. An alternative state review process that is adequate to protect issues of regional or statewide importance should be created for appropriate local governments in these areas. Further, the Legislature finds that development, including urban infill and redevelopment, should be encouraged in these urban areas. The Legislature finds that an alternative process for amending local comprehensive plans in these areas should be established with an objective of streamlining the process and recognizing local responsibility and accountability."

state or federal agency, regardless of whether the development proposal required state or federal approval.

Effect of Proposed Changes

The bill prohibits a local government or a municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency. The section provides that it is the applicant's responsibility to seek any additional state or federal authority, and that the issuance of a development permit does not create liability on the part of the local government for the applicant's failure to secure proper state or federal approval. Counties may attach this disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits must be obtained prior to development. This provision shall not be construed to prohibit a county from providing information to an applicant regarding what other state or federal permits may be applicable.

Section 5. Creates s. 161.032, F.S. providing for applicants to timely respond to RAIs

Current Situation

Under current law, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Changes

The bill provides that if the applicant believes a request for such additional information is not authorized by law or agency rule, the agency, at the applicant's request, shall proceed to process the permit application. In addition, this section requires the applicant to respond to the RAI within 90 days of receipt. If the applicant needs more than 90 days, he or she is required to inform the DEP and the applicant will receive another 90 day period. Additional time may be granted with a showing of good cause.

Section 6. Amends s. 163.3184, F.S. redefining the term 'affected person'

Current Situation

Pursuant to s. 163.3184, F.S., an "affected person" has the right to petition for an administrative hearing to challenge the Department of Community Affair's (DCA's) decision that a comprehensive plan or plan amendment is, or is not, in compliance with the Growth Management Act. "affected persons" are (1) the local government that adopted the plan or plan amendment; (2) an adjoining local government that can demonstrate substantial impacts; (3) persons who own property, reside, or own or operate a business within the boundaries of the local government that adopted the plan or plan amendment AND submit comments between the proposed hearing and the adopted hearing; and (4) for future land use map amendments, persons who own property outside of the local government jurisdiction, and that property abuts the property affected by the future land use map amendment.

Effect of Proposed Changes

The bill revises the definition of "affected persons" to require that persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review must demonstrate that their substantial interest will be affected by the plan or plan

amendment. This restricts who is able to petition for an administrative hearing to challenge DCA decisions on comprehensive plan changes.

Section 7. Amends s. 163.3215, F.S. redefining 'aggrieved or adversely affected party'

Current Situation

Currently, the Growth Management Act gives no regulatory authority to the DCA to "enforce" local government development order consistency with the provisions of their adopted comprehensive plans. However, s. 163.3215, F.S., provides that any "aggrieved or adversely affected party" can challenge a development order issued by a local government that is believed not to be consistent with the adopted comprehensive plan. An "aggrieved or adversely affected party" must show that they have an interest protected by the local government's comprehensive plan, and that this interest will be adversely affected in some degree greater than that suffered by the general public. The term includes the owner, developer, or applicant for a development order.

Effect of Proposed Changes

The bill amends the definition of "aggrieved or adversely affected party" definition to require that any local government or person must demonstrate that their substantial interest will be affected in order to be granted standing to challenge the development order.

Sections 10 and 14. Amends s. 373.026, F.S. expanding the the use of Internet-based self-certifications.

Current Situation

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March, 2007, issued an interim project report titled "Improving Consistency and Predictability in Dock and Marina Permitting"[7]. This report concluded a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. Recommendation 3, 4, and 5, of the LCIR report suggested that the Department of Environmental Protection (DEP) expand the use of the Internet for permitting and certification purposes.

E-permitting
The DEP currently accepts certain types of permit applications on-line and provides an online self-certification process for private docks associated with detached individual single-family homes on the adjacent uplands, provided the dock being constructed is the sole dock on the parcel. Through this electronic process, one may immediately determine whether a private single family dock can be constructed without further notice or review by the DEP. This includes notification of qualification for the Army Core of Engineers (COE) State Programmatic General Permit (SPGP IV). In addition, Florida's five water management districts (WMDs) have designed and support a shared permitting portal. This portal is designed to direct the user to the appropriate WMD's Web site for obtaining information regarding the WMD's permitting programs, applying for permits, and submitting permit compliance information. The WMDs issue several types of permits. The three most common deal with how much water is used (consumptive use permits), the construction of wells (well construction permits), and how new development affects water resources (environmental resource permits)[8].

Self certification
According to the LCIR report, interviews with stakeholder groups indicated some local governments often do not accept self-certification for permit-exempt projects identified in statute, rule, or listed in the DEP's Self-Certification Process for Single-Family Docks. Some local governments require a "signature" from DEP permit review staff to verify the exempt status of the projects submitted under Self-

[7] http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf
[8] See http://www.flwaterpermits.com/

Certification, notwithstanding the fact that current law neither requires nor provides for a "signature" from the DEP as an alternative or as supplemental to Self-Certification.

Effect of Proposed Change

The bill authorizes the DEP and WMDs to expand the use of internet based self certification services for appropriate exemptions and general permits issued by the DEP and the WMDs, providing such expansion is economically feasible. In addition to expanding the use of internet based self certification services for appropriate exemptions and general permits, the DEP and WMDs are directed to identify and develop general permits for activities currently requiring individual review that could be expedited through the use of professional certifications.

Section 11. Amends s. 373.4141, F.S. requiring additional RAIs to be signed off by specified officials of the DEP or WMD.

Current Situation

Under current law governing, upon receipt of an application for a license or permit, an agency is required to examine the application and, within 30 days, notify the applicant of any apparent errors or omissions and request additional information. The application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. An agency is required to approve or deny every application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. There is no time limit on when the applicant must respond to the RAI, nor is there a limit to the number of times the agency may request additional information.

Effect of Proposed Changes

The bill provides that if there is a second RAI by DEP or a WMD, that the request must be signed by the supervisor of the project manager. If there is a third RAI, the request must be signed by the division director who oversees the program area. If there is a fourth RAI, the request must be signed by the assistant secretary of the DEP or the assistant executive director of the WMD. Any additional RAI must be signed by the secretary of the DEP or the executive director of the WMD. The bill also provides that permits must be approved or denied within 60 days of receipt of the original application. Any permit required by a local government that also requires a state permit, must be approved or denied within 60 days after receiving the original application. Any application which is not approved or denied within 60 days is deemed approved.

Section 12. Amends s. 373.4144, F.S. expanding the use of SPGP permits.

Current Situation

Regulation of Florida's wetlands starts with the federal government. The federal wetland regulatory program is administered under two federal laws. The first is Section 10 of the Rivers and Harbors Act of 1899. This Act prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the U.S. without Congressional approval. The second law is the Clean Water Act (CWA). In 1972, Congress substantially amended the federal Water Pollution Control Act and initiated the CWA. Section 404 of the CWA is the foundation for federal regulation of some activities that occur in or near the nation's wetlands. The regulatory plan is intended to control discharge from dredge or fill materials into wetlands and other water bodies throughout the United States.

Under section 404 of the CWA and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency (EPA) share responsibility for implementing a permitting program for dredging and filling wetland areas. The COE administers the permitting provisions of both federal laws, with EPA oversight, in effect combining Clean Water Act and Rivers and Harbor Act permits into a single action. The COE issues two types of permits: general and individual. An individual permit is required for potentially significant impacts. It is reviewed by the COE,

which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Under the general permit, there are three types of classification: nationwide, regional, and state. The use of a nationwide permit is limited and generally addresses storm drain lines, utility lines, bank stabilization, and maintenance activities. A regional permit will state what fill actions are allowed, what mitigation is necessary, how to get an individual project authorized, and how long it will take. National and regional permits are issued by the COE in Florida, although the COE could authorize Florida to issue regional permits on its behalf.

The third permit is a State Programmatic General Permit (SPGP). This permit is limited to similar classes of projects that have minimal individual and cumulative impacts. Due to the class limitations, the complexity and physical size of projects are limited as well. Wetland impacts allowed in general permits usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include: construction of shoreline stabilization activities; boat ramps and boat launch areas and structures associated with such ramps or launch areas; docks, piers, marinas, and associated facilities; maintenance dredging of canals and channels; selected regulatory exemptions; and selected ERP noticed general permits. Monroe County and those counties within the jurisdiction of the Northwest Florida WMD are excluded from the SPGP permit.

Under current law, the DEP works with the COE to streamline the issuance of both the state and federal permits for work in wetlands and other surface waters in Florida. The SPGP process allows the DEP or WMD to grant both the ERP and the federal permit, instead of requiring both agencies to process the application.

The general permit process is supposed to eliminate individual review by the COE and allow certain activities to proceed with little or no delay. In most instances, anyone complying with the conditions of the general permit can receive project specific authorization; however, this is not always the case. Since the general permit authorizes the issuance of federal permits, federal resource agency coordination requirements remain. If a permit impacts a listed species, the permit must be forwarded to the COE for coordination with federal resource agencies.

Effect of Proposed Changes

The bill requires the DEP to obtain an expanded SPGP or a series of regional general permits from the COE for activities in waters which are similar in nature, which will only cause minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. In appropriate cases, the need for a separate individual approval from the COE would be eliminated.

The bill directs the DEP to not seek such permits unless the conditions are at least as protective of the environment and natural resources as existing state law under this section and federal law under the Clean Water and the Rivers and Harbors Act of 1899.

The bill authorizes the DEP and WMDs to implement a voluntary SPGP for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the COE. The bill would not preclude the DEP from pursuing a series of regional general permits for construction activities in wetlands or surface waters.

Section 13. Amends s. 373.441, F.S. directing DEP and WMDs to regulate activities pursuant to delegation agreements.

Current Situation

Florida Statutes and Florida Administrative Code (F.A.C.) sections authorize and provide procedures and considerations for the DEP to delegate the Environmental Resource Permit (ERP) program to local

governments[9]. Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs the rules shall "seek to increase governmental efficiency" and "maintain environmental standards." Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained[10].

According to the statute, delegation includes the applicability of Chapter 120, F. S., (the Administrative Procedures Act) to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs. Responsibilities of the state agency and the local government are outlined in a "delegation agreement" executed between the two parties.

Effect of Proposed Changes

The bill provides that any county having a population of 75,000 or more, or a municipality that has local pollution control programs serving populations of more than 50,000, must apply for delegation of authority on or before Jun 1, 2012. Those local governments that fail to apply for delegation of authority may not require permits that are similar to the requirements needed to obtain an ERP.

The bill provides that upon delegation to a qualified local government, the DEP and WMD shall not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

Section 15. Creates s. 403.0874 creates incentive-based permitting

Current Situation-Florida

The State of Florida regulates the impacts of certain activities on the environment primarily through permitting programs in three chapters of the Florida Statutes: ch. 403, ch. 373, and ch. 161, F.S. The majority of permitting programs within these chapters are administered by DEP and the WMDs.[11] Although certain DEP rules do require consideration of a permit applicant's prior violations,[12] the DEP does not currently have a comprehensive program to reward those in the regulated community who consistently meet or better their permit requirements.[13]

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[9] In an effort to place the planning and regulatory program into the hands of the local governments, s. 373.441, F.S., and its implementing rule, chapter 62-344, F.A.C., provide delegation authority.

[10] Chapter 62-344 of the Florida Administrative Code, provides a guide to local governments in the application process, as well as the criteria that will be used to approve or deny a delegation request.

[11] *See, e.g.*, s. 403.0885, F.S. (the DEP's permitting authority for a state-operated National Pollutant Discharge Elimination System program under federal delegation); s. 403.0881, F.S. (the DEP's permitting authority for wastewater treatment facilities, generally conducted by the DEP's six District Offices and delegated local programs (http://www.dep.state.fl.us/water/wastewater/permitting.htm)); s. 373.219, F.S. (the DEP and water management district's permitting authority for consumptive use of water, which the water management districts issue) s. 161.041 (DEP's permitting authority for certain coastal construction and reconstruction); s. 403.086, F.S. (the DEP's permitting authority for certain stationary air and water pollution sources); *see also* http://flwaterpermits.com/home/floridawater_permits.html (identifying certain permitting authority shared by the DEP and water management districts).

[12] *See* discussion of Rule 62-4.070(5), F.A.C., under section on Chapter 403.

[13] However, limited financial incentives do exist in the DEP's permitting process for wastewater treatment facilities not regulated under the National Pollutant Discharge Elimination System. If certain conditions based on compliance and water quality standards are met, renewal of operation permits must be issued for term of up to 10 years for the same cost and under the same conditions as a 5-year permit. s. 403.087(3), F.S.

Chapter 403, F.S.

Chapter 403, the Florida Air and Water Pollution Control Act, establishes that the state's public policy includes protecting water and air quality and supply for public health and safety and the environment.[14] The DEP is responsible for issuing permits for stationary installations that are reasonably expected to be a source of air and water pollution.[15] The DEP has rulemaking authority to adopt, amend, or repeal rules related to the issuance, denial, modification or revocation of permits issued for this regulation.[16]

Pursuant to s. 403.087(2), F.S., the DEP has adopted rules describing the various requirements that must be met by permit applicants. These requirements may include provisions such as equipment requirements, operating and maintenance requirements, and limitations on emissions or discharges from the permitted facility.[17] In addition to listed permit requirements, under Rule 62-4.070(5), F.A.C., the DEP must consider the permit applicant's environmental violations at any location in the state when determining whether the applicant has provided the necessary "reasonable assurance" that it will be able to meet the permit requirements. Within certain individual program areas of the DEP, additional rules or statutes narrow the standards for issuing or denying permits.[18]

In addition, the DEP currently has statutory authority to adopt alternative permitting programs on a pilot project basis. Section 403.0611, F.S., directs the DEP to explore alternative methods of regulatory permitting aimed at reducing transaction costs and providing economic incentives for reducing pollution.

Chapter 373, F.S.

Under the Florida Water Resources Act of 1972, ch. 373, F.S., water constitutes a public resource benefiting the entire state and thus should be managed on a state and regional basis.[19] Generally, environmental permits issued under ch. 373, F.S., are issued by the governing board of water management districts or the DEP. Prior to construction or alteration of any stormwater management system, dam, impoundment, reservoir appurtenant work,[20] or vessel dry storage facility,[21] the DEP or governing board of a water management district may require a permit authorizing the construction or alteration activity. Permits may also be required for authorization of mitigation banks.[22]

For environmental resource permitting, which regulates activities involving the alteration of surface water flows, the DEP has specific conditions for issuance of permits and considers rule and permit violations.[23] However, these programmatic rules and statutes do not provide guidance as to what type of violations should be considered or how far back into an applicant's compliance history the DEP should review.

Chapter 161, F.S.

The Legislature adopted the Beach and Shore Preservation Act, parts I and II of ch. 161, F.S., in order to protect, preserve, and manage Florida's valuable sandy beaches and adjacent and coastal system. Any coastal construction, reconstruction of existing structures, or physical activity undertaken specifically for shore protection purposes upon sovereignty lands of Florida requires a coastal construction permit issued by DEP.[24]

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[14] s. 403.021, F.S.
[15] s. 403.087, F.S.
[16] s. 403.087(1), F.S.
[17] Rule 62-4.070(1), F.A.C.
[18] *See, e.g.*, Rule 62-620.320, F.A.C. (for wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination); s. 403.707(8), F.S. (for solid waste facilities, the DEP may deny a permit application for repeated violations of statutes, rules, orders, or permit terms or conditions and is deemed to be irresponsible under the DEP's rules).
[19] s. 373.016(4)(a), F.S.
[20] s. 373.413, F.S.
[21] s. 373.4132, F.S.
[22] s. 373.4136, F.S.
[23] Rule 40B-400.104(2), (3), F.A.C.
[24] s. 161.041, F.S.

Current Situation – Federal

In 2000, the federal Environmental Protection Agency established the National Environmental Performance Track (Performance Track) program. The goal of the program was to encourage performance above and beyond legal requirements that results in measurable benefits to the environment.[25] Admittance to the program required a record of sustained compliance with environmental laws, an independently reviewed environmental management system, a commitment to continuous improvement with four measurable goals, a commitment to public outreach, and annual reporting.[26] Benefits of Performance Track membership include recognition, networking, and regulatory incentives. However, the Performance Track program was terminated in 2009, at which point more than half of the states had developed similar programs.[27]

Effect of Proposed Changes

The bill creates s. 403.0874, F.S., the Florida Incentive-based Permitting Act. The bill establishes the Legislature's finding that the DEP should consider a permit applicant's site-specific and program-specific history of compliance when considering whether to issue, renew, amend, or modify a permit. Compliance with applicable permits and state environmental laws makes a person eligible for permitting benefits, including, but not limited to, expedited permit application reviews, extended permit terms, decreased announced compliance inspections, and other similar regulatory and compliance incentives. These benefits are intended as incentives to encourage and reward environmental performance.

This bill applies to all persons and regulated activities subject to permitting requirements of ch. 403, ch. 161, and ch. 373, F.S., as well as all other applicable state or federal laws governing activities for the purpose of protecting the environment or public health from pollution or contamination. However it does not apply to environmental permitting or authorization laws that regulate for the purpose of zoning, growth management, or land use. In addition, the bill does not apply where its implementation would jeopardize the state's delegation or assumption of federal law or permit programs. "Regulated activities" within this section refers to any activity including, but not limited to, construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under ch. 161, ch. 373, or ch. 403, F.S.

The DEP is directed to consider a permit applicant's compliance history for 5 years before the date any permit or renewal application is received. To qualify for compliance incentives, an applicant must:

- Have conducted the regulated activity at the same site for which the permit or renewal is sought for at least 4 of the 5 years prior, or have conducted the same regulated activity at a different site within the state for at least 4 of the last 5 years prior
- Have not been subject to a formal administrative or civil judgment or criminal conviction in the last 5 years where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant must request applicable compliance incentives at the time of submitting a permit application or renewal. If an applicant meets all other criteria for the permit or authorization, unless otherwise prohibited by state or federal law, rule, or regulation, an applicant is entitled to the following incentives:

- Expedited reviews on certain permit actions including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any requests for additional information regarding a permit application shall be issued no later than 15 days after the application is filed and final agency action shall be taken no later than 45 days after the application is deemed complete

[25] EPA's Performance Track website, http://www.epa.gov/performancetrack/ (last visited Mar. 10, 2011).
[26] *Id.*
[27] *Id.*

- Priority review of permit applications
- Reduced number of routine compliance inspections
- No more than two requests for additional information under s. 120.60, F.S.
- Longer permit period durations

Furthermore, the DEP is directed to identify and make available additional incentives to applicants who demonstrate during a 10-year compliance history the implementation of activities or practices that resulted in:

- Reductions in actual or permitted discharges or emissions
- Reductions in the impacts of regulated activities on public lands or natural resources
- Implementation of voluntary environmental performance programs, such as environmental management systems
- The applicant having not been subject in the 10 years before the renewal application to a formal administrative or civil judgment or criminal conviction where the applicant was found to have knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. This excludes administrative settlement or consent orders, unless entered into as a result of significant harm to human health or the environment.

An applicant meeting any one of the first three criteria above and the fourth criterion during the 10-year compliance history is entitled to:

- Automatic renewals if there are no substantial changes in permitted activities or circumstances
- Reduced or waived application fees

The DEP must implement rulemaking within 6 months after the effective date of this act. The DEP may identify additional incentives and programs consistent with the Legislature's purpose noted in this bill. All rules must produce certain compliance incentives established in this bill and are binding on the water management districts and any local government administering a regulatory program to which this bill applies

Section 16. Amends s. 161.041(5), F.S. allowing incentive based permitting to apply to certain permits

The bill requires the incentive-based permitting program of s. 403.0874, F.S., to apply to all permits issued under this chapter, which governs the protection of beaches and shores.

Section 17. Amends s. 373.413(6), F.S. allowing incentive-based permitting to apply to certain permits

The bill requires the incentive-based permitting program of s. 403.0874, F.S., to apply to all permits issued under this chapter, which governs the issuance of environmental resource permits for the alteration of surface waters.

Section 18. Amends s. 403.087, F.S. revising conditions under which the DEP is authorized to revoke permits.

Current Situation

Current law states that the DEP may revoke permits for the following reasons:

- The permit holder has submitted false or inaccurate information on the application
- The permit holder has violated law, DEP orders, rules, or regulations, or permit conditions
- The permit holder has failed to submit operational reports or other information required by DEP rule or regulation

- The permit holder has refused lawful inspection under s. 403.091, F.S.[28]

Effect of Proposed Changes

The bill revises s. 403.087(7), F.S., to require that DEP prove that a permit holder knowingly violated this section in order to revoke any permit. The bill limits application of the submission of false information criterion to the application for the specific permit under review for revocation; limits the violations criterion to violations of law or department orders, rules or conditions that directly relate to such permit and where the applicant has refused to correct or cure such violations when requested to do so; limits the submission of reports and information criterion to reports and other information directly related to the permit and or review and where the applicant has refused to correct or cure such violations when requested to do so; and limits the refusing inspection criterion to the facility authorized by such permit.

Section 19. Amends s. 403.412, F.S. deleting language stating that no demonstration of special injury different in kind from the general public at large is required.

Current Situation

Section 403.412, F.S., created the Environmental Protection Act of 1971. The act permits the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state to maintain an action for injunctive relief against:

- Any agency with the duty of enforcing laws, rules, and regulation for the protection of the environment of the state to compel enforcement; or
- Any person, including corporations, or governmental agencies to stop them from violating laws intended to protect the environment.

The statute explicitly states no demonstration of special injury different in kind from the general public at large is required. The Florida Supreme Court has ruled that the act authorizes private citizens, both corporate and non-corporate, to institute a suit under the act without a showing of special injury (i.e. a violation that causes injury different both in kind and degree from that suffered by the public at large)[29]. However, to state a cause of action under the act, it must appear that the question raised is real and not merely theoretical, and that the plaintiff has a bona fide and direct interest in the result. A mere allegation of an irreparable injury not sustained by any allegation of facts will not ordinarily warrant the granting of injunctive relief.

Before filing such a suit, the party must file with the appropriate agency a verified complaint describing the facts and explaining how the party is affected. This verified complaint is then forwarded by the agency to the parties charged with the violation. The agency has 30 days to take appropriate action before the complaining party can start court proceedings. If appropriate action is not taken within that 30 days the complaining party may institute suit.

In that suit, the court may add as a defendant, any agency who is responsible for enforcing the applicable environmental laws, rules, and regulations. However, a person cannot sue if the party charged with the violation is acting pursuant to a valid permit issued by the proper agency and is complying with that permit. The court may grant injunctive relief to stop the complained of activity and may also impose conditions on the defendant consistent with law and any rules or regulations adopted by any state or local environmental agency.

The prevailing party is entitled to costs and attorneys' fees. However, in an action involving a state National Pollutant Discharge Elimination System (NPDES) permit, attorneys' fees are discretionary with

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[28] Section 403.091(c), F.S., states that no person shall refuse reasonable entry or access to any authorized representative of the DEP who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

[29] *See Florida Wildlife Federation v. Dept. of Environmental Regulation,* 390 So.2d 64 (Fla. 1980).

the court. Moreover, if the court is doubtful about the plaintiff's ability to pay such costs and fees, the court may order the plaintiff to post a good and sufficient surety bond or cash.

In an administrative, licensing, or other environmental proceedings, s. 403.12(5), F.S., grants the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state standing to intervene as a party. In order to intervene a verified pleading must be filed asserting that the activity, conduct, or product to be licensed or permitted has or will have a negative effect on the environment of the state. The term "intervene" under s. 403.12, F.S., has been interpreted to mean that a party can initiate s. 120.57, F.S., or s. 120.569, F.S., hearing in an administrative, licensing, or other environmental proceeding after notice of proposed agency action.

The Administrative Procedure Act (APA) allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. In s. 120.52(1)(b)(8), F.S., "agency" is defined to include each entity described in chapter 380, F.S., which would include water management district governing boards. Administrative hearings involving disputed issues of fact are generally referred to the Divisions of Administrative Hearings (DOAH), an independent group of administrative law judges (ALJs) who hear cases involving most state agencies.

In a challenge to a rule under s. 120.56, F.S., any person substantially affected by a rule or proposed rule may seek a determination as to whether the proposed or existing agency rule is an invalid exercise of delegated legislative authority. In the case of proposed rules, an invalid determination may be based on constitutional grounds. The hearings are conducted by an ALJ in the same way as provided in s. 120.569, F.S., and s. 120.57, F.S., discussed below.

Under s. 120.569, F.S., in adjudicatory cases, where a decision affects "substantial interests," the ALJ has the role of making findings of fact and drawing conclusions of law and providing a recommended order. The affected agency is responsible for entering a final order. Findings of fact by ALJs continue to be presumptively correct, and may not be lightly set aside by the agency. Basically, the ALJ conducts an evidentiary hearing and makes a determination as to the facts in question. These proceedings are less formal than court proceedings and function in most respects like a non-jury trial, with the ALJ presiding. Section 120.57, F.S., sets out the procedures used. In a hearing involving disputed issues of material fact, an agency may enter a final order rejecting or modifying findings of fact upon review of the entire record and after stating with particularity that the findings were not based upon competent substantial evidence or did not comply with essential requirements of law. An agency may enter a final order rejecting or modifying conclusions of law over which it has substantive jurisdiction. The agency must state its reasons with particularity, and must find that its substituted conclusion of law is at least as reasonable as the conclusion of law it rejected. Procedures applicable to cases not involving disputed issues of material fact are described in s. 120.57(2), F.S. Appellate review of agency actions is authorized by s. 120.68, F.S.

Effect of Proposed Changes

The bill deletes language stating that no demonstration of special injury different in kind from the general public at large is required. This change will now require that the petitioners under this statute must prove "special injury" in order to have standing to intervene to assert that a proceeding for the protection of air, water, or other natural resources of the state results in pollution, impairment, or destruction of the resource.

Section 20. Amends s. 403.814, F.S. providing for the issuance of general permits for certain surface water management systems without the action of the DEP or a WMD.

Current Situation

Currently, DEP is authorized to adopt rules establishing and providing for a program of general permits for projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules must specify design or performance criteria which, if applied, would result in compliance with

appropriate standards. Any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the DEP without any agency action by the DEP[30]. Projects include, but are not limited to:

- Construction and modification of boat ramps of certain sizes
- Installation and repair of riprap at the base of existing seawalls
- Installation of culverts associated with stormwater discharge facilities
- Construction and modification of certain utility and public roadway construction activities

Effect of Proposed Changes

The bill amends current law to allow for the construction, alteration, and maintenance of surface water management systems to be eligible for general permits. Construction of a system may proceed without DEP or WMD action if:

- The total project area is less than 10 acres;
- The total project area involves less than 2 acres of impervious surface;
- No activities will impact wetlands or other surface waters;
- No activities are conducted in, on, or over wetlands or other surface waters;
- Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and
- The project is not part of a larger common plan of development or sale.

Section 21. Amends s. 380.06, F.S. exempting proposed mines or proposed additions or expansions of existing mines from provisions governing developments of regional impacts.

Current Situation

Developments of Regional Impacts (DRIs) are developments which, because of their character, magnitude, or location, are presumed to have a substantial effect upon the health, safety, or welfare of citizens of more than one county. The variety of projects that can fall under DRI status include large-scale planned developments, airport expansions, office and industrial parks, mining operations, and sports and entertainment facilities. Pursuant to s. 380.06, F.S., the state land planning agency must recommend to the Administration Commission specific statewide guidelines and standards for adoption. These rules will be used in determining whether particular developments shall undergo development-of-regional-impact review. In adopting these guidelines and standards, the Administration Commission must consider and be guided by:

- The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise
- The amount of pedestrian or vehicular traffic likely to be generated
- The number of persons likely to be residents, employees, or otherwise present
- The size of the site to be occupied
- The likelihood that additional or subsidiary development will be generated
- The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments
- The unique qualities of particular areas of the state.

Effect of Proposed Changes

The bill exempts any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine from review as a DRI. Any proposed changes to any

[30] Section 403.814(1), F.S.

previously approved solid mineral mine DRI's development orders will not be subject to further review or approval as a DRI, nor will any notices of proposed change review or approvals pursuant to s. 380.06(19), F.S., except for those applications pending as of July 1, 2011, which will be governed by s. 380.115(2), F.S.[31] Lastly, any previously approved solid mineral mine DRI orders will continue to be effective unless rescinded by the developer.

Section 22. Amends s. 380.0657, F.S. authorizing certain inland multimodal facilities for expedited permitting.

Current Situation

Currently, DEP and the WMDs are required to adopt programs to expedite the processing of wetland resource and environmental resource permits when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S.

Pursuant to s. 288.106(1)(o), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

- Stability – The industry may not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry may be more resistant to recession. Special consideration should be given to Florida's growing access to international markets or to replacing imports. Demand for products of this industry is not necessarily subject to decline during an economic downturn.
- High wage – The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent – The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis. Special consideration should be given to the development of strong industrial clusters that include defense and homeland security businesses.
- Industrial base diversification and strengthening – The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
- Economic benefits – The industry should have strong positive impacts on or benefits to the state and regional economies.

Effect of Proposed Changes

The bill amends current law to include any inland multimodal facility, receiving or sending cargo to or from Florida ports as a target industry that would receive expedited permitting.

[31] Section 380.115(2), F.S., states that a development with an application for development approval pending, pursuant to s. 380.06, F.S., on the effective date of a change to the guidelines and standards, or a notification of proposed change pending on the effective date of a change to the guidelines and standards, may elect to continue such review pursuant to s. 380.06, F.S.

Section 23. Amends s. 403.973, F.S. Provides for the creation of regional action teams for expedited permitting for businesses that will house one or more other businesses or operations that would collectively create at least 50 jobs and clarifies the process and use of Memorandum of Agreement (MOA).

Current Situation

Section 403.973, F.S., provides for an expedited permitting and comprehensive plan amendment process for certain projects that are identified to encourage and facilitate the location and expansion of economic development, offer job creation and high wages, strengthen and diversify the state's economy, and which have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., OTTED or a Quick Business County (QBC) may certify a business as eligible to use the process. Recommendations on which projects should use the process may come from Enterprise Florida, any county or municipality, or the Rural Economic Development Initiative (REDI). Eligibility criteria stipulate that a business must:

- Create at least 100 jobs; or
- Create 50 jobs if the project is located in an enterprise zone, in a county with a population of fewer than 75,000, or in a county with a population of fewer than 100,000 that is contiguous to a county having a population of 75,000 residing in incorporated and unincorporated areas of the county.

Regional Permit Action Teams are established by a Memoranda of Agreement (MOA) with the secretary of DEP directing the creation of these teams. The MOA is between the secretary and the applicant with input solicited from the Department of Community Affairs, Transportation, Agriculture & Consumer Services; the Florida Fish & Wildlife Conservation Commission; the Regional Planning Councils; and the WMDs. The MOA accommodates participation by federal agencies, as necessary. At a local government's option, a special MOA may be developed on a case-by-case basis to allow some or all local development permits or orders to be covered under the expedited review. Implementation of the local government MOA requires a noticed public workshop and hearing.

Certified projects receive the following benefits:

- Pre-application meeting of regulatory agencies and business representatives held within 14 days after eligibility determination;
- Identification of all necessary permits and approvals needed for the project;
- Designation of a project coordinator and regional permit action team contacts;
- Identification of the need for any special studies or reviews that may affect the time schedule;
- Identification of any areas of significant concern that may affect the outcome of the project review;
- Development of a consolidated time schedule that incorporates all required deadlines, including public meetings and notices;
- Final agency action on permit applications within 90 days from the receipt of complete application(s);
- Waiver of twice-a-year limitation on local comprehensive plan amendments;
- Waiver of interstate highway concurrency with approved mitigation;

Appeals of expedited permitting projects are subject to the summary hearing provisions of s. 120.574, F.S. The administrative law judge's recommended order is not the final state agency action unless the participating agencies of the state opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action. Where one state agency action is challenged, the agency of the state shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order. In those proceedings where the more than one state agency action is

challenged, the Governor shall issue the final order within 10 working days of receipt of the administrative law judge's recommended order.

Expedited permitting provides a special assistance process for REDI counties. OTTED, working with REDI and the regional permitting teams, is to provide technical assistance in preparing permit applications for rural counties. This additional assistance may include providing guidance in land development regulations and permitting processes, and working cooperatively with state, regional and local entities to identify areas within these counties that may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 403.973(19), F.S., prohibits the following projects from using the expedited process:

- A project funded and operated by a local government and located within that government's jurisdiction;
- A project, the primary purpose of which is to:
- Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,

    - Produce electrical power (unless the production of electricity is incidental and not the project's primary function),
    - Extract natural resources, produce oil, or construct, maintain, or
    - Operate an oil, petroleum, natural gas, or sewage pipeline

Effect of Proposed Changes

The bill revises the structure and process for expedited permitting of targeted industries. The bill substitutes the Secretary of DEP, or his or her designee, for OTTED; adds commercial or industrial development projects that will be occupied by businesses that would individually or collectively create at least 50 jobs to activities qualifying for expedited review; requires regional teams to be established through the execution of a project-specific MOA; provides that the standard form of the MOA will be used only if the local government participates in the expedited review process.

Section 24. Amends s. 163.3180, F.S. providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities.

Current Situation

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system, and then measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.[32]

Concurrency in Florida is tied to provisions in the state Growth Management Act requiring the adoption of level of service standards, addressing existing service deficiencies, and providing infrastructure to accommodate new growth reflected in the comprehensive plan. Plans and development regulations must achieve and maintain the desired level of service, and the Department of Community Affairs (DCA) reviews comprehensive plans to ensure that the capital improvement element is consistent with other elements of the plan, including the future land use element. Rule 9J-5.0055(3), Florida Administrative Code, establishes the minimum requirements for satisfying concurrency. It also requires local governments to develop and implement a concurrency management system, which typically includes a

[32] Department of Community Affairs website, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm

method for tracking transportation concurrency, an application for transportation concurrency and a review process.[33]

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), Florida Administrative Code, allows local governments to evaluate transportation concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under s. 163.3177(3)(a)(6), F.S. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the DCA. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle[34].

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or *"de minimis"* are exempted from concurrency, where certain criteria are met. These alternatives include:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in s. 163.3180(5), F.S., these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.
- Multimodal Transportation Districts - The Multimodal Transportation District is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit" (s. 163.3180(15)(a), F.S.). To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

Effect of Proposed Changes

The bill provides for a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with local comprehensive plans as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The exemption applies only if the project meets all of the following criteria:

- The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150% within the first 5 years of the project's development.
- The project, upon completion, would result in the creation of at least 50 full-time jobs.
- The project is compatible with existing and planned adjacent land uses.
- The project is consistent with local and regional economic development goals or plans.

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[33] *Id.*
[34] *Id.*

- The project is proximate to regionally significant road and rail transportation facilities.
- The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10% or more above the statewide reported average.

Section 25. Amends s. 373.4137, F.S. revising legislative findings relating options for mitigation, excluding projects from mitigations plans.

Current Situation

Enacted in 1996, s. 373.4137, F.S., directs the Florida Department of Transportation (FDOT) to annually submit for approval to the DEP and the WMDs a plan to mitigate the adverse environmental impacts of transportation projects to wetlands, wildlife, and other aspects of the natural environment. The ecosystem-based mitigation plan was to be based on an environmental impact inventory reflecting habitats that would be adversely impacted by projects listed in the next three years of the tentative work programs. The FDOT creates escrow accounts with the DEP or WMDs for their mitigation requirements.

Expressway authorities created pursuant to chapters 348 and 349, F.S., also are able to create similar escrow accounts with the WMD's and DEP for their mitigation requirements.

On a annual basis, FDOT and the participating expressway authorities are required to transfer to their escrow accounts sufficient funds for the current fiscal year to pay for mitigation of projected acreage impacts resulting from projects identified in the inventory. At the end of each year, the projected acreage impacts are compared to the actual acreage of impact of projects as permitted, including permit modifications. The escrow balances are then adjusted accordingly to reflect any over transfer or under transfer of funds.

Effect of Proposed Changes

In addition to using mitigation banks to offset the adverse effects of transportation projects on wetlands, the bill provides for the use of any other mitigation options that satisfy state and federal requirements, including, but not limited to U.S. general compensatory mitigation requirements.[35] The bill makes it optional for transportation authorities to participate in the program. Finally, the bill provides that environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. Once the final payment has been made, the DOT or the participating transportation authorities' obligation will be satisfied and the WMD will have continuing responsibility for the mitigation project.

Section 26 provides an effective date.

This act shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.569, F.S., providing for a notice of rights via internet; providing that a nonapplicant who challenges an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence.

Section 2. Amends s. 120.60, F.S., revising the period for an agency to approve or deny an application for a license.

Section 3. Creates s. 125.0112, F.S., providing that the construction and operation of biofuel processing facilities or renewable energy generation facilities is a valid and permitted land use; requiring

[35] 33 U.F.R. s. 332.3(b), http://edocket.access.gpo.gov/cfr_2009/julqtr/pdf/33cfr332.3.pdf

expedited review of such facilities; providing that such facilities are eligible for the alternative state review process.

Section 4. Amends s. 125.022, F.S., prohibiting a county from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency; authorizing a county to attach certain disclaimers to the issuance of a development permit.

Section 5. Creates s. 161.032, F.S., providing for applicants to timely respond to RAIs for beach applications.

Section 6. Amends s. 163.3184, F.S., redefining the term "affected person" for purposes of the adoption process for a comprehensive plan or plan amendments.

Section 7. Amends s. 163.3215, F.S., redefining the term "aggrieved or adversely affected party" for enforcing local comprehensive plans.

Section 8. Amends s. 166.033, F.S., prohibiting a municipality from requiring as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency.

Section 9. Creates s. 166.0447, F.S., providing that the construction and operation of biofuel processing facilities or renewable energy generation facilities is a valid and permitted land use within the unincorporated area of a municipality; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount.

Section 10. Amends s. 373.026, F.S., directing the DEP and water management districts to expand the use of Internet-based self certificates.

Section 11. Amends s. 373.4141, F.S., providing for applicants to timely respond to RAIs for ERP applications.

Section 12. Amends s. 373.4144, F.S., providing legislative intent in the coordination of regulatory duties among state and federal agencies; requiring that the DEP report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities.

Section 13. Amends s. 373.441, F.S., directing the DEP and water management districts to regulate activities pursuant to delegation agreements.

Section 14. Amends s. 403.061, F.S., conforming provisions related to the use of online self-certification.

Section 15. Creates s. 403.0874, F.S., providing legislative intent in the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered in issuing or renewing a permit; providing criteria to be used by DEP; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authoring the DEP to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring DEP to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties.

Section 16. Amends s. 161.041, F.S., specifying that authorized expedited permitting applies to provisions governing beaches and shores and surface water management and storage.

Section 17. Amends s. 373.413, F.S., specifying that authorized expedited permitting applies to provisions governing beaches and shores and surface water management and storage.

Section 18. Amends s. 403.087, F.S., revising conditions under which the DEP is authorized to revoke a permit.

Section 19. Amends s. 403.412, F.S., eliminating a provision providing that it is not necessary to demonstrate special injury in order to seek relief under the EPA.

Section 20. Amends s. 403.814, F.S., providing for issuance of general permits for certain surface water management systems without action by the DEP or water management districts; specifies conditions for those permits.

Section 21. Amends s. 380.06, F.S., exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from provisions governing developments of regional impact; providing certain exceptions.

Section 22. Amends s. 380.0657, F.S., authorizing expedited permitting for certain inland multimodal facilities.

Section 23. Amends s. 403.973, F.S., authorizing expedited permitting for certain commercial or industrial development projects; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review of the expedited permitting by the Secretary of the DEP instead of OTTED.

Section 24. Amends s. 163.3180, F.S., providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities.

Section 25. Amends s. 373.4137, F.S., revising legislative findings related to options for mitigation for transportation projects; revises certain requirements for determining the habitat impacts of transportation projects; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan.

Section 26. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Local governments that have their permitting programs preempted could see a reduction in revenues from permit fees.

2. Expenditures:

   According to DEP's analysis, the demand for an estimated additional 100 permitting FTE's would require increased appropriations of $5 to $7.5 million per year, at a minimum. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   According to DEP's analysis, local governments that have their environmental regulatory programs preempted could see a cost savings from program elimination. When a local government is a permit applicant, increased availability of web-based authorizations should reduce permitting costs. When a local government is a permit applicant, shortened permitting time clocks could reduce the cost to obtain a permit, but only if overall permit times were actually reduced.

2. Expenditures:

   Provisions for local governments to obtain permits will likely result in additional time clock waivers by applicants or permit denials by the agencies, there would likely be an indeterminate but significant increase in costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs:

- Increased litigation costs for third party petitioners who will have the burden of proof in a license or permit challenge.
- Restrictions on the ability to revoke permits may result in loss of federal program approval. This could result in applicants for federally required permits having to obtain permits from both the state and federal government for the same activity, with the attendant increased costs.

Direct Private Sector Benefits:

- Increased availability of web-based self-certifications and general permits should reduce permitting costs.
- Shortened permitting time clocks could reduce costs to obtain a permit, but only if overall permit times were actually reduced. According to DEP, because the provisions are more likely to result in additional time clock waivers by applicants or permit denials by the agencies, there would likely be an indeterminate but significant increase in costs.
- Decreased litigation costs for private sector applicants who no longer have the burden of proof in a third party permit challenge.

D. FISCAL COMMENTS:

The following are comments from the DEP analysis:

- Changing the permitting time clock from 90 days to 60 days, and from 90 days to 45 days under the incentive based permitting program, in addition to shortening the initial review clock from 30 to 15 days, collectively would require additional staffing (and therefore legislative appropriations of FTE and associated money) to review applications within the mandatory timeframes and to avoid default permits or an increase escalation in permit denials. The staffing demand would increase as the economy improves and the number of applications the agency receives increases. There are an estimated 287 FTE processing permits at DEP. Based on the legislation, the processing time clock would be shortened by 33-50% for all permits. Combine this with the fact that the expansive incentive based permitting provisions would cut the initial review period in half, from 30 days to 15 days, for many permit applications. Considered together, these two changes would require, conservatively, the addition of 100 permitting FTE. Assuming an average FTE cost (including salaries, benefits, fringe, and indirect) of from $50,000 to $75,000, the additional appropriations required to implement the expedited permitting provisions alone would range between $5 million to $7.5 million per year, at a minimum.
- Changes to the DOT mitigation program would likely leave the WMDs with insufficient funds to successfully provide mitigation for transportation projects.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to implement rulemaking for incentive-based permitting within 6 months after the effective date of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to environmental permitting; amending s. 120.569, F.S.; authorizing the provision of certain notices under the Administrative Procedure Act via a link to a publicly available Internet website; providing that a nonapplicant who petitions to challenge an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 120.60, F.S.; revising the period for an agency to approve or deny an application for a license; creating s. 125.0112, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy by a local government is a valid and permitted land use; requiring expedited review of such facilities; providing that such facilities are eligible for the alternative state review process; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 161.032, F.S.; requiring that the Department of Environmental Protection review an application for certain permits under the Beach and Shore Preservation Act and request additional information within a specified time; requiring that the department proceed to process the application if

the applicant believes that a request for additional information is not authorized by law or rule; extending the period for an applicant to timely submit additional information, notwithstanding certain provisions of the Administrative Procedure Act; amending s. 163.3184, F.S.; redefining the term "affected person" for purposes of the adoption process for a comprehensive plan or plan amendments to include persons who can show that their substantial interest will be affected by the plan or amendment; amending s. 163.3215, F.S.; redefining the term "aggrieved or adversely affected party" for purposes of standing to enforce local comprehensive plans; deleting a requirement that the adverse interest exceed in degree the general interest shared by all persons; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 166.0447, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy is a valid and permitted land use within the unincorporated area of a municipality; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount; amending s. 373.026, F.S.;

requiring the Department of Environmental Protection to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; requiring that a request by the department or a water management district that an applicant provide additional information be accompanied by the signature of specified officials of the department or district; reducing the time within which the department or district must approve or deny a permit application; providing that an application for a permit that is required by a local government and that is not approved within a specified period is deemed approved by default; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; requiring that the department report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring that certain counties or municipalities apply by a specified date to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district may not regulate activities that are subject to the delegation; amending s. 403.061, F.S., relating to the use of online self-certification; conforming provisions to changes made by

the act; creating s. 403.0874, F.S.; providing a short title; providing legislative findings and intent with respect to the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered is issuing or renewing a permit; providing criteria to be considered by the Department of Environmental Protection; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authorizing the department to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring the department to adopt rules that are binding on a water management district or local government that has been delegated certain regulatory duties; amending ss. 161.041 and 373.413, F.S.; specifying that s. 403.0874, F.S., authorizing expedited permitting, applies to provisions governing beaches and shores and surface water management and storage; amending s. 403.087, F.S.; revising conditions under which the department is authorized to revoke a permit; amending s. 403.412, F.S.; eliminating a provision limiting a requirement for demonstrating injury in order to seek relief under the Environmental Protection Act; amending s. 403.814, F.S.; providing for issuance of general permits for the construction, alteration, and maintenance of certain

surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 380.06, F.S.; exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from provisions governing developments of regional impact; providing certain exceptions; amending ss. 380.0657 and 403.973, F.S.; authorizing expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review and certification of a business as eligible for expedited permitting by the Secretary of Environmental Protection rather than by the Office of Tourism, Trade, and Economic Development; amending s. 163.3180, F.S.; providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities; specifying project criteria; amending s. 373.4137, F.S., relating to transportation projects; revising legislative findings with respect to the options for mitigation; revising certain requirements for determining the habitat impacts of transportation projects; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising

the procedure for excluding a project from a mitigation plan; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 120.569, Florida Statutes, is amended, and paragraph (p) is added to subsection (2) of that section, to read:

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), ~~then,~~ unless waived by all parties, the proceeding under s. 120.57(2) shall be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits that ~~which~~ apply. Notwithstanding any other provision of law, notice

of the procedure to obtain an administrative hearing or judicial review, including any items required by the uniform rules adopted pursuant to s. 120.54(5), may be provided via a link to a publicly available Internet website.

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 2. Subsection (1) of section 120.60, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.60 Licensing.—

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If

the applicant believes the agency's request for additional information is not authorized by law or rule, the agency, at the applicant's request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 60 ~~90~~ days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 60-day ~~90-day~~ time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 60-day ~~90-day~~ or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.

Section 3. Section 125.0112, Florida Statutes, is created to read:

125.0112 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, shall be considered by a local government to be a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan. If the local comprehensive plan does not specifically allow for the construction of a biofuel processing facility or renewable energy facility, the local government shall establish a specific review process that may include expediting local review of any necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. Local expedited review of a proposed biofuel processing facility or a renewable energy facility does not obligate a local government to approve such proposed use. A comprehensive plan amendment necessary to accommodate a biofuel processing facility or renewable energy facility shall, if approved by the local government, be eligible for the alternative state review process in s. 163.32465. The construction and operation of a facility and related improvements on a portion of a property under this section does not affect the remainder of the property's classification as agricultural under s. 193.461.

Section 4. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or a federal agency. A county may attach such a disclaimer to the issuance of a development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 5. Section 161.032, Florida Statutes, is created to read:

161.032 Application review; request for additional information.—

(1) Within 30 days after receipt of an application for a permit under this part, the department shall review the

application and shall request submission of any additional information the department is permitted by law to require. If the applicant believes that a request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review such additional information and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes that the request for such additional information by the department is not authorized by law or rule, the department, at the applicant's request, shall proceed to process the permit application.

(2) Notwithstanding s. 120.60, an applicant for a permit under this part has 90 days after the date of a timely request for additional information to submit such information. If an applicant requires more than 90 days in order to respond to a request for additional information, the applicant must notify the agency processing the permit application in writing of the circumstances, at which time the application shall be held in active status for no more than one additional period of up to 90 days. Additional extensions may be granted for good cause shown by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the timely requested information by the applicable deadline shall result in denial of the application without prejudice.

Section 6. Paragraph (a) of subsection (1) of section

163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review and who can demonstrate that their substantial interest will be affected by the plan or plan amendment; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Section 7. Subsection (2) of section 163.3215, Florida Statutes, is amended to read:

163.3215 Standing to enforce local comprehensive plans through development orders.—

(2) As used in this section, the term "aggrieved or adversely affected party" means any person or local government

that can demonstrate that their substantial interest will be affected by a development order ~~will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.~~ The term includes the owner, developer, or applicant for a development order.

Section 8. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails

to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or federal agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 9. Section 166.0447, Florida Statutes, is created to read:

166.0447 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, are each a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan and for purposes of any local zoning regulation within an unincorporated area of a municipality. Such comprehensive land use plans and local zoning regulations may not require the owner or operator of a biofuel processing facility or a renewable energy generating facility to obtain any comprehensive plan amendment, rezoning, special exemption, use permit, waiver, or variance, or to pay any special fee in excess of $1,000 to operate in an area zoned for or categorized as industrial, agricultural, or silvicultural use. This section does not exempt biofuel processing facilities and renewable energy generating facilities from complying with

building code requirements. The construction and operation of a facility and related improvements on a portion of a property pursuant to this section does not affect the remainder of that property's classification as agricultural pursuant to s. 193.461.

Section 10. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for activities currently requiring individual review which could be expedited through the use of professional certification.

Section 11. Section 373.4141, Florida Statutes, is amended to read:

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. In order to ensure the proper scope and necessity for the information requested, a second request for additional information, if any, must be signed by the supervisor of the project manager. A third request for additional information, if any, must be signed by the division director who oversees the program area. A fourth request for additional information, if any, must be signed by the assistant secretary of the department or the assistant executive director of the district. Any additional request for

information must be signed by the secretary of the department or the executive director of the district.

(2)(a) A permit shall be approved or denied within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(b) A permit required by a local government for an activity that also requires a state permit under this part shall be approved or denied within 60 days after receipt of the original application. An application for a local permit which is not approved or denied within 60 days is deemed approved by default.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

Section 12. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection

to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland~~

~~permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of~~

~~Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) Nothing in this section shall be construed to preclude the department from pursuing a series of regional general permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

Section 13. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, and new subsections (3) and (4) are added to that section, to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county having a population of 75,000 or more or a municipality that has local pollution control programs serving populations of more than 50,000 must apply for delegation of authority on or before June 1, 2012. A county, municipality, or local pollution control programs that fails to apply for delegation of authority may not require permits that in part or

in full are substantially similar to the requirements needed to obtain an environmental resource permit.

(4) Upon delegation to a qualified local government, the department and water management district may not regulate the activities subject to the delegation within that jurisdiction unless regulation is required pursuant to the terms of the delegation agreement.

Section 14. Subsection (41) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(41) Expand the use of online self-certification for appropriate exemptions and general permits issued by the department or the water management districts if such expansion is economically feasible. ~~Notwithstanding any other provision of law,~~ A local government may not specify the method or form for documenting that a project qualifies for an exemption or meets the requirements for a permit under chapter 161, chapter 253, chapter 373, or this chapter. This limitation of local government authority extends to Internet-based department programs that provide for self-certification.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 15. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based permitting program.—

(1) SHORT TITLE.—This section may be cited as the "Florida Incentive-based Permitting Act."

(2) FINDINGS AND INTENT.—The Legislature finds and declares that the department should consider compliance history when deciding whether to issue, renew, amend, or modify a permit by evaluating an applicant's site-specific and program-specific relevant aggregate compliance history. Persons having a history of complying with applicable permits or state environmental laws and rules are eligible for permitting benefits, including, but not limited to, expedited permit application reviews, longer-duration permit periods, decreased announced compliance inspections, and other similar regulatory and compliance incentives to encourage and reward such persons for their environmental performance.

(3) APPLICABILITY.—

(a) This section applies to all persons and regulated activities that are subject to the permitting requirements of chapter 161, chapter 373, or this chapter, and all other applicable state or federal laws that govern activities for the purpose of protecting the environment or the public health from pollution or contamination.

(b) Notwithstanding paragraph (a), this section does not apply to certain permit actions or environmental permitting laws such as:

1. Environmental permitting or authorization laws that

regulate activities for the purpose of zoning, growth management, or land use; or

2. Any federal law or program delegated or assumed by the state to the extent that implementation of this section, or any part of this section, would jeopardize the ability of the state to retain such delegation or assumption.

(c) As used in this section, a the term "regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chapter 161, chapter 373, or this chapter.

(4) COMPLIANCE HISTORY.—The compliance history period shall be the 5 years before the date any permit or renewal application is received by the department. Any person is entitled to the incentives under paragraph (5)(a) if:

(a)1. The applicant has conducted the regulated activity at the same site for which the permit or renewal is sought for at least 4 of the 5 years prior to the date the permit application is received by the department; or

2. The applicant has conducted the same regulated activity at a different site within the state for at least 4 of the 5 years prior to the date the permit or renewal application is received by the department; and

(b) In the 5 years before the date the permit or renewal application is received by the department or water management district, the applicant has not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the

applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to human health or the environment.

(5) COMPLIANCE INCENTIVES.—

(a) An applicant shall request all applicable incentives at the time of application submittal. Unless otherwise prohibited by state or federal law, rule, or regulation, and if the applicant meets all other applicable criteria for the issuance of a permit or authorization, an applicant is entitled to the following incentives:

1. Expedited reviews on permit actions, including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any request for additional information regarding a permit application shall be issued no later than 15 days after the application is filed, and final agency action shall be taken no later than 45 days after the application is deemed complete;

2. Priority review of permit application;

3. Reduced number of routine compliance inspections;

4. No more than two requests for additional information under s. 120.60; and

5. Longer permit period durations.

(b) The department shall identify and make available additional incentives to persons who demonstrate during a 10-

year compliance history period the implementation of activities or practices that resulted in:

1. Reductions in actual or permitted discharges or emissions;

2. Reductions in the impacts of regulated activities on public lands or natural resources;

3. Implementation of voluntary environmental performance programs, such as environmental management systems; and

4. In the 10 years before the date the renewal application is received by the department, the applicant having not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to the human health or the environment.

(c) Any person meeting one of the criteria in subparagraph (b)1.-3., and the criteria in subparagraph (b)4., is entitled to the following incentives:

1. Automatic permit renewals if there are no substantial deviations or modifications in permitted activities or changed circumstances; and

2. Reduced or waived application fees.

(6) RULEMAKING.—The department shall implement rulemaking within 6 months after the effective date of this act. Such

rulemaking may identify additional incentives and programs not expressly enumerated under this section, so long as each incentive is consistent with the Legislature's purpose and intent of this section. Any rule adopted by the department to administer this section shall be deemed an invalid exercise of delegated legislative authority if the department cannot demonstrate how such rules will produce the compliance incentives set forth in subsection (5). The department's rules adopted under this section are binding on the water management districts and any local government that has been delegated or assumed a regulatory program to which this section applies.

Section 16. Subsection (5) is added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

(5) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to all permits issued under this chapter.

Section 17. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(6) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to permits issued under this section.

Section 18. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(7) A permit issued pursuant to this section shall not

become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder knowingly:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for such permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions which directly relate to such permit and has refused to correct or cure such violations when requested to do so;

(c) ~~Has~~ Failed to submit operational reports or other information required by department rule which directly relate to such permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 19. Subsection (5) of section 403.412, Florida Statutes, is amended to read:

403.412 Environmental Protection Act.—

(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state. As used in this section

and as it relates to citizens, the term "intervene" means to join an ongoing s. 120.569 or s. 120.57 proceeding; this section does not authorize a citizen to institute, initiate, petition for, or request a proceeding under s. 120.569 or s. 120.57. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under s. 120.569 or s. 120.57. A citizen's substantial interests will be considered to be determined or affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by this chapter. ~~No demonstration of special injury different in kind from the general public at large is required.~~ A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by this chapter.

Section 20. Subsection (12) is added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of

impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and

(f) The project is not part of a larger common plan of development or sale.

Section 21. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from the provisions of this section. Proposed changes to any previously approved solid mineral mine development-of-regional-impact development orders having vested rights is not subject to further review or approval as a development of regional impact or notice of proposed change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 22. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility, receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 23. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (15), (17), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the office and~~ the respective heads of the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this

expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or

modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(15) The secretary ~~office~~, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the secretary ~~office~~, the agencies shall provide to the secretary ~~office~~ a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(17) The secretary ~~office~~ shall be responsible for certifying a business as eligible for undergoing expedited

review under this section. Enterprise Florida, Inc., a county or municipal government, or the Rural Economic Development Initiative may recommend to the secretary ~~Office of Tourism, Trade, and Economic Development~~ that a project meeting the minimum job creation threshold undergo expedited review.

(18) The secretary ~~office~~, working with the Rural Economic Development Initiative and the regional permit action team ~~agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

Section 24. Subsection (10) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(10)(a) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic

Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(b) There shall be a limited exemption from Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with the local comprehensive plan as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may, if developed

as proposed, include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The limited exemption applies if the project meets all of the following criteria:

1. The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150 percent within the first 5 years of the project's development.

2. The project, upon completion, would result in the creation of at least 50 full-time jobs.

3. The project is compatible with existing and planned adjacent land uses.

4. The project is consistent with local and regional economic development goals or plans.

5. The project is proximate to regionally significant road and rail transportation facilities.

6. The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average.

Section 25. Subsections (1) and (2), paragraph (c) of subsection (3), and subsection (4) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the

Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the water management districts, including the use of mitigation banks and any other mitigation options that satisfy state and federal requirements, including, but not limited to, 33 U.S.C. s. 332.3(b) ~~established pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future

transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of

Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is

in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the department or the participating transportation authorities' obligation will be satisfied, the water management district will have continuing responsibility for the mitigation project, and the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Prior to March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or

enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall also consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days prior to approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or ~~and~~ the appropriate water management district ~~that the inclusion~~

~~of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process~~. ~~The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project.~~

Section 26. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Patronis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 120.569, Florida Statutes, is amended, and paragraph (p) is added to subsection (2) of that section, to read:

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), ~~then,~~ unless waived by all parties, the proceeding under s. 120.57(2) shall

be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits that ~~which~~ apply. Notwithstanding any other provision of law, notice of the procedure to obtain an administrative hearing or judicial review, including any items required by the uniform rules adopted pursuant to s. 120.54(5), may be provided via a link to a publicly available Internet website.

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 2. Subsection (1) of section 120.60, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.60 Licensing.—

(1) Upon receipt of a license application, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within this 30-day period. The agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for an extension of time for submitting the additional information. If the applicant believes the agency's request for additional information is not authorized by law or rule, the agency, at the applicant's request, shall proceed to process the application. An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. An application for a license must be approved or denied within 60 ~~90~~ days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 60-day ~~90-day~~ time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57. Any application for a license which is not approved or denied within the 60-day ~~90-day~~ or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved

unless the recommended order recommends that the agency deny the license. Subject to the satisfactory completion of an examination if required as a prerequisite to licensure, any license that is considered approved shall be issued and may include such reasonable conditions as are authorized by law. Any applicant for licensure seeking to claim licensure by default under this subsection shall notify the agency clerk of the licensing agency, in writing, of the intent to rely upon the default license provision of this subsection, and may not take any action based upon the default license until after receipt of such notice by the agency clerk.

Section 3. Section 125.0112, Florida Statutes, is created to read:

125.0112 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, shall be considered by a local government to be a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan. If the local comprehensive plan does not specifically allow for the construction of a biofuel processing facility or renewable energy facility, the local government shall establish a specific review process that may include expediting local review of any necessary comprehensive plan amendment, zoning change, use permit, waiver, variance, or special exemption. Local expedited review of a proposed biofuel processing facility or a renewable energy facility does not

obligate a local government to approve such proposed use. A comprehensive plan amendment necessary to accommodate a biofuel processing facility or renewable energy facility shall, if approved by the local government, be eligible for the alternative state review process in s. 163.32465. The construction and operation of a facility and related improvements on a portion of a property under this section does not affect the remainder of the property's classification as agricultural under s. 193.461.

Section 4. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits.—When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A county may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or a federal agency. A county may attach such a disclaimer to the issuance of a

development permit, and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 5. Section 161.032, Florida Statutes, is created to read:

161.032 Application review; request for additional information.—

(1) Within 30 days after receipt of an application for a permit under this part, the department shall review the application and shall request submission of any additional information the department is permitted by law to require. If the applicant believes that a request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department shall review such additional information and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes that the request for such additional information by the department is not authorized by law or rule, the department, at the applicant's request, shall proceed to process the permit application.

(2) Notwithstanding s. 120.60, an applicant for a permit under this part has 90 days after the date of a timely request for additional information to submit such information. If an applicant requires more than 90 days in order to respond to a

request for additional information, the applicant must notify the agency processing the permit application in writing of the circumstances, at which time the application shall be held in active status for no more than one additional period of up to 90 days. Additional extensions may be granted for good cause shown by the applicant. A showing that the applicant is making a diligent effort to obtain the requested additional information constitutes good cause. Failure of an applicant to provide the timely requested information by the applicable deadline shall result in denial of the application without prejudice.

Section 6. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits.—When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164. A municipality may not require as a condition of approval for a development permit that an applicant obtain a permit or approval from any other state or federal agency. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from another state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to fulfill its legal obligations to obtain requisite approvals or fulfill the obligations imposed by another state or federal

agency. A municipality may attach such a disclaimer to the issuance of development permits and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 7. Section 166.0447, Florida Statutes, is created to read:

166.0447 Biofuels and renewable energy.—The construction and operation of a biofuel processing facility or a renewable energy generating facility, as defined in s. 366.91(2)(d), and the cultivation and production of bioenergy, as defined pursuant to s. 163.3177, are each a valid industrial, agricultural, and silvicultural use permitted within those land use categories in the local comprehensive land use plan and for purposes of any local zoning regulation within an unincorporated area of a municipality. Such comprehensive land use plans and local zoning regulations may not require the owner or operator of a biofuel processing facility or a renewable energy generating facility to obtain any comprehensive plan amendment, rezoning, special exemption, use permit, waiver, or variance, or to pay any special fee in excess of $1,000 to operate in an area zoned for or categorized as industrial, agricultural, or silvicultural use. This section does not exempt biofuel processing facilities and renewable energy generating facilities from complying with building code requirements. The construction and operation of a facility and related improvements on a portion of a property

pursuant to this section does not affect the remainder of that property's classification as agricultural pursuant to s. 193.461.

Section 8. Subsection (10) is added to section 373.026, Florida Statutes, to read:

373.026 General powers and duties of the department.—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(10) Expand the use of Internet-based self-certification services for appropriate exemptions and general permits issued by the department and the water management districts, if such expansion is economically feasible. In addition to expanding the use of Internet-based self-certification services for appropriate exemptions and general permits, the department and water management districts shall identify and develop general permits for activities currently requiring individual review which could be expedited through the use of professional certification.

Section 9. Section 373.4141, Florida Statutes, is amended to read:

Amendment No. 1

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application. In order to ensure the proper scope and necessity for the information requested, a second request for additional information, if any, must be signed by the supervisor of the project manager. A third request for additional information, if any, must be signed by the division director who oversees the program area. A fourth request for additional information, if any, must be signed by the assistant secretary of the department or the assistant executive director of the district. Any additional request for information must be signed by the secretary of the department or the executive director of the district.

(2) A permit shall be approved or denied within 60 ~~90~~ days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

Section 10. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and

which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States~~

~~Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees.~~

(2) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 3 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. ~~The department is directed to file with the Speaker of the House of Representatives and the President of the Senate a report proposing any required federal and state statutory changes that would be necessary to accomplish the directives listed in this section and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.~~

(3) Nothing in this section shall be construed to preclude the department from pursuing a series of regional general

permits for construction activities in wetlands or surface waters or complete assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899, so long as the assumption encompasses all dredge and fill activities in, on, or over jurisdictional wetlands or waters, including navigable waters, within the state.

Section 11. Present subsections (3), (4), and (5) of section 373.441, Florida Statutes, are renumbered as subsections (6), (7), and (8), respectively, and new subsections (3), (4), and (5) are added to that section, to read:

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(3) A county having a population of 75,000 or more or a municipality having a population of more than 50,000 that implements a local pollution control program regulating wetlands or surface waters throughout its geographic boundary must apply for delegation of state environmental resource permitting authority on or before June 1, 2012. A county, municipality, or local pollution control program that fails to apply for delegation of authority may not require permits that in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.

(4) Upon delegation to a qualified local government, the department and water management district may not regulate the activities subject to the delegation within that jurisdiction

unless regulation is required pursuant to the terms of the delegation agreement.

(5) This section does not prohibit or limit a local government from adopting a pollution control program regulating wetlands or surface waters after June 1, 2012, if the local government applies for delegation of state environmental resource permitting authority within 1 year after adopting such a program.

Section 12. Section 376.30715, Florida Statutes, is amended to read:

376.30715 Innocent victim petroleum storage system restoration.—A contaminated site acquired by the current owner prior to July 1, 1990, which has ceased operating as a petroleum storage or retail business prior to January 1, 1985, is eligible for financial assistance pursuant to s. 376.305(6), notwithstanding s. 376.305(6)(a). For purposes of this section, the term "acquired" means the acquisition of title to the property; however, a subsequent transfer of the property to a spouse or child, a surviving spouse or child in trust or free of trust, ~~or~~ a revocable trust created for the benefit of the settlor, or a corporate entity created by the owner to hold title to the site does not disqualify the site from financial assistance pursuant to s. 376.305(6) and applicants previously denied coverage may reapply. Eligible sites shall be ranked in accordance with s. 376.3071(5).

Section 13. Section 403.0874, Florida Statutes, is created to read:

403.0874 Incentive-based permitting program.—

(1) SHORT TITLE.—This section may be cited as the "Florida Incentive-based Permitting Act."

(2) FINDINGS AND INTENT.—The Legislature finds and declares that the department should consider compliance history when deciding whether to issue, renew, amend, or modify a permit by evaluating an applicant's site-specific and program-specific relevant aggregate compliance history. Persons having a history of complying with applicable permits or state environmental laws and rules are eligible for permitting benefits, including, but not limited to, expedited permit application reviews, longer-duration permit periods, decreased announced compliance inspections, and other similar regulatory and compliance incentives to encourage and reward such persons for their environmental performance.

(3) APPLICABILITY.—

(a) This section applies to all persons and regulated activities that are subject to the permitting requirements of chapter 161, chapter 373, or this chapter, and all other applicable state or federal laws that govern activities for the purpose of protecting the environment or the public health from pollution or contamination.

(b) Notwithstanding paragraph (a), this section does not apply to certain permit actions or environmental permitting laws such as:

1. Environmental permitting or authorization laws that regulate activities for the purpose of zoning, growth management, or land use; or

2. Any federal law or program delegated or assumed by the state to the extent that implementation of this section, or any part of this section, would jeopardize the ability of the state to retain such delegation or assumption.

(c) As used in this section, a the term "regulated activity" means any activity, including, but not limited to, the construction or operation of a facility, installation, system, or project, for which a permit, certification, or authorization is required under chapter 161, chapter 373, or this chapter.

(4) COMPLIANCE HISTORY.—The compliance history period shall be the 5 years before the date any permit or renewal application is received by the department. Any person is entitled to the incentives under paragraph (5)(a) if:

(a)1. The applicant has conducted the regulated activity at the same site for which the permit or renewal is sought for at least 4 of the 5 years before the date the permit application is received by the department; or

2. The applicant has conducted the same regulated activity at a different site within the state for at least 4 of the 5 years before the date the permit or renewal application is received by the department; and

(b) In the 5 years before the date the permit or renewal application is received by the department or water management district, the applicant has not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant

harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to human health or the environment.

(5) COMPLIANCE INCENTIVES.—

(a) An applicant shall request all applicable incentives at the time of application submittal. Unless otherwise prohibited by state or federal law, rule, or regulation, and if the applicant meets all other applicable criteria for the issuance of a permit or authorization, an applicant is entitled to the following incentives:

1. Expedited reviews on permit actions, including, but not limited to, initial permit issuance, renewal, modification, and transfer, if applicable. Expedited review means, at a minimum, that any request for additional information regarding a permit application shall be issued no later than 15 days after the application is filed, and final agency action shall be taken no later than 45 days after the application is deemed complete;

2. Priority review of permit application;

3. Reduced number of routine compliance inspections;

4. No more than two requests for additional information under s. 120.60; and

5. Longer permit period durations.

(b) The department shall identify and make available additional incentives to persons who demonstrate during a 10-year compliance history period the implementation of activities or practices that resulted in:

1. Reductions in actual or permitted discharges or emissions;

2. Reductions in the impacts of regulated activities on public lands or natural resources;

3. Implementation of voluntary environmental performance programs, such as environmental management systems; and

4. In the 10 years before the date the renewal application is received by the department, the applicant having not been subject to a formal administrative or civil judgment or criminal conviction whereby an administrative law judge or civil or criminal court found the applicant knowingly violated the applicable law or rule and the violation was the proximate cause that resulted in significant harm to human health or the environment. Administrative settlement or consent orders, whether formal or informal, are not judgments for purposes of this section unless entered into as a result of significant harm to the human health or the environment.

(c) Any person meeting one of the criteria in subparagraph (b)1.-3., and the criteria in subparagraph (b)4., is entitled to the following incentives:

1. Automatic permit renewals if there are no substantial deviations or modifications in permitted activities or changed circumstances; and

2. Reduced or waived application fees.

(6) RULEMAKING.—The department shall implement rulemaking within 6 months after the effective date of this act. Such rulemaking may identify additional incentives and programs not expressly enumerated under this section, so long as each

incentive is consistent with the Legislature's purpose and intent of this section. Any rule adopted by the department to administer this section shall be deemed an invalid exercise of delegated legislative authority if the department cannot demonstrate how such rules will produce the compliance incentives set forth in subsection (5). The department's rules adopted under this section are binding on the water management districts and any local government that has been delegated or assumed a regulatory program to which this section applies.

Section 14. Subsection (5) is added to section 161.041, Florida Statutes, to read:

161.041 Permits required.—

(5) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to all permits issued under this chapter.

Section 15. Subsection (6) is added to section 373.413, Florida Statutes, to read:

373.413 Permits for construction or alteration.—

(6) The provisions of s. 403.0874, relating to the incentive-based permitting program, apply to permits issued under this section.

Section 16. Subsection (11) of section 403.061, Florida Statutes, is amended to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department shall ~~is authorized to~~ establish reasonable zones of mixing for discharges into waters where assimilative capacity in the receiving water is available. Zones of discharge to groundwater are authorized to a facility or owner's property boundary and extending to the base of a specifically designated aquifer or aquifers. Discharges that occur within a zone of discharge or on land that is over a zone of discharge do not create liability under this chapter or chapter 376 for site cleanup and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) No mixing zone for point source discharges shall be permitted in Outstanding Florida Waters except for:

1. Sources that have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act;

3. Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary; and

4. The discharge of demineralization concentrate which has been determined permittable under s. 403.0882 and which meets the specific provisions of s. 403.0882(4)(a) and (b), if the proposed discharge is clearly in the public interest.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on

reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 17. Subsection (7) of section 403.087, Florida Statutes, is amended to read:

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(7) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder knowingly:

(a) ~~Has~~ Submitted false or inaccurate information in the ~~his or her~~ application for such permit;

(b) ~~Has~~ Violated law, department orders, rules, ~~or regulations,~~ or ~~permit~~ conditions which directly relate to such permit and has refused to correct or cure such violations when requested to do so;

(c) ~~Has~~ Failed to submit operational reports or other information required by department rule which directly relate to such permit and has refused to correct or cure such violations when requested to do so ~~or regulation~~; or

(d) ~~Has~~ Refused lawful inspection under s. 403.091 at the facility authorized by such permit.

Section 18. Subsection (32) of section 403.703, Florida Statutes, is amended to read:

403.703 Definitions.—As used in this part, the term:

(32) "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution

control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (24) are not solid waste. The term does not include sludge from a waste treatment works if the sludge is not discarded.

Section 19. Subsections (2) and (3) of section 403.707, Florida Statutes, are amended to read:

403.707 Permits.—

(2) Except as provided in s. 403.722(6), a permit under this section is not required for the following~~, if the activity does not create a public nuisance or any condition adversely affecting the environment or public health and does not violate other state or local laws, ordinances, rules, regulations, or orders~~:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or

rented property, or property subject to a homeowners or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if:

1. The environmental effects of such disposal on groundwater and surface waters are:

a.~~1.~~ Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

b.~~2.~~ Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department. As used in this sub-subparagraph, "addressed by a groundwater monitoring plan" means the plan is sufficient to monitor groundwater or surface water for contaminants of concerns associated with the solid waste being disposed. A groundwater monitoring plan can be demonstrated to be sufficient irrespective of whether the groundwater monitoring plan or disposal is referenced in a department permit or other authorization.

2. The disposal of solid waste takes place within an area which is over a zone of discharge.

The disposal of solid waste pursuant to this paragraph does not create liability under this chapter or chapter 376 for site cleanup and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities. Additionally, any permit issued to a solid waste management facility shall be for 20 years. This provision applies to all solid waste management facilities that obtain an operating or construction permit or renew an existing operating or construction permit on or after July 1, 2012.

Section 20. Subsection (12) is added to section 403.814, Florida Statutes, to read:

403.814 General permits; delegation.—

(12) A general permit shall be granted for the construction, alteration, and maintenance of a surface water management system serving a total project area of up to 10 acres. The construction of such a system may proceed without any agency action by the department or water management district if:

(a) The total project area is less than 10 acres;

(b) The total project area involves less than 2 acres of impervious surface;

(c) No activities will impact wetlands or other surface waters;

(d) No activities are conducted in, on, or over wetlands or other surface waters;

(e) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; and

(f) The project is not part of a larger common plan of development or sale.

Section 21. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any proposed solid mineral mine and any proposed addition to, expansion of, or change to an existing solid mineral mine is exempt from the provisions of this section. Proposed changes to any previously approved solid mineral mine

development-of-regional-impact development orders having vested rights is not subject to further review or approval as a development of regional impact or notice of proposed change review or approval pursuant to subsection (19), except for those applications pending as of July 1, 2011, which shall be governed by s. 380.115(2). Notwithstanding the foregoing, however, pursuant to s. 380.115(1), previously approved solid mineral mine development-of-regional-impact development orders shall continue to enjoy vested rights and continue to be effective unless rescinded by the developer.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 22. Subsection (1) of section 380.0657, Florida Statutes, is amended to read:

380.0657 Expedited permitting process for economic development projects.—

(1) The Department of Environmental Protection and, as appropriate, the water management districts created under chapter 373 shall adopt programs to expedite the processing of

wetland resource and environmental resource permits for economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, or any inland multimodal facility, receiving or sending cargo to or from Florida ports, with the exception of those projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 23. Paragraph (a) of subsection (3) and subsections (4), (5), (10), (11), (15), (17), and (18) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(4) The regional teams shall be established through the execution of a project-specific memoranda of agreement developed and executed by the applicant and the secretary, with input solicited from ~~the office and~~ the respective heads of the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memoranda of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of

permit applications under the jurisdiction of those agencies that are members of the regional permit action team ~~party to the memoranda of agreement~~. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately ~~by the parties to the memorandum of agreement~~ to be combined into one proceeding or held jointly and at one location. Such waivers or modifications shall not be available for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The ~~standard form for~~ memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements;

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency;

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and

limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review;

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies;

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph; and

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(15) The secretary ~~office~~, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the

location of facilities eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the secretary ~~office~~, the agencies shall provide to the secretary ~~office~~ a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(17) The secretary ~~office~~ shall be responsible for certifying a business as eligible for undergoing expedited review under this section. Enterprise Florida, Inc., a county or municipal government, or the Rural Economic Development Initiative may recommend to the secretary ~~Office of Tourism, Trade, and Economic Development~~ that a project meeting the minimum job creation threshold undergo expedited review.

(18) The secretary ~~office~~, working with the Rural Economic Development Initiative and the regional permit action team ~~agencies participating in the memoranda of agreement~~, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for

preclearance review of specified types of land uses and other activities requiring permits.

Section 24. Subsection (10) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(10)(a) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management

system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(b) There shall be a limited exemption from the Strategic Intermodal System adopted level-of-service standards for new or redevelopment projects consistent with the local comprehensive plan as inland multimodal facilities receiving or sending cargo for distribution and providing cargo storage, consolidation, repackaging, and transfer of goods, and which may, if developed as proposed, include other intermodal terminals, related transportation facilities, warehousing and distribution facilities, and associated office space, light industrial, manufacturing, and assembly uses. The limited exemption applies if the project meets all of the following criteria:

1. The project will not cause the adopted level-of-service standards for the Strategic Intermodal System facilities to be exceeded by more than 150 percent within the first 5 years of the project's development.

2. The project, upon completion, would result in the creation of at least 50 full-time jobs.

3. The project is compatible with existing and planned adjacent land uses.

4. The project is consistent with local and regional economic development goals or plans.

5. The project is proximate to regionally significant road and rail transportation facilities.

6. The project is proximate to a community having an unemployment rate, as of the date of the development order application, which is 10 percent or more above the statewide reported average.

Section 25. Subsections (1) and (2), paragraph (c) of subsection (3), and subsection (4) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the water management districts, through ~~including~~ the use of privately owned mitigation banks where available or, if a privately owned mitigation bank is not available, through any other mitigation options that satisfy state and federal requirements ~~established pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a

transfer of funds from an escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled

with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the department or the participating transportation authorities' obligation will be satisfied, the water management district will have continuing responsibility for the mitigation project, and the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Prior to March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the

Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall ~~also consider the~~ purchase ~~of~~ credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project~~, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option~~. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days prior to approval, the water management district shall provide a copy of

the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and shall not be subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or ~~and~~ the appropriate water management district ~~that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process~~. ~~The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project.~~

Section 26. Subsection (5) is added to section 526.203, Florida Statutes, to read:

526.203 Renewable fuel standard.—

(5) This section does not prohibit the sale of unblended fuels for the uses exempted under subsection (3).

Section 27. The uniform mitigation assessment rules adopted by the Department of Environmental Protection in chapter 62-345, Florida Administrative Code, as of January 1, 2011, to fulfill the mandate of s. 373.414(18), Florida Statutes, are changed as follows:

(1) Rule 62-345.100(11), Florida Administrative Code, is added to read: "(11) The Department of Environmental Protection shall be responsible for ensuring statewide coordination and consistency in the application of this rule by providing training and guidance to other relevant state agencies, water management districts, and local governments. Not less than every two years, the Department of Environmental Protection shall coordinate with the water management districts to verify consistent application of the methodology. To ensure that this rule is interpreted and applied uniformly, any interpretation or application of this rule by any agency or local government that differs from the Department of Environmental Protection's interpretation or application of this rule is incorrect and invalid. The Department of Environmental Protection's interpretation, application, and implementation of this rule shall be the only acceptable method."

(2) Rule 62-345.200(12), Florida Administrative Code, is changed to read: "(12) "Without preservation assessment" means a reasonably anticipated use of the assessment area, and the temporary or permanent effects of those uses on the assessment area, considering the protection provided by existing easements, regulations, and land use restrictions. Reasonably anticipated uses include those activities that have been previously implemented within the assessment area or adjacent to the assessment area, or are considered to be common uses in the region without the need for additional authorizations or zoning, land use code, or comprehensive plan changes."

(3) Rule 62-345.300(1), Florida Administrative Code, is changed to read: "(1) When an applicant proposes mitigation for impacts to wetlands and surface waters as part of an environmental resource permit or wetland resource permit application, the applicant will be responsible for preparing and submitting the necessary supporting information for the application of Rules 62-345.400-62-345.600, F.A.C., of this chapter and the reviewing agency will be responsible for verifying this information , contacting the applicant to address any insufficiencies or need for clarification, and approving the amount of mitigation necessary to offset the proposed impacts. When an applicant submits a mitigation bank or regional mitigation permit application, the applicant will be responsible for preparing and submitting the necessary supporting information for the application of Rules 62-345.400-.600, F.A.C., of this chapter and the reviewing agency will be responsible for verifying this information, contacting the applicant to address any insufficiencies or need for clarification, and approving the potential amount of mitigation to be provided by the bank or regional mitigation area. If an applicant submits either Part I or Part II or both, the reviewing agency shall notify the applicant of any inadequacy in the submittal or disagreement with the information provided.

(4) Rule 62-345.300(3)(a), Florida Administrative Code, is changed to read: "(a) Conduct qualitative characterization of both the impact and mitigation assessment areas (Part I) that identifies the assessment area's native community type and the functions to fish and wildlife and their habitat, describes the

current condition and functions provided by the assessment area, and summarizes the project condition of the assessment area. The purpose of Part I is to provide a framework for comparison of the assessment area to the optimal condition and location/landscape setting of that native community type. Another purpose of this part is to note any relevant factors of the assessment area that are discovered by site inspectors, including use by listed species."

(5) Rule 62-345.300(3)(c), Florida Administrative Code, is changed to read: "(c) Adjust the gain in ecological value from either upland or wetland preservation in accordance with subsection 62-345.500(3), F.A.C. when preservation is the only mitigation activity proposed (absent creation, restoration, or enhancement activities) at a specified assessment area."

(6) The introductory paragraph of rule 62-345.400, Florida Administrative Code, is changed to read: "An impact or mitigation assessment area must be described with sufficient detail to provide a frame of reference for the type of community being evaluated and to identify the functions that will be evaluated. When an assessment area is an upland proposed as mitigation, functions must be related to the benefits provided by that upland to fish and wildlife of associated wetlands or other surface waters. Information for each assessment area must be sufficient to identify the functions beneficial to fish and wildlife and their habitat that are characteristic of the assessment area's native community type, based on currently available information, such as current and historic aerial photographs, topographic maps, geographic information system

data and maps, site visits, scientific articles, journals, other professional reports, field verification when needed, and reasonable scientific judgment. For wetlands and other surface waters, other than those created for mitigation, that have been created on sites where such did not exist before the creation, such as borrow pits, ditches, and canals, refer to the native community type or surface water body to which it is most analogous in function for the given landscape position. For altered natural communities or surface waterbodies, refer to the native community type or surface water body present in the earliest available aerial photography except that if the alteration has been of such a degree and extent that a clearly defined different native community type is now present and self-sustaining, in which case the native community type shall be identified as the one the present community most closely resembles. In determining the historic native community type, all currently available information shall be used to ensure the highest degree of accuracy. The information provided by the applicant for each assessment area must address the following, as applicable:"

(7) Rule 62-345.500(1)(a), Florida Administrative Code, is changed to read: "(a) Current condition or, in the case of preservation only mitigation, without preservation - The current condition of an assessment area is scored using the information in this part to determine the degree to which the assessment area currently provides the relative value of functions identified in Part I for the native community type. In the case of preservation-only mitigation, the "without preservation"

assessment utilizes the information in this part to determine the degree to which the assessment area could provide the relative value of functions identified in Part I for the native community type assuming the area is not preserved. For assessment areas where previous impacts that affect the current condition are temporary in nature, consideration will be given to the inherent functions of these areas relative to seasonal hydrologic changes, and expected vegetation regeneration and projected habitat functions if the use of the area were to remain unchanged. When evaluating impacts to a previously permitted mitigation site that has not achieved its intended function, the reviewing agency shall consider the functions the mitigation site was intended to offset and any delay or reduction in offsetting those functions that may be caused by the project. Previous construction or alteration undertaken in violation of Part IV, Chapter 373, F.S., or Sections 403.91-.929, F.S. (1984 Supp.), as amended, or rule, order or permit adopted or issued thereunder, will not be considered as having diminished the condition and relative value of a wetland or surface water, when assigning a score under this part. When evaluating wetlands or other surface waters that are within an area that is subject to a recovery strategy pursuant to Chapter 40D-80, F.A.C., impacts from water withdrawals will not be considered when assigning a score under this part."

(8) Rule 62-345.500(1)(b), Florida Administrative Code, is changed to read: "(b) "With mitigation" or "with impact" - The "with mitigation" and "with impact" assessments are based on the reasonably expected outcome, which may represent an increase,

decrease, or no change in value relative to current conditions. For the "with impact" and "with mitigation" assessments, the evaluator will assume that all other necessary regulatory authorizations required for the proposed project have been obtained and that construction will be consistent with such authorizations. The "with mitigation" assessment will be scored only when reasonable assurance has been provided that the proposed plan can be conducted. When scoring the "with mitigation" assessment for assessment areas involving enhancement, restoration, or creation activities and that are proposed to be placed under a conservation easement or other similar land protection mechanism, the with mitigation score shall reflect the combined preservation and enhancement/restoration/creation value of the specified assessment area, and the Preservation Adjustment Factor shall not apply to these mitigation assessments."

(9) Rule 62-345.500(2), Florida Administrative Code, is changed to read: "(2) Uplands function as the contributing watershed to wetlands and are necessary to maintain the ecological value of associated wetlands or other surface waters. Upland mitigation assessment areas shall be scored using the landscape support/location and community structure indicators listed in subsection 62-345.500(6), F.A.C. Scoring of these indicators for the upland assessment areas shall be based on the degree to which the relative value of functions of the upland assessment area provide benefits to the fish and wildlife of the associated wetlands or other surface waters, considering the native community type, current condition, and anticipated

ecological value of the uplands and associated wetlands and other surface waters.

(a) For upland preservation, the without preservation assessment utilizes the information in this part to determine the degree to which the assessment area could provide the relative value of functions identified in Part I for the native community type (to include benefits to fish and wildlife of the associated wetlands or other surface waters) assuming the upland area is not preserved. The gain in ecological value is determined by the mathematical difference between the score of the upland assessment area with the proposed preservation measure and the upland assessment area without the proposed preservation measure. When the community structure is scored as "zero", then the location and landscape support shall also be "zero". However, an increase in the location and landscape support score can also occur when the community structure is scored other than "zero". The resulting delta is then multiplied by the preservation adjustment factor contained in subsection 62-345.500(3), F.A.C.

(b) For upland enhancement or restoration, the current condition of an assessment area is scored using the information in this part to determine the degree to which the assessment area currently provides the relative value of functions identified in Part I for the native community type (to include benefits to fish and wildlife of the associated wetlands or other surface waters). The value provided shall be determined by the mathematical difference between the score of the upland

assessment area with the proposed restoration or enhancement measure and the current condition of the upland assessment area.

(c) For uplands proposed to be converted to wetlands or other surface waters through creation or restoration measures, the upland areas shall be scored as "zero" in their current condition. Only the "with mitigation" assessment shall be scored in accordance with the indicators listed in subsection 62-345.500(6), F.A.C."

(10) Rule 62-345.500(3), Florida Administrative Code, is changed to read: "(3)(a) When an assessment area's mitigation plan consists of preservation only (absent creation, restoration, or enhancement activities), the "with mitigation" assessment shall consider the potential of the assessment area to perform current functions in the long term, considering the protection mechanism proposed, and the "without preservation" assessment shall evaluate the assessment area's functions considering the reasonably anticipated use of the assessment area and the temporary or permanent effects of those uses in the assessment area considering the protection provided by existing easements, regulations, and land use restrictions. The gain in ecological value is determined by the mathematical difference between the Part II scores for the "with mitigation" and "without preservation" (the delta) multiplied by a preservation adjustment factor. The preservation adjustment factor shall be scored on a scale from 0.2 (minimum preservation value) to 1 (optimal preservation value), on one-tenth increments. The score shall be calculated using the scoring method set forth in the

"Preservation Adjustment Factor Worksheet" for each of the following considerations:

1. The extent to which proposed management activities within the preserve area promote natural ecological conditions such as fire patterns or the exclusion of invasive exotic species.

2. The ecological and hydrological relationship between wetlands, other surface waters, and uplands to be preserved.

3. The scarcity of the habitat provided by the proposed preservation area and the degree to which listed species use the area.

4. The proximity of the area to be preserved to areas of national, state, or regional ecological significance, such as national or state parks, Outstanding Florida Waters, and other regionally significant ecological resources or habitats, such as lands acquired or to be acquired through governmental or non-profit land acquisition programs for environmental conservation, and whether the areas to be preserved include corridors between these habitats.

5. The extent and likelihood of potential adverse impacts if the assessment area were not preserved.

(b) Each of these considerations shall be scored on a relative scale of zero (0) to two-tenths (0.2) based on the value provided [optimal (0.2), low to moderate (0.1), and no value (0)] and summed together to calculate the preservation adjustment factor. The minimum value to be assigned to a specified assessment area will be 0.2. The preservation adjustment factor is multiplied by the mitigation delta assigned

to the preservation proposal to yield an adjusted mitigation delta for preservation."

(11) Rule 62-345.500(6)(a), Florida Administrative Code, is changed to read: "(6) Three categories of indicators of wetland function (landscape support, water environment and community structure) listed below are to be scored to the extent that they affect the ecological value of the assessment area. Upland mitigation assessment areas shall be scored for landscape support/location and community structure only.

(a) Landscape Support/Location - The value of functions provided by an assessment area to fish and wildlife are influenced by the landscape attributes of the assessment area and its relationship with surrounding areas. While the geographic location of the assessment area does not change, the ecological relationship between the assessment area and surrounding landscape may vary from the current condition to the "with impact" and "with mitigation" conditions. Additionally, the assessment area may be located within a regional corridor or in proximity to areas of national, state, or regional significance, and the "with mitigation" condition may serve to complement the regional ecological value identified for these areas. Many species that nest, feed, or find cover in a specific habitat or habitat type are also dependent in varying degrees upon other habitats, including upland, wetland, and other surface waters, that are present in the regional landscape. For example, many amphibian species require small isolated wetlands for breeding pools and for juvenile life stages, but may spend the remainder of their adult lives in uplands or other wetland

habitats. If these habitats are unavailable or poorly connected in the landscape or are degraded, then the value of functions provided by the assessment area to the fish and wildlife identified in Part I is reduced. The assessment area shall also be considered to the extent that fish and wildlife utilizing the area have the opportunity to access other habitats necessary to fulfill their life history requirements. The availability, connectivity, and quality of offsite habitats, and offsite land uses which might adversely impact fish and wildlife utilizing these habitats, are factors to be considered in assessing the landscape support of the assessment area. The location of the assessment area shall be considered relative to offsite and upstream hydrologic contributing areas and to downstream and other connected waters to the extent that the diversity and abundance of fish and wildlife and their habitats is affected in these areas. The opportunity for the assessment area to provide offsite water quantity and quality benefits to fish and wildlife and their habitats downstream and in connected waters is assessed based on the degree of hydrologic connectivity between these habitats and the extent to which offsite habitats are affected by discharges from the assessment area. It is recognized that isolated wetlands lack surface water connections to downstream waters and as a result, do not perform certain functions (e.g., detrital transport) to benefit downstream fish and wildlife; for such wetlands, this consideration does not apply.

1. A score of (10) means the assessment area, in combination with the surrounding landscape, provides full

opportunity for the assessment area to perform beneficial functions at an optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Habitats outside the assessment area represent the full range of habitats needed to fulfill the life history requirements of all wildlife listed in Part I and are available in sufficient quantity to provide optimal support for these wildlife.

b. Invasive exotic or other invasive plant species are not present in the proximity of the assessment area.

c. Wildlife access to and from habitats outside the assessment area is not limited by distance to these habitats and is unobstructed by landscape barriers.

d. Functions of the assessment area that benefit downstream fish and wildlife are not limited by distance or barriers that reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have no adverse impacts on wildlife in the assessment area as listed in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is not limited by hydrologic impediments or flow restrictions.

g. Downstream or other hydrologically connected habitats are critically or solely dependent on discharges from the assessment area and could suffer severe adverse impacts if the quality or quantity of these discharges were altered.

h. For upland mitigation assessment areas, the uplands provide a full suite of ecological values so as to provide optimal protection and support of wetland functions.

2. A score of (7) means that, compared to the optimal condition of the native community type, the opportunity for the assessment area to perform beneficial functions in combination with the surrounding landscape is limited to 70% of the optimal ecological value. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Habitats outside the assessment area are available in sufficient quantity and variety to provide optimal support for most, but not all, of the wildlife listed in Part I, or certain wildlife populations may be limited due to the reduced availability of habitats needed to fulfill their life history requirements.

b. Some of the plant community composition in the proximity of the assessment area consists of invasive exotic or other invasive plant species, but cover is minimal and has minimal adverse effect on the functions provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is partially limited, either by distance or by the presence of barriers that impede wildlife movement.

d. Functions of the assessment area that benefit fish and wildlife downstream are somewhat limited by distance or barriers that reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have minimal adverse impacts on fish and wildlife identified in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is limited by hydrologic impediments or flow restrictions such that these benefits are provided with lesser frequency or lesser magnitude than would occur under optimal conditions.

g. Downstream or other hydrologically connected habitats derive significant benefits from discharges from the assessment area and could suffer substantial adverse impacts if the quality or quantity of these discharges were altered.

h. For upland mitigation assessment areas, the uplands provide significant, but suboptimal ecological values and protection of wetland functions.

3. A score of (4) means that, compared to the optimal condition of the native community type, the opportunity for the assessment area to perform beneficial functions in combination with the surrounding landscape is limited to 40% of the optimal ecological value. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Availability of habitats outside the assessment area is fair, but fails to provide support for some species of wildlife listed in Part I, or provides minimal support for many of the species listed in Part I.

b. The majority of the plant community composition in the proximity of the assessment area consists of invasive exotic or

other invasive plant species that adversely affect the functions provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is substantially limited, either by distance or by the presence of barriers which impede wildlife movement.

d. Functions of the assessment area that benefit fish and wildlife downstream are limited by distance or barriers that substantially reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have significant adverse impacts on fish and wildlife identified in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is limited by hydrologic impediments or flow restrictions, such that these benefits are rarely provided or are provided at greatly reduced levels compared to optimal conditions.

g. Downstream or other hydrologically connected habitats derive minimal benefits from discharges from the assessment area but could be adversely impacted if the quality or quantity of these discharges were altered.

h. For upland mitigation assessment areas, the uplands provide minimal ecological values and protection of wetland functions.

4. A score of (0) means that the assessment area, in combination with the surrounding landscape, provides no habitat support for wildlife utilizing the assessment area and no opportunity for the assessment area to provide benefits to fish and wildlife outside the assessment area. The score is based on

reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. No habitats are available outside the assessment area to provide any support for the species of wildlife listed in Part I.

b. The plant community composition in the proximity of the assessment area consists predominantly of invasive exotic or other invasive plant species such that little or no function is provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is precluded by barriers or distance.

d. Functions of the assessment area that would be expected to benefit fish and wildlife downstream are not present.

e. Land uses outside the assessment area have a severe adverse impact on wildlife in the assessment area as listed in Part I.

f. There is negligible or no opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas due to hydrologic impediments or flow restrictions that preclude provision of these benefits.

g. Discharges from the assessment area provide negligible or no benefits to downstream or hydrologically connected areas and these areas would likely be unaffected if the quantity or quality of these discharges were altered.

h. For upland mitigation assessment areas, the uplands provide no ecological value or protection of wetland functions."

(12) The Department of Environmental Protection is directed to make additional changes to the worksheet portions of

chapter 62-345, Florida Administrative Code, as needed to conform to the changes set forth in this section.

(13) Any entity holding a mitigation bank permit may apply to the relevant agency to have such mitigation bank reassessed pursuant to the changes to chapter 62-345, Florida Administrative Code, set forth in this section, if such application is filed with that agency no later than September 30, 2011.

Section 28. This act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to environmental permitting; amending s. 120.569, F.S.; authorizing the provision of certain notices under the Administrative Procedure Act via a link to a publicly available Internet website; providing that a nonapplicant who petitions to challenge an agency's issuance of a license or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 120.60, F.S.; revising the period for an agency to approve or deny an application for a license; creating s. 125.0112, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of

bioenergy by a local government is a valid and permitted land use; requiring expedited review of such facilities; providing that such facilities are eligible for the alternative state review process; amending s. 125.022, F.S.; prohibiting a county from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 161.032, F.S.; requiring that the Department of Environmental Protection review an application for certain permits under the Beach and Shore Preservation Act and request additional information within a specified time; requiring that the department proceed to process the application if the applicant believes that a request for additional information is not authorized by law or rule; extending the period for an applicant to timely submit additional information, notwithstanding certain provisions of the Administrative Procedure Act; amending s. 166.033, F.S.; prohibiting a municipality from requiring an applicant to obtain a permit or approval from another state or federal agency as a condition of approving a development permit; authorizing a county to attach certain disclaimers to the issuance of a development permit; creating s. 166.0447, F.S.; providing that the construction and operation of a biofuel processing facility or renewable energy generating facility and the cultivation of bioenergy is a valid and permitted land use within the unincorporated area of a

municipality; prohibiting any requirement that the owner or operator of such a facility obtain comprehensive plan amendments, use permits, waivers, or variances, or pay any fee in excess of a specified amount; amending s. 373.026, F.S.; requiring the Department of Environmental Protection to expand its use of Internet-based self-certification services for exemptions and permits issued by the department and water management districts; amending s. 373.4141, F.S.; requiring that a request by the department or a water management district that an applicant provide additional information be accompanied by the signature of specified officials of the department or district; reducing the time within which the department or district must approve or deny a permit application; amending s. 373.4144, F.S.; providing legislative intent with respect to the coordination of regulatory duties among specified state and federal agencies; requiring that the department report annually to the Legislature on efforts to expand the state programmatic general permit or regional general permits; providing for a voluntary state programmatic general permit for certain dredge and fill activities; amending s. 373.441, F.S.; requiring that certain counties or municipalities apply by a specified date to the department or water management district for authority to require certain permits; providing that following such delegation, the department or district may not regulate activities that are subject to the delegation; clarifying the authority of local governments to adopt pollution

control programs under certain conditions; amending s. 376.30715, F.S.; providing that the transfer of a contaminated site from an owner to a child or corporate entity does not disqualify the site from the innocent victim petroleum storage system restoration financial assistance program; authorizing certain applicants to reapply for financial assistance; amending s. 403.061, F.S.; requiring the Department of Environmental Protection to establish reasonable zones of mixing for discharges into specified waters; providing that certain discharges do not create liability for site cleanup; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; creating s. 403.0874, F.S.; providing a short title; providing legislative findings and intent with respect to the consideration of the compliance history of a permit applicant; providing for applicability; specifying the period of compliance history to be considered is issuing or renewing a permit; providing criteria to be considered by the Department of Environmental Protection; authorizing expedited review of permit issuance, renewal, modification, and transfer; providing for a reduced number of inspections; providing for extended permit duration; authorizing the department to make additional incentives available under certain circumstances; providing for automatic permit renewal and reduced or waived fees under certain circumstances; requiring the department to adopt rules that are binding on a water management district or local government that

has been delegated certain regulatory duties; amending ss. 161.041 and 373.413, F.S.; specifying that s. 403.0874, F.S., authorizing expedited permitting, applies to provisions governing beaches and shores and surface water management and storage; amending s. 403.087, F.S.; revising conditions under which the department is authorized to revoke a permit; amending s. 403.703, F.S.; revising the term "solid waste" to exclude sludge from a waste treatment works that is not discarded; amending s. 403.707, F.S.; revising provisions relating to disposal by persons of solid waste resulting from their own activities on their property; clarifying what constitutes "addressed by a groundwater monitoring plan" with regard to certain effects on groundwater and surface waters; authorizing the disposal of solid waste over a zone of discharge; providing that exceedance of soil cleanup target levels is not a basis for enforcement or cleanup; extending the duration of all permits issued to solid waste management facilities; providing applicability; providing that certain disposal of solid waste does not create liability for site cleanup; amending s. 403.814, F.S.; providing for issuance of general permits for the construction, alteration, and maintenance of certain surface water management systems without the action of the department or a water management district; specifying conditions for the general permits; amending s. 380.06, F.S.; exempting a proposed solid mineral mine or a proposed addition or expansion of an existing solid mineral mine from

provisions governing developments of regional impact; providing certain exceptions; amending ss. 380.0657 and 403.973, F.S.; authorizing expedited permitting for certain inland multimodal facilities and for commercial or industrial development projects that individually or collectively will create a minimum number of jobs; providing for a project-specific memorandum of agreement to apply to a project subject to expedited permitting; providing for review and certification of a business as eligible for expedited permitting by the Secretary of Environmental Protection rather than by the Office of Tourism, Trade, and Economic Development; amending s. 163.3180, F.S.; providing an exemption to the level-of-service standards adopted under the Strategic Intermodal System for certain inland multimodal facilities; specifying project criteria; amending s. 373.4137, F.S., relating to transportation projects; revising legislative findings with respect to the options for mitigation; revising certain requirements for determining the habitat impacts of transportation projects; requiring water management districts to purchase credits from public or private mitigation banks under certain conditions; providing for the release of certain mitigation funds held for the benefit of a water management district if a project is excluded from a mitigation plan; revising the procedure for excluding a project from a mitigation plan; amending s. 526.203, F.S.; authorizing the sale of unblended fuels for certain uses; revising rules of the

Department of Environmental Protection relating to the uniform mitigation assessment method for activities in surface waters and wetlands; directing the Department of Environmental Protection to make additional changes to conform; providing for reassessment of mitigation banks under certain conditions; providing an effective date.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Agriculture & Natural Resources Subcommittee

Representative(s) Burgin offered the following:

Amendment to Amendment (1) by Representative Patronis (with title amendment)

Remove line 92 and insert:

to s. 163.3177, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, shall be considered by a local government to be

Remove line 123 and insert:

agency unless the agency has issued a notice of intent to deny the federal or state permit prior to the county action on the local development permit. Issuance of a development permit by a county does not in

Remove line 180 and insert:

federal agency unless the agency has issued a notice of intent to deny the federal or state permit prior to the municipal

action on the local development permit. Issuance of a development permit by a

Remove line 200 and insert:

to s. 163.3177, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, are each a valid industrial, agricultural, and

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T I T L E A M E N D M E N T

Remove line 1604 and insert:

bioenergy, by a local government, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities, is a valid and permitted

Remove line 1610 and insert:

agency, unless the agency has issued a notice of intent to deny the federal or state permit prior to the county action on the local development permit, as a condition of approving a development permit;

Remove line 1625 and insert:

agency, unless the agency has issued a notice of intent to deny the federal or state permit prior to the municipal action on the local development permit, as a condition of approving a development permit;

Remove line 1630 and insert:

facility and the cultivation of bioenergy, except where biomass material derived from municipal solid waste or landfill gases provides the renewable energy for such facilities,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 239 Numeric Nutrient Water Quality Criteria
SPONSOR(S): Agriculture & Natural Resources Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Kliner	Blalock

SUMMARY ANALYSIS

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs. A portion of the final rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011, 60 days after publication in the Federal Register, Volume 75, No. 233. The remainder of the final rule becomes effective 15 months after publication, on March 6, 2012.

The bill prohibits state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated criteria in any program administered by a state, regional, or local governmental entity. The bill does not limit the ability of any state, regional, or local governmental entity to:

- Apply for any pollution discharge permit
- Comply with the conditions of such permits, including NPDES permits
- Implement best management practices, source control or pollution abatement measures for water quality improvement programs "as provided by law"

Notwithstanding the prohibition to give any effect to the EPA criteria, the bill authorizes the Department of Environmental Protection (DEP) to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life expected to inhabit those waters, and if the criteria are based on:

> Objective and credible data, studies and reports establishing the nutrient levels which the water body may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.

The criteria may be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.

The bill designates DEP-adopted nutrient Total Maximum Daily Loads (TMDLs) that were approved by the EPA as of December 6, 2010, as site-specific numeric nutrient water quality criteria. The site-specific criteria are not effective if the EPA disapproves, approves in part, or conditions its approval of the criteria, unless ratified by the Legislature. The site-specific criteria are subject to s. 403.067, F.S. (Florida Watershed Restoration Act), administrative rules and orders issued thereto, and are subject to s. 120.56(3), F.S., authorizing a substantially affected person to seek an administrative determination of the invalidity of an existing rule. Once approved and effective, the site-specific criteria may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804, F.S., after approval by the Environmental Regulations Commission.

The effective date of the bill is July 1, 2011. The bill's fiscal impact is indeterminate. See Fiscal Comments for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

Water Quality Standards for Surface Waters in Florida

Water quality standards (WQS) are the foundation of the water quality-based pollution control program mandated by the Clean Water Act (CWA). The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.[1]

The CWA requires states or the Federal Environmental Protection Agency (EPA) to establish WQS for pollutants flowing into surface waters, and prohibits the discharge of any pollutant from a point source, such as a pipe, man-made ditch, or large animal feeding operation, into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. In Florida, the water quality of surface waters is primarily regulated through Florida's implementation of the CWA. The CWA provides incentives to Florida to: (a) adopt CWA-compliant WQS; and (b) administer the federal NPDES program on behalf of the EPA.[2]

Under the CWA, states adopt water quality standards for their navigable waters, and review and update those standards at least every three years. Under the CWA, states determine WQS for surface waters in three steps:

- Part one is establishing the designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes;
- Part two is establishing water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use; and
- Part three is establishing an anti-degradation policy to maintain and protect existing uses and high quality waters.

The CWA requires states to submit WQS to the EPA for review and approval.[3]

The EPA Administrator must "promptly prepare and publish" proposed regulations setting forth a revised or new WQS for the navigable waters involved:

- If a revised or new WQS submitted by the state is determined by the Administrator not to be consistent with the applicable requirements , or

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[1] Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act. 40 CFR 131.21

[2] Under the federal structure established in the U.S. Constitution, states may not be compelled by the Federal Government to enact legislation or take executive action to implement federal regulatory programs. However, Congress can encourage a state to regulate in a particular way by offering incentives -- often in the form of federal funds. Congress may also create a "potential preemption" structure in which states must regulate the activity under state law according to federally approved standards, or have state regulation pre-empted by federal regulation. The Clean Water Act, Clean Air Act, and Safe Drinking Water Act, for example, utilize these techniques. In addition, it is important to note that a state agency in Florida must have legislative authorization to implement a federal law. The Florida Department of Environmental Protection receives federal funds to administer the NPDES permitting program in the state.

[3] This section of the CWA represents the "potential preemption" structure previously mentioned. Apart from receiving federal funds to assist the state in meeting water quality standards approved by the EPA, the state retains local control over its water quality programs, and provides to its NPDES applicants something the federal structure lacks --administrative deadlines for the agency to approve or deny a permit application.

- In any case where the Administrator determines that a revised or new standard is necessary to meet requirements of the CWA.[4]

The Administrator must promulgate any new or revised standards not later than ninety days after publication of the proposed standards, unless prior to such promulgation, the state adopts a revised or new WQS which the Administrator determines to be in accordance with the CWA. After promulgation by the EPA, however, the promulgated rules become the state's WQS until such time as the EPA withdraws the promulgation, again by rule.[5] This may occur if the state proposes and the EPA approves the state's submission.

The CWA also requires that states identify impaired waters not meeting established WQS. In such instances, a state establishes a total maximum daily load, or TMDL, for those impaired waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet WQS.[6] To enforce TMDLs, water quality-based effluent limitations (WQBELs) must be developed and incorporated into NPDES permits for point sources. Each TMDL represents a goal that is implemented by adjusting pollutant discharge requirements in the individual NPDES permits, along with the implementation of nonpoint source controls, such as Best Management Practices.[7] State-established TMDLs and NPDES WQBELs are submitted to the EPA for approval. The EPA may adjust the criteria on either if the federal agency determines the standard does not comply with the CWA.

The threshold limit on pollutants in surface waters (Florida's surface WQS on which TMDLs are based) are set in administrative rule. The state's impaired waters rule contains a table that catalogues over 100 substances, including subparts, with numerical thresholds for surface water classifications, including fresh and marine waters.[8] Generally, a pollutant is expressed in a numerical threshold (e.g., 11mg/L, or 11 milligrams per liter) because certain chemicals (e.g., Benzene, Lead, Mercury), have threshold concentrations above which adverse biological damage is a scientific certainty.

The EPA and the Florida Department of Environmental Protection (DEP) executed a Memorandum of Understanding (MOU) in 2007 delineating the state and federal agencies' mutual responsibilities in the DEP's administration of the federal NPDES program (the approved program). Pursuant to the MOU, the EPA acknowledges that the DEP has no veto authority over an act of the Florida Legislature, and reserves the right to initiate procedures for withdrawal of the state NPDES program approval in the event the state legislature enacts legislation or issues any directive which substantially impairs the DEP's ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements. If the approved program were withdrawn, entities requiring a NPDES permit for activities relating to wastewater, stormwater, construction, industry, pesticide application, power generation, and some agricultural activities would need to acquire both federal and state permits.

The MOU anticipates situations when the EPA resumes authority over an individual permit and instances when DEP-submitted NPDES permits are disapproved by the EPA until the DEP adjusts the permit conditions to include EPA conditions on the permit. If the permit is issued by the DEP, the permit holder may seek an administrative challenge in the Florida Division of Administrative Hearings. If the

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[4] CWA, s. 303(a)(3)(C).

[5] Pursuant to 40 CFR 131.21(c), if EPA finalizes a proposed rule, the EPA promulgated WQS would be applicable WQS for purposes of the CWA until EPA withdraws the federally-promulgated standard. Withdrawing a federal standard would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 551 et seq.).

[6] Generally, the pollutant of concern and a numeric water quality target are, respectively, the chemical causing the impairment and the numeric criteria for that chemical (e.g., chromium) contained in the water quality standard. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target. Guidelines for Reviewing TMDLs Under Existing Regulations Issued in 1992, are found at: http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/final52002.cfm

[7] When a water body is classified as impaired, Florida law also authorizes the DEP to adopt a Basin Management Action Plan, or BMAP, for that particular water body. A BMAP is designed to reduce the pollutant concentrations to meet the TMDL. Strategies may include: educational programs, permit limits on wastewater facilities, best management practices, conservation programs, and financial assistance.

[8] Chapter 62-302.530, Florida Administrative Code.

permit is issued by the EPA, the permit holder may seek a federal appeal; however, in the meantime, the permit holder would be required to comply with the federal permit.

Nutrients and Water Quality

Nutrients, such as nitrogen and phosphorus, are substances that are needed by organisms to live and grow. In aquatic systems, these nutrients feed the growth of bacteria, algae, and other organisms. Nitrogen and phosphorus are essential to the production of plant and animal tissue. Phosphorus is essential to cellular growth and respiration. The DEP has relied on a narrative criterion (described in its impaired waters rule as "an imbalance in natural populations of flora or fauna") for many years because nutrients are unlike any other pollutant regulated by the CWA.

Natural sources of nitrogen and phosphorus are the atmosphere, soils, and the decay of plants and animals. Unnatural sources include sewage disposal systems (treatment works or septic tanks), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and runoff from urban areas, neighborhoods, and pastures.

Excessive amounts of nutrients may result in harmful algal blooms, nuisance aquatic weeds, and alteration of the natural community of plants and animals. Dense, harmful blooms of algae can also cause human health problems, fish kills, problems for water treatment plants, and generally impair the aesthetics of waters. Populations of nuisance aquatic weeds can increase in nutrient-enriched waters, which can impact recreational activities like swimming and boating. Increased algal production as a result of increased nutrients can alter plant communities, which in turn can inhibit natural food chain dynamics.

As such, the derivation of specific numeric nutrient criteria to complement the narrative is very complex.[9] Since nutrients are essential to life, a balance must be understood to provide adequate nutrients to sustain aquatic life while not providing excessive nutrients which alter the aquatic ecosystem through species shifts. Each water body can have very different and unique nutrient requirements. In order to best develop thresholds at which a healthy aquatic environment can be sustained, it is best to develop a reliable measure of the biological condition of the water body.[10]

Effect of Proposed Changes

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs (EPA Rule). A portion of the EPA Rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011, 60 days after publication in the Federal Register, Volume 75, No. 233. The remainder of the EPA Rule becomes effective 15 months after publication, on March 6, 2012.

Section one of the bill bars any and all state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated EPA criteria (EPA criteria), in any program administered by a state, regional, or local governmental entity. The bill does not, however, "limit the ability" of any state, regional, or local governmental entity to:

- Apply for any pollution discharge permit

[9] The development of protective nutrient criteria is immensely more complicated than that for toxic substances. It must be recognized that nutrients should not be regulated at levels that are artificially lower than those concentrations required for normal ecosystem functioning. If humans were to reduce nutrients below the levels that natural aquatic systems are accustomed to, adverse biological effects (disruption of trophic dynamics, loss of representative taxa) would occur. This would be counter to the CWA charge in Section 101 to "protect the physical, chemical, and biological integrity" of the state's waters and, coincidentally, against Florida law, which prohibits DEP from conducting remediation for natural conditions. Ideally, nutrients should be managed in a range of concentrations with some consideration of a margin of safety on both the upper and lower bounds of the range. Source: *Draft Technical Support Document -- Development of Numeric Nutrient Criteria for Florida Lakes and Streams* http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd_nutrient_crit.docx

[10] http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd_nutrient_crit.docx, page 11.

- Comply with the conditions of such permits, including NPDES permits
- Implement best management practices, source control or pollution abatement measures for water quality improvement programs "as provided by law"

Analysis

The EPA Rule is promulgated pursuant to applicable sections of the federal Clean Water Act (CWA), and EPA's implementing regulations at 40 CFR part 131. The CWA requires adoption of water quality standards (WQS) for "navigable waters."[11] The CWA defines "navigable waters" to mean "the waters of the United States, including the territorial seas."[12] Whether a particular water body is a water of the United States is a water body-specific determination. Every water body that is a water of the United States requires a WQS under the CWA. The Florida Department of Environmental Protection (DEP) is the primary agency responsible for implementing CWA programs in the state of Florida, including the National Pollution Discharge Elimination System (NPDES) program and the Total Maximum Daily Load (TMDL) program.[13] For the purpose of NPDES permitting, "waters of the state" are synonymous with "waters of the United States." This means that every water body in the state that is receiving treated wastewater, reclaimed water, stormwater runoff, etc., is affected by the EPA Rule, as is every Type III water body (fishable, swimmable) that fails to meet the WQS for its intended use.

The bill uses the verb "implement" followed by the phrase "give any effect" in the sentence prohibiting state, regional, or local government action regarding the EPA criteria. The common dictionary meaning for the verb "implement" is to carry out, or accomplish, and is often used in statutory and administrative rule construction. The phrase "give any effect" suggests a different standard than "implement" that may be open to subjective interpretation.

Illustration 1. Assume subsequent to the bill's enactment into law, on or after March 6, 2012, the DEP reviews a NPDES permit renewal for an entity discharging into Lake Thirtyweight. Based on the EPA criteria for Lake Thirtyweight, the permit's water quality-based effluent limits (WQBELs) need to be more protective to allow the entity to continue discharging.

In this situation, the DEP would submit the permit with the state nutrient criteria (narrative criteria) to the EPA for its review. The EPA may disapprove the permit and return the permit to the DEP after replacing the state standard with one acceptable to the EPA. The DEP issues the permit (with the EPA criteria) to the permit holder. The permit holder has two options; comply with the permit conditions, or challenge the permit conditions in the state Division of Administrative Hearings. Under state law, the entity would continue its operations under the conditions of the earlier permit until the challenge is resolved.[14] However, this would not prohibit the EPA from enforcing the permit conditions. Rather than return the permit to the DEP with adjusted criteria, the EPA may simply assume regulatory control over the permit. If, under the bill, the DEP is restricted from implementing federally-promulgated criteria, it is possible that, subsequent to the bill's effective date, the EPA may withdraw its approval for the state to implement the NPDES program. If this occurs, both point source, and some non-point dischargers will need to acquire both state and federal water quality permits.[15]

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[11] CWA section 303(c)(2)(A).

[12] CWA section 502(7).

[13] 33 U.S.C. s. 1342 provides for the TMDL program. 33 U.S.C. s. 1313 addresses surface waters that are not "fishable, swimmable" by requiring states to identify the waters and to develop total maximum daily loads for them, with oversight from the EPA. As such, TMDLs can play a key role in watershed management. Each state must identify waters at risk and establish TMDLs to protect those waters. This includes identification of needed load reductions within a watershed from agricultural producers and other nonpoint sources. These load reductions are to be achieved through nonpoint source programs established under CWA s. 319 and the Coastal Zone Act Reauthorization Amendment s. 6217.

[14] This scenario, according to the DEP, is continuing to play out from a case in the 1990s, when the EPA imposed a dioxin standard for the Fenholloway River near Perry, Florida, involving the Buckeye pulp and paper mill. The administrative action is still ongoing and the mill still operates under old permit conditions.

[15] Typically, the EPA does not regulate non-point sources of pollution. However, polluted stormwater runoff is commonly transported through Municipal Separate Storm Sewer Systems (MS4s), from which it is often discharged untreated into local water bodies. To prevent harmful pollutants from being washed or dumped into an MS4, operators must obtain a NPDES permit and develop a stormwater management program. Source: http://cfpub1.epa.gov/npdes/stormwater/munic.cfm?program_id=6

Under the bill, state, regional, and local government entities may not implement, or give any effect, to the EPA criteria in any regulatory program administered by the governmental entities. This prohibition, however, does not limit the ability of any water management district or any other state, regional, or local governmental entity from applying for any pollution discharge permit or complying with the conditions of such permits, including those issued under the National Pollution Discharge Elimination System, or from implementing best management practices, source control or pollution abatement measures for water quality improvement programs as provided by law; provided, however, that nothing in this section shall be construed to derogate or limit county and municipal home rule authority.[16]

A situation involving a publicly-owned treatment works operating under an NPDES permit, for instance, would resemble the situation provided in Illustration 1. Assume this same local government proposes an amendment to its comprehensive plan requiring vegetation buffers of 50 meters between new construction and certain water bodies, to prevent or reduce nutrient loading from fertilizer use and stormwater runoff not captured by existing detention ponds. It is unclear under the bill's language whether the regulatory action by the local government gives any effect to the EPA criteria.

Section two of the bill authorizes the DEP to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life reasonably expected to inhabit those waters, and if the criteria are based on:

> Objective and credible data, studies and reports establishing the nutrient levels which the water body may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.

In addition, section two provides the criteria may be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.

Analysis

It is unclear how the bill's limited authorization for DEP to adopt water quality criteria necessary "to protect aquatic life reasonably expected to inhabit those waters" will interact with the pre-existing classification of designated use process.

EPA's final rule proposes an alternative regulatory approach the state may consider if meeting numeric criteria for certain water bodies is unattainable; re-designation of water use. Pursuant to the CWA, states establish water quality standards (WQS) in three steps:

- Establish designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes
- Establish water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use
- Establish an anti-degradation policy to maintain and protect existing uses and high quality waters

In 2009, the DEP began to refine the current system of designated uses, primarily because certain engineered water systems that were designed for flood control or as conveyances to treatment areas are currently designated as Type III waters, for aquatic life and recreation purposes. The DEP amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters. Pursuant to 62-302.400(5), F.A.C.:

> Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-

[16] The bill also restates the governmental entities' ability to impose WQS on themselves through applying for and complying with any pollution discharge permit, including a NPDES permit.

302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. "Limited recreation" means opportunities for recreation in the water are reduced due to physical conditions. "Limited population of fish and wildlife" means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:
(a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or
(b) Altered waterbodies that were dredged or filled prior to November 28, 1975. For purposes of this section, "altered waterbodies" are those portions of natural surface waters that were dredged or filled prior to November 28, 1975, to such an extent that they exhibit separate and distinct hydrologic and environmental conditions from any waters to which they are connected.

Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

The bill requires the numeric nutrient criteria adopted by the DEP to be based upon "objective and credible data, studies and reports establishing the nutrient levels which the water bodies may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses." According to the DEP, it is exceptionally difficult to establish objective data establishing a quantitative amount of nutrient which flowing water bodies may accept without exhibiting an imbalance of flora or fauna based on a cause and effect relationship between nutrient levels and biological responses. The EPA and the DEP acknowledge a dose-response methodology for flowing rivers and streams result in scientific results that are not robust.[17] [18] It was this realization that led the DEP to adopt a site reference approach with a subsequent biological assessment to determine if the river or stream was impaired or healthy. The DEP determined through extensive laboratory and field test methodologies that such a protective criterion may be determined in lakes, however. It is a very time consuming and expensive endeavor. With an estimated 1,918 miles of rivers and streams, and 378,435 acres of lakes identified as impaired by nutrients, the process takes a very long time.

Section three of the bill addresses DEP-adopted nutrient TMDLs that were approved by the EPA as of December 6, 2010. The bill declares these TMDLs (and "associated numeric interpretations of the narrative nutrient criterion, whether total nitrogen, total phosphorus, nitrate/nitrite, or a surrogate nutrient standards, such as chlorophyll a, biological demand, or specific biological metric") to be site-specific numeric nutrient water quality criteria (SSNNWQC), unless the EPA disapproves, approves in part, or conditions its approval of the criteria. If the EPA takes such action, the criteria take effect only upon legislative ratification. In addition, the bill provides that the statutorily-created SSNNWQC are subject to s. 403.067, F.S. (Florida Watershed Restoration Act), administrative rules and orders issued thereto, and are subject to s. 120.56(3), F.S., authorizing a substantially affected person to seek an administrative determination of the invalidity of an existing rule.[19] Once approved and effective, the SSNNWQC may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804, F.S.

Analysis

When the EPA finalized their rule, the agency did not include DEP-established nutrient TMDLs as site-specific alternative criteria (SSAC), even though the EPA had previously approved the nutrient TMDLs

[17] See, DEP's 2009 Draft Nutrient Criteria Technical Support Document, p. 111: "...DEP has invested significant resources ... attempting to derive criteria based on dose-response relationships. However, DEP has concluded that specific thresholds could not be established due to inherent variability within and between streams and the compounding complexity from other factors."
[18] EPA final rule, Federal Register, Vol. 75, No. 233, p. 75777.
[19] The Florida Watershed Protection Act provides authority for several regulatory programs, including the state TMDL program, DEP responsibilities pursuant to s. 303(d) of the CWA (assessing, listing, and reporting to the EPA all surface waters in the state that do not comply with CWA standards), BMAPs, agricultural BMPs, and water quality credit trading.

pursuant to federal regulation.[20] Instead, the EPA Rule provides a procedure for the state (or any entity) to submit these, and any other nutrient TMDL, to the EPA for consideration as a SSAC for a water body or segment. As stated in the final rule, one reason for not accepting the previously-approved TMDLs is the chance that, in the space of time between EPA approval of the TMDL and the promulgation of the EPA Rule, advances in technology or science may allow for a TMDL that is even more protective of the designated use than the original. See Federal Register, Volume 75, No. 233, pp. 75786, 75787.

Pursuant to state law regarding adoption of a TMDL for a water body, the DEP coordinates with applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources. The parties determine the information required, accepted methods of data collection and analysis, and quality control/quality assurance requirements. The TMDL is adopted pursuant to the DEP Secretary's rulemaking authority and is subject to administrative challenge under the Florida Administrative Procedures Act (APA). Afterward, the TMDL is submitted to the EPA for review and approval. According to the DEP, Florida has adopted 135 nutrient TMDLs.

Under the bill, DEP-developed nutrient TMDLs that were approved by the EPA before December 6, 2010, are designated as site-specific nutrient water quality criteria (SSNNWQC). According to the DEP, all 135 nutrient TMDLs were EPA-approved on or before December 6, 2010, which, if the bill is enacted, will result in 135 SSNNWQCs. The bill provides the SSNNQWC are not effective if the EPA disapproves, approves in part, or conditions approval of the SSNNWQC. The DEP must adopt the SSNNWQC in administrative rule because the bill subjects the statutorily-created criteria to s. 120.56(3), F.S., the APA provision for an invalid rule challenge. In addition, the bill subjects the SSNNWQC to the Florida Watershed Protection Act and any constituent rules promulgated or orders issued thereto. If challenged, the proposed SSNNWQC is ineffective pending resolution of the administrative action.[21] Therefore, the TMDL criteria, previously subject to administrative rule challenge, may now be subject to an additional administrative challenge, this time as a SSNNWQC.

After the SSNNWQC are adopted by rule, the DEP may submit the criteria to the EPA for consideration as a SSAC. If the EPA responds with anything less than an unqualified approval, the criteria are no longer effective as a SSNNWQC, unless the Florida Legislature ratifies the rule criteria.[22] If the EPA approves the criteria, any subsequent modification of the SSNNWQC shall not be pursuant to the DEP Secretary's rulemaking authority, but shall instead require the review and approval of the Environmental Regulation Commission (ERC). The ERC, in exercising its authority pursuant to s. 403.804, F.S., shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. This layer of review is in addition to any administrative challenge that may follow promulgation.

The bill does not provide the DEP with specific rulemaking authority. Providing the DEP's existing rulemaking authority is sufficient, the SSNNWQC will be subject to s. 120.541, F.S., requiring a statement of estimated regulatory costs. Section 120.541(2)(a), F.S., reads as follows:

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[20] 40 CFR s. 130.7

[21] Subsection (14) of s. 403.067, F.S., provides: In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act shall be ineffective pending resolution of a s. 120.54(3), s. 120.56, s. 120.569, or s. 120.57 administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by subsections (2)-(6), provided that the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

[22] Legislative ratification of rules has not proven to be an automatic process. On February 23, 2006, Florida's Environmental Regulation Commission approved an amendment to the DEP's wetland delineation rule. According to DEP, this rule change was in response to legislative direction in HB 759 in the 2005 Session, to streamline State and Federal permitting programs and was included in the department's October 3, 2005 report to the Legislature required by HB 759. The rule amendment changes the status of gallberry and slash pine from being indicators of upland areas to being neutral. Under chapter 373, F.S., the rule amendment does not become effective until formally ratified by the Florida Legislature. Despite successive bill filings in 2006, 2007, and 2009, the Legislature has not ratified the rule amendment.

(2) A statement of estimated regulatory costs shall include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Pursuant to s. 120.541(3), F.S., proposed rules which will have an adverse impact of more than $1 million over 5 years must be submitted to the Florida Legislature for ratification before rule may go into effect. Considering the historic costs for surface water restoration, the DEP rules are likely to meet or exceed this threshold. An exception to paragraph (2)(a) applies for the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6). Neither exception appears to apply in this case.

Additional Background Information

History of Florida's Development of Numeric Nutrient Criteria

In recognition of the need to more proactively address impairment of state waters due to nutrients, the DEP implemented a detailed, EPA-approved plan for the development of numeric nutrient criteria and recently proposed revisions to Chapter 62-302, FAC (Water Quality Standards) and Chapter 62-303, FAC (Impaired Waters Rule) to establish numeric nutrient criteria for lakes and streams. DEP selected the "dose-response" approach (investigating the effects of nutrients on biological communities) as the primary method for the development of scientifically defensible numeric nutrient criteria, and has invested significant resources in:

- the development of biological assessment tools
- the documentation of minimally disturbed reference conditions
- the collection of large amounts of water quality and nutrient data
- conducting a variety of studies to link nutrients to adverse effects on valued ecological attributes

This process has required extensive methods development, staff training, and Quality Assurance oversight to ensure the defensibility of the resulting products. The elements of this development and assessment process to date include such components as habitat assessment for streams and lakes, benthic invertebrate indices for streams and lakes, a vegetation index for lakes, and a periphyton index for streams. These activities represent significant investments in staff time and contractual services, with recent and planned funding associated with nutrient criteria development in Florida totaling nearly $20 million dollars.[23]

While the approved plan called for adoption of the criteria by the end of 2010, DEP accelerated its efforts to adopt numeric nutrient criteria in response to the EPA's January 14, 2009, determination that numeric nutrient water quality criteria are necessary in Florida to implement the Clean Water Act. As part of a settlement agreement with EarthJustice, discussed later in this analysis, EPA was obligated to promulgate numeric nutrient criteria for Florida streams and lakes by a date certain, unless EPA approved criteria proposed by the DEP prior to that date.[24] The DEP did not formally propose

[23]The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. This document, and other documentation of nutrient criteria study results, including statistical analyses and interpretation, are found at: http://www.dep.state.fl.us/water/wqssp/nutrients/

[24] The determination letter established a schedule for criteria development, with criteria for lakes and streams due by January 14, 2010, and criteria for estuaries due by January 14, 2011. Due to approved extensions of time, the due dates were extended. The EPA numeric nutrient criteria for Florida's inland waters (except for south Florida) will be effective March 6, 2012. The EPA will propose numeric

alternative criteria to the EPA prior to the final promulgation by the EPA, and the EPA established numeric nutrient criteria for lakes, streams, rivers, and springs, effective March 6, 2012.

Development of the DEP Plan

The DEP started developing numeric nutrient criteria nearly ten years earlier. In 1999, the DEP's Division of Water Resource Management initiated the implementation of a watershed approach for surface water protection patterned after EPA guidance (EPA, 1991, 1995), including the prioritization of water bodies for TMDL development.[25] The DEP drew guidance from the EPA's *Nutrient Criteria Technical Guidance Manual: Rivers and Streams* (Buck et al., 2000), which describes three general approaches for the development of numeric nutrient criteria for streams: the observed dose-response relationship, the "reference site" methodology, and the "all streams" approach.

- Observed dose-response -- Establishes a cause/effect relationship between nutrients and valued ecological attributes, and is linked to maintaining designated uses.
- Reference site -- In the absence of data quantitatively describing biological dose-response relationships, the EPA recommends this as the next best alternative, setting criteria based on an inclusive distribution of values obtained from minimally disturbed reference sites in a designated ecoregion (based on climate and geology) and recommends projection of an upper percentile value to represent a level of nutrient concentration that will inherently protect aquatic life.
- All-streams -- For use in situations where sufficient known reference sites are unavailable, either absent or not identifiable. This approach is often referred to as the "all streams" approach, and involves establishing criteria using a lower distribution (e.g., 5th to 25th percentile) of a pool of sites of undetermined ecological quality, as long as the pool is sufficiently large enough to represent all waters and can be presumed to reasonably reflect the full range of ambient conditions with a disturbance gradient from least to most impacted.

The DEP Plan distinguished the first option, the observed dose-response, as the preferred methodology.[26] These thresholds helped to expedite the assessment of Florida's waters, but they were set for variables that measure the response to nutrient over enrichment, rather than concentrations of nutrients. The DEP Plan expressed support for the reference site approach, although that option does not definitively demonstrate that exceeding the threshold established by the distribution of reference sites results in harm (impairment) to the aquatic life in a particular water body. Multiple factors can strongly influence the expression of biological responses to nutrients across water bodies, such as water velocity, residence time, availability of the other nutrient, presence of grazers, availability of light (due to tree cover and/or water transparency), and availability of suitable habitat. The DEP found that additional stressors (e.g., degraded habitat, unfavorable hydrology) often influence biological impairments more than the actual concentration of nutrients at a given point. The DEP discounted option three, the all-streams approach, as having limited defensibility in the state.

Pursuant to the CWA, there are three paths to develop protective numeric criteria (40 CFR 131.11). Numeric criteria may be established based upon (1) EPA-published Section 304(a) guidance, or (2) 304(a) guidance modified to reflect site-specific conditions, or (3) by use of other scientifically defensible methods. The DEP drew from EPA guidance documents and, from its own experience and knowledge gained from field and laboratory testing, fashioned a methodology which incorporated site-

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nutrient criteria for Florida's estuaries, flowing waters in south Florida (including canals), and the downstream protection values for flowing waters into estuaries on or before November 14, 2011. The deadline for promulgating a final rule is August 15, 2012.

[25] Pursuant to the CWA, s. 304(a), the EPA publishes and periodically revises guidance documents to accurately reflect the latest scientific knowledge on the effects of pollution on life and the environment.

[26] The DEP Plan implemented this approach as a quantified translation of its narrative criteria in two ways. For point sources (e.g., wastewater facilities discharging to surface waters), the DEP interpreted the narrative criterion on a site-specific basis and established numeric permit limits for nutrients. To better address nutrient impairment from nonpoint (non-regulated) sources, the DEP revised the Impaired Waters Rule to include numeric nutrient impairment thresholds. Criteria utilize trophic state indices. For streams, Chapter 62-303.351(2), F.A.C., denotes an imbalance if annual mean chlorophyll a concentrations are greater than 20 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years. For lakes, the criteria were dependent upon lake color and variations of the TSI over time.

specific verifications. In 2002, the DEP submitted to the EPA its initial *DRAFT Numeric Nutrient Criteria Development Plan*. The DEP and the EPA reached mutual agreement on the Plan on July 7, 2004.[27] The DEP revised its Plan in September, 2007, to reflect an evolved strategy and technical approach, and again received agreement from the EPA on September 28, 2007.[28] From 2002 through 2009, the DEP conducted 22 meetings with a group of scientists and experts that formed the Nutrient Technical Advisory Committee (TAC). TAC experts came from a variety of backgrounds, including environmental groups, the EPA, environmental and economic consultants, and representatives from state and local governments.

Comparing the DEP's Plan with the EPA Final Rule

The DEP's 2007 Plan (which was approved by the EPA) and the 2009 Plan do not differ in conceptual approach. The 2009 Plan, however, demonstrated refinement in several areas. For instance, the 2007 Plan also classified lakes by color (or lack thereof), but the 2009 Plan reflected refinements in biological response by incorporating alkalinity levels in specific water bodies. Not reflected in the 2007 Plan, the 2009 Plan incorporated refinements in its stream assessment to develop a final nutrient standard for spring runs. The DEP kept the 2007-established schedule for completing the nutrient rule by the end of 2010.

Florida's Rivers and Streams

For rivers and streams, the DEP determined there was insufficient robust data to develop a scientifically-defensible method establishing a cause-effect relationship between nutrients and biological health endpoints. EPA guidance states that the next best plan involves a reference site distributional approach. The EPA recommends setting criteria based on an inclusive distribution of values obtained from reference sites in a designated ecoregion (based on climate and geology, etc.).[29] The DEP expanded this approach by identifying streams that were minimally affected by human disturbance and nutrients, and also by documenting the existence of "full aquatic life full use support" (using Stream Condition Index methods).[30] According to published EPA guidance, reference reaches may be identified for each class of streams within a state based on best professional judgment. DEP expanded beyond EPA's best professional judgment approach regarding selection of reference streams, and developed an extremely rigorous, multi-step process to ensure that the sites eventually selected truly represented minimal human disturbance and full designated use support.

The DEP's Nutrient Benchmark Site Distributional Approach for nutrient criteria development includes the following:

- Use of the 90th percentile of nutrient concentrations (75th percentile for Bone Valley streams) derived from a distribution of minimally disturbed streams is inherently protective of aquatic life, including biota inhabiting downstream waters

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[27] The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. The DEP's approach conceptualized establishing ecological sub-regions as a starting point for regionalization efforts it saw as necessary to establish nutrient criteria.

[28] The DEP's 2007 Plan utilized EPA guidance and proposed the development of regional nutrient criteria for streams based upon the "reference site" approach to determine nutrient characteristics at minimally-disturbed, biologically healthy sites. The Florida-derived bioassessment methods, the Stream Condition, Lake Condition, and Lake Vegetation Indices, were also considered. Additionally, DEP began using a rapid periphyton survey methodology for streams in early 2007 and initiated the development of phytoplankton and periphyton indices for lakes and streams, respectively. The EPA's 2007 letter memorializing the mutual agreement with the DEP may be accessed here: http://www.dep.state.fl.us/water/wqssp/nutrients/docs/epa-092807.pdf

[29] A memorandum from the Director of the EPA's Office of Science and Technology, Geoff Grubbs (2001), indicated that states are allowed the flexibility to develop and adopt nutrient criteria other than those currently proposed by EPA for water body types in specific Nutrient Ecoregions which were aggregated from Level III (EPA, 1998). As proposed, the EPA criteria recommendations that would include Florida do not fully reflect localized conditions or specific water body designated uses within the state. The DEP Plan proposes to undertake activities to develop criteria for lakes, streams, estuaries, coastal waters (and wetlands) within the state, based on state-specific, subregional data. Upon issuance of §304(a) Ecoregional Nutrient Criteria Recommendations, and since that time, EPA has encouraged states to refine their approach where possible in order to reflect more state-specific data and conditions. DEP Plan, pages 1, 2.

[30] DEP Draft Nutrient Criteria Technical Support Document, p. 98.

- Documentation of healthy biological communities directly demonstrates that aquatic life uses are fully met within the associated range of nutrients

The DEP noted one disadvantage of using the benchmark approach: it does not identify the specific nutrient levels at which biological impairment occurs. For this reason, it cannot be concluded on its face that adverse effects on aquatic life actually occur at concentrations above these values. Therefore, the DEP's methodology included a multi-step verification process which culminated with an extensive field examination process.

The criteria listed in the tables below express annual geometric means that cannot be exceeded more than once every three years.

Numeric Criteria for Florida Streams Total Phosphorus (mg/L)			
Nutrient Watershed Region	**EPA**	**DEP**	
		75th %	90th %
Panhandle West	0.06	0.043	**0.069**
Panhandle East	0.18	0.066	**0.101**
North Central	0.30	0.216	**0.322**
Peninsula	0.12	0.088	**0.116**
West Central	0.49	**0.415**	0.559

Numeric Criteria for Florida Streams – Total Nitrogen (mg/L)			
Nutrient Watershed Region	**EPA**	**DEP**	
		75th %	90th %
Panhandle West	0.67	0.63	**0.82**
Panhandle East	1.03	1.13	**1.73**
North Central	1.87	1.13	**1.73**
West Central	1.65	1.13	**1.73**
Peninsula	1.54	1.13	**1.73**

Florida's Lakes

As previously stated, according to the DEP the most comprehensive and scientifically defensible approach to developing numeric nutrient criteria for surface waters is to establish cause and effect relationships between nutrients (stressors) and valued ecological attributes. Chapters 9 and 10 of DEP's *Nutrient Criteria Technical Support Document* provides justification for use of chlorophyll a as an indicator of designated use support, primarily as a measure of excessive algal growth, which can result in imbalances of natural populations of flora or fauna. Additionally, the Lake Vegetation Index (LVI) is a direct assessment of the floral community and can therefore be used to demonstrate use support.

The DEP evaluated responses in both chlorophyll a and the LVI to total phosphorus and total nitrogen concentrations. Lakes were initially categorized based on color categories previously adopted in Florida's Impaired Waters Rule. Lakes with color less than or equal to 40 platinum cobalt units (PCU) were categorized as clear, and lakes with color greater than 40 PCU were categorized as colored. Based upon recommendations from the Nutrient TAC, the DEP evaluated whether there were any differences in the relationships between nutrients and chlorophyll a in clear lakes with specific conductance values above and below 100 µmhos/cm.[31] The specific conductance threshold was

[31] Conductivity is a measure of the ability of water to pass an electrical current. Conductivity in water is affected by the presence of inorganic dissolved solids such as chloride, nitrate, sulfate, and phosphate anions (ions that carry a negative charge) or sodium, magnesium, calcium, iron, and aluminum cations (ions that carry a positive charge). Organic compounds like oil, phenol, alcohol, and sugar do not conduct electrical current very well and therefore have a low conductivity when in water. Conductivity in streams and rivers is affected primarily by the geology of the area through which the water flows. Streams that run through areas with clay soils tend to have higher conductivity because of the presence of materials that ionize when washed into the water. Ground water inflows can have the same effects depending on the bedrock they flow through. Discharges to streams can change the conductivity depending on their make-up. A failing sewage system would raise the conductivity because of the presence of chloride, phosphate, and nitrate; an

designed to capture lakes that receive input from calcareous aquifer sources, which naturally contain higher levels of phosphorus than do lakes that receive most of their water from (low conductivity) rainfall.

Color primarily affects lake response to nutrients by limiting light at very high color levels, but color is also an indirect indication of the source of the water reaching the lake. High water color (> 40 PCU), which is imparted from breakdown of natural leaf litter, indicates that a lake is influenced by surface water runoff from forests and wetlands, and would contain higher natural nutrient levels than a rainfall driven system. Low color lakes (< 40 PCU) derive their water primarily from rainfall, unless high alkalinity is also present, meaning higher phosphorus Floridan aquifer groundwater has influenced the system.

After dividing lakes into categories of color and alkalinity, the DEP determined statistically strong, dose-response relationships between nutrients and chlorophyll a (an indicator of algal biomass or primary productivity). The DEP then used multiple lines of evidence, including paleolimnology, fisheries success, expert opinion, lack of harmful algal blooms, and user perception, to determine chlorophyll a levels that would be protective of designated uses. The DEP concluded that a chlorophyll *a* level of 20 ug/L would protect human and aquatic life uses in both colored lakes and in clear, high alkalinity lakes. For clear, low alkalinity lakes, the protective chlorophyll a threshold was set at 9 ug/L.

Because algal response is influenced by factors other than nutrients (grazing, macrophyte nutrient uptake, water retention time), the DEP contends the most scientifically defensible strategy for managing nutrients within the range of uncertainty is to verify a biological response prior to taking management action. If data demonstrate that a given lake is biologically healthy and does not experience excess algal growth (e.g., < 20 µg chlorophyll a/L in a colored lake or high conductivity clear lake) despite having nutrient concentrations within the range of uncertainty, then no nutrient reductions are needed.

Lakes Criteria					
Lake Type	**DEP Response (Chl-a ug/L)**	**EPA Response (Chl-a ug/L)**	**Stressor**	**DEP**	**EPA**
Clear/Low Alkalinity	9	6	TP (mg/L)	0.015 - 0.043	0.01 (0.01 – 0.03)
			TN (mg/L)	0.85 - 1.14	0.51 (0.51 – 0.93)
Clear/High Alkalinity	20	20	TP (mg/L)	0.030 - 0.087	0.03 (0.03 – 0.09)
			TN (mg/L)	1.0 - 1.81	1.05 (1.05 – 1.91)
Colored	20	20	TP (mg/L)	0.05 - 0.157	0.05 (0.05 – 0.16)
			TN (mg/L)	1.23 - 2.25	1.27 (1.27 – 2.23)

Florida's Spring Runs

Similar to the methods being used to establish numeric nutrient criteria for lakes and streams, the DEP utilized multiple lines of evidence taken from the results of different types of research as well as

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oil spill would lower the conductivity. The basic unit of measurement of conductivity is the mho or siemens. Conductivity is measured in micromhos per centimeter (µmhos/cm) or microsiemens per centimeter (µs/cm). Distilled water has a conductivity in the range of 0.5 to 3 µmhos/cm. The conductivity of rivers in the United States generally ranges from 50 to 1500 µmhos/cm. Studies of inland fresh waters indicate that streams supporting good mixed fisheries have a range between 150 and 500 µhos/cm. Conductivity outside this range could indicate that the water is not suitable for certain species of fish or macroinvertebrates. Industrial waters can range as high as 10,000 µmhos/cm. Source: http://water.epa.gov/type/rsl/monitoring/vms59.cfm

empirical data available from various monitoring programs to develop nitrate criteria for clear streams, including springs. The DEP focused on developing nitrate-nitrite criteria for springs and clear streams (< 40 PCU), rather than phosphorus, for four distinct reasons:

- Increases in nitrate-nitrite concentrations are nearly omnipresent in areas where anthropogenic loading to the land's surface has occurred
- Once in the ground water, de-nitrification is negligible and nitrate-nitrite appears to be transported as a conservative solute
- Although Florida's geology is naturally rich in phosphorus, there does not appear to be a trend of increasing phosphorus concentrations in spring discharges. While nitrate-nitrite concentrations have increased significantly in most spring discharges, phosphorus concentrations have remained relatively constant over the past 50 years
- Since springs are naturally rich in phosphorus, the majority of Florida springs are likely to have been historically nitrogen limited

Through extensive laboratory experiments, in situ field surveys, TMDL development activities for the Wekiva River and Rock Springs Run, studies, and using data derived from nutrient gradient studies of Rapid Periphyton Survey (algal responses to nutrients and other variables), the DEP derived a 0.35 mg/L nitrate-nitrite criterion for spring runs.[32] At monthly concentrations below 0.35 mg/L, the DEP obtained high confidence (95% Confidence Interval) that adverse responses will not be observed.

The EPA's Final Rule criteria threshold established for spring runs is identical to the DEP's threshold.

Site Specific Alternative Criteria for Florida Waters

Nutrient dynamics are complex and the impacts are site-specific, and there will always be cases where statewide criteria are over-protective for specific water bodies. To address this possibility, the DEP developed rule language for a new process for developing Site Specific Alternative Criteria (SSAC) for nutrients. This new "Type III" SSAC process would require a demonstration that the SSAC is fully protective of designated uses based on the SCI and LVI, for streams and lakes, respectively. Under the draft rule, a Type III SSAC would be adopted if two spatially and temporally independent biological health assessments indicated that the existing nutrient regime supported healthy biota. To ensure that the SSAC is also protective of downstream waters, DEP also added a requirement that all downstream waters attain water quality standards related to nutrients.

The DEP Plan included previously adopted nutrient TMDLs (adopted in Chapter 62-304, FAC) as SSACs, because the TMDLs:

- Establish site specific and sensitive responses to nutrient enrichment for a particular area
- Use data appropriate for a site specific assessment
- Establish a protective endpoint equivalent to numeric criteria
- Reflect geographically explicit protective conditions, and are more appropriate than a statewide criterion because it would be counter-productive for statewide nutrient criteria to supersede the TMDL.

The DEP designed the recommended revisions to Chapter 62-303 (Impaired Waters Rule) to implement the proposed revisions to Chapter 62-302. The revisions would have allowed the DEP to assess waters for nutrient impairment using the numeric nutrient criteria in addition to the current narrative nutrient impairment thresholds in the IWR, and to assess waters for biological impairment using the new SCI and LVI thresholds. Both rules are still in draft stages.[33]

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[32] During the development of the TMDL for these water bodies, protective nutrient concentration targets were derived using periphyton and water quality data collected from the Suwannee River and two tributaries, the Withlacoochee River and Santa Fe River (Hornsby et al. 2000). These data were considered applicable to the Wekiva River and Rock Springs Run since the Suwannee River is heavily influenced by spring inflow, and in the absence of anthropogenic inputs, the algal communities would be expected to be generally similar in composition to those in the Wekiva River and Rock Springs Run. DEP's *Nutrient Criteria Technical Support Document*, Chapter 4.

[33] See Surface Water Draft Rules at http://www.dep.state.fl.us/water/rules_dr.htm

The EPA did not include Florida's water bodies with previously-approved nutrient TMDLs as SSAC under the Final Rule. As such, the DEP will be required to submit the TMDLs again to the EPA for consideration as SSAC under the Final Rule.

Downstream Protection of Florida Waters

The DEP could discern no defensible method to quantitatively describe the maximum nutrient concentrations allowed for the protection of downstream waters. According to the DEP, there exists no adequate, statewide calibrated model that could be used to numerically determine, without great uncertainty, protective nutrient loads for downstream lakes or estuaries. With no scientifically defensible solution to reply upon, the DEP proposed a narrative statement to ensure downstream waters protection.

The EPA did not include Florida's downstream protection methodology in the final rule. Instead, the EPA promulgated an equation to adjust in-stream total phosphorus criteria to protect downstream lakes.

EPA's final rule proposes an alternative regulatory approach the state may consider if meeting numeric criteria for certain water bodies is unattainable; re-designation of water use. Pursuant to the CWA, states establish water quality standards (WQS) in three steps:

- Establish designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes
- Establish water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use
- Establish an anti-degradation policy to maintain and protect existing uses and high quality waters

In 2009, the DEP began to refine the current system of designated uses, primarily because certain engineered water systems that were designed for flood control or as conveyances to treatment areas are currently designated as Type III waters, for aquatic life and recreation purposes. The DEP amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters. Pursuant to 62-302.400(5), F.A.C.:

> Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. "Limited recreation" means opportunities for recreation in the water are reduced due to physical conditions. "Limited population of fish and wildlife" means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:
> (a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or
> (b) Altered waterbodies that were dredged or filled prior to November 28, 1975. For purposes of this section, "altered waterbodies" are those portions of natural surface waters that were dredged or filled prior to November 28, 1975, to such an extent that they exhibit separate and distinct hydrologic and environmental conditions from any waters to which they are connected.

Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

<u>Snapshot Comparison of the EPA's Final Rule and the DEP Plan</u>

In general, the quantitative values promulgated by the EPA for lakes and streams were similar to those in the DEP's NNC Plan, and the value reached for springs was identical. In key areas related to implementation, however, there are significant differences in the two approaches.

- The DEP's multi-tiered approach (numerical criteria with follow-up biological assessment) was not adopted by the EPA. The DEP demonstrated that some water bodies with nutrient thresholds that exceed the value of undisturbed reference waters have healthy biota and do not need restoration. The DEP's intent was to have "biological confirmation" that nutrient concentrations above the numeric standard actually resulted in biological impairment of the water body.
- The EPA rejected the DEP's approach to protect downstream lake values by using the narrative criteria, and instead promulgated an equation to adjust in-stream total phosphorus criteria to protect downstream lakes. This will likely result in more stringent instream values.
- The EPA did not accept Florida's existing nutrient TMDLs as meeting CWA WQS under the rule, even though the TMDLs have already been approved by the EPA. As a result, the DEP must re-establish to the EPA that water bodies with approved TMDLs comply with provisions of the CWA.

Cost of Compliance with the Final Rule

The fiscal impact of the EPA's rule on industrial dischargers, municipal wastewater and urban stormwater facilities, agriculture, and the regulatory agencies is unclear. EPA-generated annualized cost estimates to achieve the numeric criteria ($130-$150 million) differ dramatically from estimates provided by the DEP ($5.7 - $8.4 billion). The difference in cost estimates is largely due to the different baselines utilized by the two entities: the EPA based its cost estimates on the difference between the EPA criteria and the criteria in the draft DEP Plan. A study commissioned by the Florida Water Environment Association Utility Council in November, 2010, estimates that wastewater utilities alone will spend between $24 billion and $51 billion in capital costs for additional wastewater treatment facilities and incur increases in annual operating costs between $4 million and $1 billion to comply with the federal numeric nutrient criteria. According to the commissioned study, the EPA's cost estimate inadequately accounted for existing baseline conditions, failed to address all direct costs, and did not consider all indirect costs to businesses and the public, including the costs of uncertainty. If the EPA enforces "end-of-pipe" criteria (requiring all discharger effluent levels to be at or below the federally-promulgated standards), the total annual costs could range from $3.1 to $8.4 billion (based on the estimated fifth and ninety-fifth percentile of costs). Even if EPA enforces criteria to less strict BMPs and Limit of Technology standards in which effluent is not at or below the federal standard, then the annual costs could range from $1.0 to $3.2 billion (based on the estimated fifth and ninety-fifth percentile of costs in this scenario).

Because the numeric nutrient criteria is water body-specific, the expected costs for compliance will be largely site-specific and contingent upon the level of impairment. The EPA only just published guidance documents detailing how the rule is to be implemented and cost estimates have not yet been updated.

The EPA is Sued over Florida's Narrative Criteria

On July 17, 2008, five environmental groups (the Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper) sued the EPA, alleging failure on the part of the federal agency to comply with the CWA. These groups initially alleged that the EPA's 1998 National Strategy for the Development of Regional Nutrient Criteria was a necessity determination, pursuant to s. 303(c)(4)(B) of the CWA, requiring the EPA to promulgate numeric nutrient rules for Florida. Their amended complaint asserted the 1998 Clean Water Action Plan, coauthored with the U.S. Department of Agriculture, was the necessity determination. The EPA initially defended the suit and contested the plaintiffs' arguments. However, in an EPA internal memorandum from December, 2008, the writer warned that a judicial finding in favor of the plaintiffs could result in the EPA being required to promulgate numeric nutrient rules for the other 49 states. The internal memorandum proposes a strategy to avoid this possibility: if the EPA issues a s. 303(c)(4)(B)

necessity determination, that may be used as a basis to settle the lawsuit and request a dismissal from the court.[34]

On January 14, 2009, the EPA placed the DEP on formal notice that numerical criteria for nutrients were necessary for compliance with the CWA. This notice triggered a deadline of one year for the EPA to develop numeric nutrient criteria for Florida's surface waters and 24 months to develop numeric criteria for coastal waters, unless the state proposed criteria acceptable to the EPA before final promulgation. On August 19, 2009, the EPA entered into a consent decree to settle the lawsuit filed by the five environmental groups. The EPA committed to propose numeric nutrient standards for inland waters (lakes and flowing waters), as well as for estuarine and coastal waters, by certain dates.[35] The DEP did not formally submit numeric nutrient criteria to the EPA before the deadline.

In drafting the proposed rule, the EPA had the benefit of more than seven years of DEP data and analysis, DEP's nutrient plans, as well as technical support documentation. The DEP maintained contact with the EPA while the EPA formulated the proposed rule.

On January 14, 2010, EPA Administrator Lisa Jackson signed EPA's rule proposing numeric nutrient criteria for Florida's fresh waters. Ten months later, on November 14, 2010, Administrator Jackson signed the final rule adopting numeric nutrient criteria for Florida's fresh waters. On December 6, 2010, the EPA published its final administrative rule. Fifteen months from the publication date, the established numeric water quality standards for nutrients in Florida's inland lakes and flowing waters take effect.

Legal Challenges to the EPA's Final Rule

Several parties, representing the environment, state and local governments, water utilities, wastewater, stormwater, agriculture, and fertilizer industries, have challenged the EPA-promulgated numeric nutrient rules in federal court.[36] With the exception of the challenge filed by environmental groups, the complaints share a common theme; that the EPA's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory authority; or without observance of procedures required by law.[37] EarthJustice, representing the environmental groups, is challenging the portion of the Final Rule providing a watershed approach to Site Specific Alternative Criteria.

The legal challenges were filed in federal courts located in Tallahassee and in Pensacola, Florida. To date, the Pensacola cases were transferred to Tallahassee and may be consolidated. The EPA has not yet established which documents will comprise the administrative record for the case.

B. SECTION DIRECTORY:

Section 1 creates s. 403.0675. F.S., prohibiting state and local governments from implementing or giving any effect to the EPA-promulgated numeric nutrient criteria in any state or local government

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[34] Only 15 months earlier, the EPA agreed with Florida's methodology and plan to finalize numeric nutrient rules by the end of 2010. The DEP was not a party to the lawsuit, however, several groups representing utilities, local governments, and agriculture in the state intervened.

[35] The EPA numeric nutrient criteria for Florida's inland waters (except for south Florida) will be effective March 6, 2012. The EPA will propose numeric nutrient criteria for Florida's estuaries, flowing waters in south Florida (including canals), and the downstream protection values for flowing waters into estuaries on or before November 14, 2011. The deadline for promulgating a final rule is August 15, 2012.

[36] The State of Florida v. Jackson, Case No. 03:10-cv-503-RV-MD; The Mosaic Company, Inc., v. Jackson, Case No. 03:10-cv-506-RV-EMT; The Fertilizer Institute v. U.S. EPA, Case No. 03:10-cv-507-RS-MD; CF Industries, Inc., v. Jackson, Case No. 03:10-cv-513-MCR-MD; Destin Water Users, Inc., South Walton Utility Co., Inc., Emerald Coast Utilities Authority, City of Panama City, Okaloosa County Board of County Commissioners v. Jackson, Case No. 03:10-cv-532-MCR-EMT; Florida League of Cities, Inc., and Florida Stormwater Association, Inc., v. Lisa P. Jackson, Case No. 3:11-cv-11; Florida Pulp and Paper Association Environmental Affairs, Inc., Southeast Milk, Inc., and Florida Fruit and Vegetable Association v. Lisa Jackson, Case No. 3:11-cv-47-MCR/EMT; Florida Wildlife Federation v. EPA, Case No. 04:10-cv-511-SPM-WCS (filed prior to promulgation); Florida Wildlife Federation v. Jackson, Case No. 04:08-cv-324-RH-WCS (filed before the issuance of the Determination Letter).

[37] Citing 5 U.S.C. s. 706(2)(A)(C) and (D).

regulatory program; authorizing the DEP to promulgate numeric nutrient criteria; designating certain existing TMDLs as site-specific numeric nutrient water quality criteria under certain situations; providing authority to modify such criteria.

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See, Section D, FISCAL COMMENTS

2. Expenditures:

   See, Section D, FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See, Section D, FISCAL COMMENTS

2. Expenditures:

   See, Section D, FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See, Section D, FISCAL COMMENTS

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate overall, and contingent on actions by the EPA and other affected parties after the bill goes into effect. Public and private entities requiring new or renewal NPDES permits on or after March 6, 2012, when the federal criteria is effective, will need to comply with the federally-promulgated criteria associated with the affected water body. If the DEP issues the permits or renewals, some delay in the permitting process may occur due to the fact that (a) the bill prohibits the DEP from implementing the federal criteria, and (b) the EPA is not likely to approve an NPDES permit with a water-quality based effluent limit that does not comply with the EPA criteria. There is a possibility the DEP may face an administrative challenge to each NPDES permit the DEP issues after March, 2012.

If the EPA assumes authority of the NPDES permitting program, state and local jobs associated with that program may be lost as federal funding for the program is withdrawn along with the program. Private and public entities requiring NPDES permits will need to seek those permits from the EPA, and will be required to seek any and all state water-quality permits as well.

DEP rulemaking authority is provided for implementation of certain portions of the bill. According to DEP estimates in the recent past, costs associated with rulemaking start around $10,000, not including costs associated with legal challenges. It is not known yet if state regulators will need to revise existing rules regarding Basin Management Action Plans or Best Management Practices.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DEP to promulgate rules establishing numeric nutrient criteria for surface waters and provides specific conditions thereto. The bill also provides DEP rulemaking authority designating certain water bodies' TMDLs as sight-specific numeric nutrient water quality criteria.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to numeric nutrient water quality criteria; creating s. 403.0675, F.S.; prohibiting the implementation of certain federal numeric nutrient water quality criteria rules by the Department of Environmental Protection, water management districts, and local governmental entities; authorizing the department to adopt numeric nutrient water quality criteria for surface waters under certain conditions; providing that certain total maximum daily loads and associated numeric interpretations constitute site specific numeric nutrient water quality criteria; providing for effect, governance, and challenge of such criteria;; providing an effective date.

WHEREAS, the United States Environmental Protection Agency's numeric nutrient water quality criteria rules for Florida's lakes and flowing waters, finalized on December 6, 2010, and published in Volume 75, No. 233 of the Federal Register, lack adequate scientific support and fail to take into account the unique characteristics of the state's many thousands of rivers, streams, and lakes, and

WHEREAS, the final numeric nutrient water quality criteria rules fail to incorporate and actually undermine the state's science-based nutrient water quality programs, including the total maximum daily loads program and numeric endpoints promulgated thereunder that EPA has approved as protective of designated uses, and

WHEREAS, the federal agency declined to subject its unprecedented, Florida-only numeric nutrient water quality criteria rules to an independent scientific peer review or economic analysis, and

WHEREAS, implementation of the numeric nutrient water quality criteria rules would have severe economic consequences on the state's agriculture, local governments, wastewater and water utilities, economically vital industries, small businesses, and residents living below the poverty level or on fixed incomes, and

WHEREAS, implementation of the federal agency's numeric nutrient water quality criteria rules would require Floridians to needlessly expend resources pursuing numerous exemptions, variances, and other relief mechanisms made necessary by the scientific flaws underlying the federal agency's criteria, consequently resulting in the delay of restoration projects that are already underway in the total maximum daily loads program and other water quality programs, and

WHEREAS, the Clean Water Act grants the State of Florida primacy in protecting state waters from pollution, and the federal agency's numeric nutrient water quality criteria rulemaking undermines this cooperative federalism structure,

NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 403.0675, Florida Statutes, is created to read:

403.0675 Numeric nutrient water quality criteria.-

(1)(a) The department, water management districts, and all other state, regional, and local governmental entities may not implement or give any effect to the United States Environmental Protection Agency's nutrient water quality criteria for the state's lakes and flowing waters, finalized on December 6, 2010, and published in Volume 75, No. 233 of the Federal Register, in any regulatory program administered by the department, water management district, or governmental entity.

(b) The prohibition in paragraph (a) does not limit the ability of any water management district or any other state, regional, or local governmental entity from applying for any pollution discharge permit or complying with the conditions of such permits, including those issued under the National Pollution Discharge Elimination System, or from implementing best management practices, source control or pollution abatement measures for water quality improvement programs as provided by law; provided, however, that nothing in this section shall be construed to derogate or limit county and municipal home rule authority.

(2) Notwithstanding subsection (1), the department may adopt numeric nutrient water quality criteria for a particular surface water or group of surface waters if the department determines that such criteria are necessary to protect aquatic life reasonably expected to inhabit those waters. The numeric

nutrient water quality criteria adopted pursuant to this subsection:

(a) Shall be based on objective and credible data, studies and reports establishing the nutrient levels which the water bodies may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.

(b) May be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.

(3)(a) Numeric nutrient total maximum daily loads and associated numeric interpretations of the narrative nutrient criterion, whether total nitrogen, total phosphorus, nitrate/nitrite, or a surrogate nutrient standard, such as chlorophyll-a, biological demand, or specific biological metric, developed by the department and approved by the United States Environmental Protection Agency as of December 6, 2010, constitute site specific numeric nutrient water quality criteria.

(b) The site specific numeric nutrient water quality criteria established pursuant to this subsection are:

1. Not effective if the United States Environmental Protection Agency disapproves, approves in part, or conditions its approval of the criteria, unless ratified by the Legislature.

2. Subject to s. 403.067, including any rules or orders issued thereunder, and to challenge under s. 120.56(3).

(c) Once approved and effective, the site specific numeric nutrient water quality criteria established pursuant to this subsection may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804.

Section 2. This act shall take effect July 1, 2011.