

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 1052 (510850)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Environmental Preservation and Conservation Committee; and Senator Hays

SUBJECT: Environmental Control

DATE: February 24, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Howard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Howard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1052:

- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter.
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed.
- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading.
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency.
- Deletes the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund within the Department of Environmental Protection (DEP).
- Allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the facility closure or long-

term care activities if funds under the insurance policy or alternative forms of financial assurance are insufficient for these activities.

- Modifies conditions necessary for the DEP to use funds from the solid waste landfill closure account for the closing and long-term care of solid waste management facilities.
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or water management district (WMD) if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system meets all statutory requirements.
- Requires the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

There is a significant indeterminate fiscal impact to state funds related to solid waste facility closures or long-term care activities. The bill provides an effective date of July 1, 2016.

II. Present Situation:

Water Well Contractor Licenses

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a water management district (WMD).¹ Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located.² In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete an application form; and pay a nonrefundable fee.³

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.⁴

Clay Settling Areas

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres.⁵ The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity,

¹ Section 373.323(1), F.S.

² Section 373.323(2), F.S.

³ Section 373.323(3), F.S.

⁴ *Id.*

⁵ DEP, *Phosphate Mines*, <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited Jan. 15, 2016).

vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.⁶ A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays.⁷ Mining areas must be reclaimed after the completion of mining operations.⁸ Reclamation of mining areas must be completed according to a schedule detailed in s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.⁹

The Department of Environmental Protection (DEP) has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.¹⁰

Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.¹¹

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.¹² Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.¹³ Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ Section 378.209(1), F.S.

⁹ Section 378.208(2)(a)-(f), F.S.

¹⁰ DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹¹ DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 15, 2016).

¹² *Id.* at 1-2.

¹³ Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), available at <http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf> (last visited Jan. 14, 2016).

¹⁴ DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 2 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 14, 2016). See also Fla. Admin. Code R. 62-306, for rules pertaining to water quality credit trading in Florida.

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.¹⁵

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;
- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required; and
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

Variiances

The Florida Air and Water Pollution Control Act was enacted in 1967.¹⁶ The legislative declaration states in part that, “[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water.”¹⁷

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution.
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required.

¹⁵ *Id.*

¹⁶ Chapter 67-436, Laws of Fla.

¹⁷ Section 403.021(1), F.S.

- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.¹⁸

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. “The most important feature of authorization is the State’s agreement to issue permits that conform to the regulatory requirements of the law, to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program.”¹⁹ Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.²⁰

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;
- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.²¹

Solid Waste Management Trust Fund

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering,²² waste tire fees,²³ and oil related fees, fines and penalties.²⁴ The DEP must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of the DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs;
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management;
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control;

¹⁸ Section 403.201(1)(a)-(c), F.S.

¹⁹ DEP, *Hazardous Waste Regulation Section*, available at <http://www.dep.state.fl.us/waste/categories/hwRegulation/> (last visited on January 18, 2016).

²⁰ Section 403.201(2), F.S.

²¹ Fla. Admin. Code R. 62-4.050.

²² Section 403.413(6)(a), F.S.

²³ Section 403.718(2), F.S.

²⁴ Section 403.759, F.S.

- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level; and
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.²⁵

Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.²⁶ Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.²⁷

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.²⁸ Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A closure design plan;
- A closure operation plan;
- A long-term care plan; and
- A demonstration that proof of financial assurance for long-term care will be provided.²⁹

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.³⁰ The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.³¹

Operators of solid waste disposal units must receive a closure permit to close a landfill.³² Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.³³

These facilities must also perform long-term care for 30 years.³⁴ This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling

²⁵ Section 403.709(1), F.S.

²⁶ Section 403.705, F.S.

²⁷ Section 403.706, F.S.

²⁸ Fla. Admin. Code R. 62-701.100.

²⁹ Fla. Admin. Code R. 62-701.600(2).

³⁰ Section 403.7125(1), F.S.

³¹ Section 403.7125(2), F.S.

³² Fla. Admin. Code R. 62-701.600(2).

³³ Fla. Admin. Code R. 62-701.600(3)(f)2.

³⁴ Fla. Admin. Code R. 62-701.620(1)

subsidence, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.³⁵

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. The DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by the DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by the DEP; and
- The DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the implementing bill for the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, and will expire July 1, 2016.³⁶

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.³⁷

General Permits

A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres.³⁸ When the stormwater management system is designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S., there is a rebuttable presumption that the discharge for such system will comply with state water quality standards. The construction of such a system may proceed without any further agency action by the DEP or water management district if, within 30 days after construction begins, an electronic self-certification is submitted to the DEP or applicable WMD that certifies the proposed system was designed by a Florida registered professional to meet the following requirements:

- The total project area involves less than 10 acres and less than two acres of impervious surface;
- No activities will impact wetlands or other surface waters;

³⁵ *Id.*

³⁶ Ch. 2015-222, s. 53, Laws of Fla.

³⁷ DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

³⁸ Section 403.814, F.S.

- 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;
- The project is not part of a larger common plan, development, or sale; and
- The project does not:
 - Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;
 - Cause adverse impacts to existing surface water storage and conveyance capabilities;
 - Cause a violation of state water quality standards; or
 - Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042, F.S., or a work of the district established pursuant to s. 373.086, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

Section 2 amends s. 378.209, F.S., to provide that when the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the settling area is completed.

Section 3 amends s. 403.067, F.S., to allow the Department of Environmental Protection (DEP) to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.³⁹

Section 4 amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in a provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

Section 5 amends s. 403.709, F.S., to delete the July 1, 2016, expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund. The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities. Funds within the solid waste landfill closure account may be utilized for this purpose, if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the closing or long-term care of the facility, and the DEP has used all of the funds from the insurance policy or alternative form of financial assurance.

³⁹ See Fla. Admin. Code R. 62-306.400.

The bill amends the conditions necessary for the DEP to use funds from the solid waste landfill closure account to contract with a third party for the closing and long-term care of a solid waste management facility. Rather than just requiring that a permittee provided proof of financial assurance for closure in the form of an insurance certificate, the permittee must have provided proof of financial assurance when required by permit or rule and, rather than just requiring an insurance certificate, the permittee may have also provided an alternative form of financial assurance mechanism established pursuant to s. 403.7125, F.S.

Section 6 amends s. 403.814, F.S., to require, stormwater management systems to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to ch. 373, part IV, F.S. The bill changes the requirement for the timing of the submittal of an electronic self-certification from within 30 days after construction starts to before construction starts. As part of the self-certification submitted to the DEP or a WMD, the bill specifies that a Florida registered professional must certify that the proposed system will meet the specified requirements in addition to any requirements in part IV of ch. 373, F.S.

Section 7 reenacts s. 373.414(17), F.S., due to changes made by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/CS/SB 1052 may have a positive indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.

C. Government Sector Impact:

The Department of Environmental Protection (DEP) has requested \$1,000,000 from the Solid Waste Management Trust Fund in their Fiscal Year 2016-2017 Legislative Budget Request to cover costs for closure and long-term care of facilities. The Senate has included this issue in SB 2500, the Fiscal Year 2016-2017 General Appropriations Bill.

The bill has no other fiscal impact to the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that if insufficient funds exist from the insurance policy or alternative forms of financial assurance, the Department of Environmental Protection (DEP) may use funds from the solid waste landfill closure account to cover costs. This language needs to be modified to provide that if insufficient funds exists, the DEP may use funds from the Solid Waste Management Trust Fund. The solid waste landfill closure account is only authorized to contain insurance policy funding or alternative forms of financial assurance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.323, 378.209, 403.067, 403.201, 403.709, and 403.814.

This bill reenacts 373.414 of the Florida Statutes.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on General Government on February 11, 2016:

The committee substitute:

- Removes language that provided incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs) and directing the WMDs to adopt rule providing water conservation incentives;
- Removes language that makes revisions for certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorization for the Lake County legislative delegation to waive membership qualifications based on good cause;
- Removes the requirement for the Department of Environmental Protection (DEP) to adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;

- Removes prerequisites for the institution of flow control ordinances by local governments;
- Removes language prohibiting local governments from implementing flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility;
- Allows construction of a stormwater management system to proceed without any further agency action by the DEP or the WMD if, before construction begins, an electronic self-certification is submitted to the DEP or the WMD that certifies that the proposed system was designed by a Florida registered professional, and that the registered professional has certified that the proposed system meets all statutory requirements;
- Adds language that in order for the DEP to contract for the closing and long-term care of a solid waste management facility, a permittee must have shown proof of financial assurance which can include an alternative form of financial assurance mechanism in addition to an insurance certificate;
- The bill allows the DEP to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed to perform or complete the approved facility closure or long-term care activities if the amount available under the insurance policy or alternative form of financial assurance is insufficient or otherwise inaccessible to perform or complete the facility closing or long-term care of the facility;
- Removes the appropriation from the Solid Waste Management Trust Fund in Fiscal Year 2016-2017 for the closure and long-term care of solid waste management facilities; and
- Requires, rather than encourages, the stormwater management system to be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373, F.S.

CS by Environmental Preservation and Conservation on January 20, 2016:

For constructed clay settling areas, the CS provides that if the beneficial use of a clay settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

B. Amendments:

None.