Agriculture & Natural Resources Subcommittee

Meeting Packet

Wednesday, January 11, 2012
3:30 pm
12 HOB

Dean Cannon
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Wednesday, January 11, 2012 03:30 pm

End Date and Time: Wednesday, January 11, 2012 06:00 pm

Location: 12 HOB

Duration: 2.50 hrs

Consideration of the following bill(s):

HB 157 Water Management Districts by Porter, Pilon
HB 181 Sale of Advertising by Slosberg
HB 373 Environmental Permits by Glorioso
HB 463 Concealed Weapons or Firearms by Kreegel, Brandes
HB 663 Solid Waste Management Facilities by Goodson
HB 691 Beach Management by Frishe
HB 821 Packing of Agricultural Products by Albritton
HB 827 Limited Agricultural Associations by Porter
HB 1021 Agriculture by Albritton
HB 4121 Comprehensive Statewide Water Conservation Program by Pilon
HB 4123 Federal Environmental Permitting by Burgin

NOTICE FINALIZED on 01/09/2012 16:18 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 157 Water Management Districts
SPONSOR(S): Porter & Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 560

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

SUMMARY ANALYSIS

Under current law, the state of Florida has regulatory authority over various activities that affect surface waters and wetlands, primarily through the Environmental Resource Permit (ERP) program. The program is implemented jointly by the Department of Environmental Protection (DEP) and the five water management districts (WMDs). Current law also grants the WMDs the authority to implement the water supply and planning policies of the state, and issue permits for the consumptive use of water. Each WMD also is responsible for water resource management and development. Each WMD governing board is required to include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans. When the geographic area of a project or local government crosses WMD boundaries, the affected WMDs are authorized to enter into an interagency agreement designating one WMD with regulatory responsibilities for the geographic area. However, the WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Current law also requires the WMDs to establish minimum flows and levels (MFLs) for priority water bodies to prevent significant harm from water withdrawals. If the existing flow or level of a water body is below or projected in 20 years to fall below established MFLs, then a recovery strategy must be implemented to restore the system to the established MFLs or a prevention strategy implemented to prevent the system from falling below the established MFLs. MFLs are adopted by rule by the WMDs and are subject to challenges under the Administrative Procedures Act.

The bill provides that when the geographic area of a project or local government or regional water supply authority crosses WMD boundaries, the affected WMDs are authorized to designate a single affected district by interagency agreement to implement in that area all or part of the applicable resource management responsibilities under chapter 373, F.S. These interagency agreements, which apply to the geographic area of a local government, must have the concurrence of the affected local government. This provision only applies to resource projects for which a measurable water resource benefit can be demonstrated for the geographic area of the local government or regional water supply authority.

The bill also requires the governing board of a WMD, in determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, to apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by the adjoining WMD. The bill also provides that the governing board cannot authorize a consumptive use of water that violates any reservation or any MFL, except as provided for in an adopted recovery or prevention strategy. Lastly, the bill provides that any rule applied pursuant to these provisions that is challenged under the Administrative Procedures Act must be defended by the WMD that adopted the rule.

The bill does not appear to have a fiscal impact on state government. The bill has a potentially positive fiscal impact on WMDs who enter into interagency agreements by reducing the duplication of services and promoting streamlining.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Interagency Agreements

Current Situation

Under chapter 373, F.S., the state has regulatory authority over various activities that affect surface waters and wetlands, primarily through the Environmental Resource Permit (ERP) program. The program is implemented jointly by the Department of Environmental Protection (DEP) and the five water management districts (WMDs)[1]. Operating Agreements between the DEP and the WMDs outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a District has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs).

The WMDs have regulatory authority over reviewing and taking action on all other applications, mostly larger commercial and residential developments. Chapter 373, F.S., also grants the WMDs with the authority to implement the water supply and planning policies of the state, and issue permits for the consumptive use of water. Each WMD is also responsible for water resource management and development. Section 373.705, F.S., provides that it is the intent of the Legislature that WMDs take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects. The WMDs are encouraged to implement water resource development as expeditiously as possible in areas subject to regional water supply plans. Each WMD governing board is required to include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans.

Section 373.046(4), F.S., authorizes the DEP and the WMDs to modify the division of responsibilities and to enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, F.S., to provide for greater efficiency and to avoid duplication in the administration of part IV of chapter 373, F.S. (management and storage of surface waters), by designating certain activities which will be regulated by either the WMDs or the DEP. In developing the interagency agreements, the WMDs and the DEP must take into consideration the technical and fiscal ability of each WMD to implement all or some of the provisions of part IV of chapter 373, F.S.

[1] The five water management districts include: Northwest Florida Water Management District, Suwannee River Water Management District, St. John's River Water Management District, Southwest Florida Water Management District, and South Florida Water Management District.

Section 373.046(6), F.S., provides that when the geographic area of a project or local government crosses WMD boundaries, the affected WMDs may designate a single affected WMD by interagency agreement to implement in that area, under the rules of the designated WMD, all or part of the applicable regulatory responsibilities under this chapter. Interagency agreements entered into under this section, which apply to the geographic area of a local government, must have the concurrence of the affected local government.

WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Effect of Proposed Changes

The bill creates s. 373.046(7), F.S., to provide that when the geographic area of a project or local government or regional water supply authority crosses WMD boundaries, the affected WMDs are authorized to designate a single affected district by interagency agreement to implement in that area all or part of the applicable resource management responsibilities under chapter 373, F.S. These interagency agreements, which apply to the geographic area of a local government, must have the concurrence of the affected local government. The provisions in this subsection only apply to resource projects for which a measurable water resource benefit can be demonstrated for the geographic area of the local government or regional water supply authority.

Conditions for Issuance of Consumptive Use Permits

Current Situation

For uses other than private wells for domestic use, the DEP or the WMDs may require any person seeking to use "waters in the state" to obtain a consumptive use permit (CUP). A CUP establishes the duration and type of water use as well as the maximum amount that may be used. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the WMD and not harmful to the water resources of the area. Section 373.223, F.S., provides that to obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use:

1. Must be a "reasonable-beneficial use" as defined in s. 373.019, F.S.[2];
2. Must not interfere with any presently existing legal use of water; and
3. Must be consistent with the public interest.

Section 373.223(4), F.S., provides that a WMD governing board, by regulation, can "reserve" from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations must be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest. To help ensure that permitted withdrawals do not harm surface or groundwater resources, WMDs are required to establish:

- Minimum flows for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area; and
- Minimum water level. The minimum water level is the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area[3].

[2] "Reasonable-beneficial use" means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.
[3] Section 373.042, F.S.

The goal of establishing minimum flows and levels (MFLs) is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new CUP application. MFLs are adopted by rule by the WMDs and are subject to chapter 120, F.S., challenges. MFLs are established using the best available data and are independently and scientifically peer reviewed. To date, 322 MFLs have been adopted statewide, and an additional 200 are included on the priority lists for future adoption. If the existing flow or level of a water body is below or projected in 20 years to fall below established MFLs, then a recovery strategy must be implemented to restore the system to the established MFLs or a prevention strategy implemented to prevent the system from falling below the established MFLs.

The WMDs have been established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, a WMD is not required to apply the adopted reservations, MFLs, and recovery and prevention strategies of a neighboring WMD in determining the effect of a proposed consumptive use of water on the water resources of an adjoining WMD. To do so would require the WMD to go through its own rule making process to adopt the regulations of the adjoining WMD. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

Effect of Proposed Changes

The bill creates s. 373.223(6), F.S., to require the governing board of a WMD, in determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, to apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by the adjoining WMD. The bill also provides that the governing board cannot authorize a consumptive use of water that violates any reservation adopted pursuant to s. 373.223(4), F.S., discussed above, or any MFL, except as provided for in an adopted recovery or prevention strategy. Lastly, the bill provides that any rule applied pursuant to this subsection that is challenged under chapter 120, F.S., must be defended by the WMD that adopted the rule.

B. SECTION DIRECTORY:

Section 1. Amending s. 373.047, F.S., authorizing WMDs to enter into interagency agreements for resource management activities under specified conditions; providing applicability.

Section 2. Amending s. 373.223, F.S., requiring WMDs to apply specified reservations, minimum flows and levels, and recovery and prevention strategies in determining certain effects of proposed consumptive uses of water; prohibiting water WMDs from authorizing certain consumptive uses of water; providing an exception; providing requirements for the challenge of specified rules.

Section 3. Provides an effective date.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has a potentially positive fiscal impact on WMDs who enter into interagency agreements by reducing the duplication of services and promoting streamlining.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes a water management district to apply the reservations, minimum flows and levels, and recovery or prevention strategies adopted by an adjoining district, without having to adopt them by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to water management districts; amending s. 373.046, F.S.; authorizing water management districts to enter into interagency agreements for resource management activities under specified conditions; providing applicability; amending s. 373.223, F.S.; requiring water management districts to apply specified reservations, minimum flows and levels, and recovery and prevention strategies in determining certain effects of proposed consumptive uses of water; prohibiting water management districts from authorizing certain consumptive uses of water; providing an exception; providing requirements for the challenge of specified rules; providing an effective date.

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

Section 1. Subsection (7) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(7) When the geographic area of a project or local government or regional water supply authority crosses water management district boundaries, the affected districts may designate a single affected district by interagency agreement to implement in that area all or part of the applicable resource management responsibilities under this chapter. Interagency agreements entered into under this subsection which apply to the

geographic area of a local government must have the concurrence of the affected local government. This subsection only applies to resource projects for which a measurable water resource benefit can be demonstrated for the geographic area of the local government or regional water supply authority.

Section 2. Subsection (6) is added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(6) In determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, the governing board shall apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by the adjoining district. The governing board may not authorize a consumptive use of water that violates any reservation adopted pursuant to subsection (4) or any minimum flow or level adopted pursuant to ss. 373.042 and 373.0421, except as provided for in an adopted recovery or prevention strategy. Any rule applied pursuant to this subsection that is challenged under s. 120.56 or s. 120.569 shall be defended by the district that adopted the rule.

Section 3. This act shall take effect July 1, 2012.

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 Porter offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (7) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(7) If the geographic area of a resource management activity, study, or project crosses water management district boundaries, the affected districts may designate a single affected district to conduct all or part of the applicable resource management responsibilities under this chapter, not including those regulatory responsibilities that are subject to subsection(6). If funding assistance is provided to a resource management activity, study, or project, the district providing the funding must ensure that some or all the benefits accrue to

the funding district. This subsection shall not impair any interagency agreement in effect on July 1, 2012.

Section 2. Subsection (6) is added to section 373.223, Florida Statutes, to read:

373.223 Conditions for a permit.—

(6) In determining the effect of a proposed consumptive use of water on the water resources of an adjoining district, the governing board shall apply, without adopting by rule, the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule after July 1, 2012, by the adjoining district. The governing board may not authorize a consumptive use of water that violates any reservation adopted pursuant to subsection (4) or any minimum flow or level adopted pursuant to ss. 373.042 and 373.0421, after July 1, 2012, unless such permit is issued in accordance with the recovery or prevention strategy adopted by rule by the adjoining district. The district may grant a variance from the recovery or prevention strategy if the applicant identifies an alternative strategy to assist with the recovery of or the prevention of harm to a water body. Any rule applied pursuant to this subsection that is challenged under s. 120.56 or s. 120.569 shall be defended by the district that adopted the rule. This subsection does not apply to and may not be considered for any permit issued before July 1, 2012 during a review of a compliance report submitted pursuant to s. 373.236. Notwithstanding, a district must consider a reservation, minimum flows and levels, and recovery strategies adopted by rule after July 1, 2012 by the adjoining district if a modification of a

permit issued prior to July 1, 2012 is requested by the permittee to increase permitted quantities or to transfer of permitted quantities to a new or existing source.

Section 3. Section 373.605, Florida Statues, is amended to read:

373.605 Group insurance for water management districts.—

(1) The governing board of a ~~any~~ water management district may ~~is hereby authorized and empowered to~~ provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss.112.08, 112.09, 112.10, 112.11, and 112.14.

(2) The governing board of a water management district may provide group insurance for its employees and the employees of another water management district in the same manner and with the same provisions and limitations authorized for other public employees by ss.112.08, 112.09, 112.10, 112.11, and 112.14.

~~(2) Any and all insurance agreements in effect as of October 1, 1974, which conform to the provisions of this section are hereby ratified.~~

Section 4. Subsection 373.709(3), Florida Statutes, is amended to read:

373.709 Regional water supply planning.—

(3) The water supply development component of a regional water supply plan which deals with or affects public utilities and public water supply for those areas served by a regional water supply authority and its member governments ~~within the boundary of the Southwest Florida Water Management District~~ shall be developed jointly by the authority and the applicable

water management district. In areas not served by regional water supply authorities, or other multijurisdictional water supply entities, and where opportunities exist to meet water supply needs more efficiently through multijurisdictional projects identified pursuant to paragraph (2)(a), water management districts are directed to assist in developing multijurisdictional approaches to water supply project development jointly with affected water utilities, special districts, and local governments.

Section 5. Subsection (5) is added to section 373.171, Florida Statutes, to read:

373.171 Rules.—

(5) Cooperative funding programs are not subject to the rulemaking requirements of chapter 120. However, any portion of an approved program which affects the substantial interests of a party is subject to s. 120.569.

Section 6. This act shall take effect July 1, 2012.

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

Remove the entire title and insert:

An act relating to water management districts; amending s. 373.046, F.S.; authorizing districts to enter into interagency agreements for resource management activities under specific conditions; providing applicability; amending s. 373.223, F.S.; requiring districts to apply specific reservations, minimum flows and levels, and recovery and prevention strategies in

determining certain effects of proposed consumptive uses of water; providing an exception; providing requirements for the challenge of specified rules; providing applicability; amending s. 373.605, F.S.; authorizing a district to provide a group health insurance for its employees and the employees of another district; removing obsolete provisions; amending s. 373.709, F.S.; removing reference to Southwest Florida Water Management District; establishing provision for applicable water management district; amending s. 373.171, F.S.; exempting cooperative funding programs from certain rulemaking requirements providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 181 Sale of Advertising
SPONSOR(S): Slosberg
TIED BILLS: None **IDEN./SIM. BILLS:** SB 268

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

SUMMARY ANALYSIS

The Florida Greenways and Trails Act (act) was established to conserve, develop, and use Florida's natural resources for healthful and recreational purposes as well as to provide people access, where appropriate, to environmentally sensitive lands and wildlife. The act creates the Florida Greenways and Trail System and identifies the general powers of the Department of Environmental Protection (DEP). The Office of Greenways and Trails (OGT), an office within the DEP's Division of Recreation and Parks, facilitates the establishment of the Florida Greenways and Trails System. Among its responsibilities, OGT manages eight state trails and the Marjorie Harris Carr Cross Florida Greenway. OGT also subleases state acquired properties to local governments for management. Currently, there is no mechanism for OGT to generate revenue through naming rights or advertising on any of these state owned properties.

This bill authorizes the DEP to enter into a concession agreement with a not-for-profit entity or private business or entity for naming rights of state greenway and trail facilities or property or for commercial advertising to be displayed on state greenway and trail facilities or property. Signage or displays must be limited to trailheads, trail intersections, directional or distance markers, interpretive exhibits, and parking areas. The size of any sign or display located at a trailhead or parking area cannot exceed 16 square feet, and all other signs or displays cannot exceed 4 square feet.

The concession agreements administered by the DEP must be for a minimum of one year and may be terminated at any time by the DEP. Before installation, each name or advertising display must be approved by the DEP, and the DEP must set materials and construction standards for all signage displayed. All costs pertaining to the signage must be paid by the concessionaire.

Ninety percent of the proceeds must be deposited in the appropriate DEP trust fund that is the source of funding for management and operation of state greenway or trail facilities and properties. Ten percent of the proceeds must be distributed, prorated by population, to district school boards, and must be used to enhance funds for the school district's bicycle education program or Safe Route to Schools Program. If the said school district does not offer one of these education programs, the funds cannot be distributed to that district and must be deposited in the appropriate DEP trust fund.

The section of law created in the bill is named the "John Anthony Wilson Bicycle Safety Act."

The bill appears to have a positive fiscal impact on state government revenues, however, the Revenue Estimating Conference has not considered this bill yet and, accordingly, the amount of revenue that might be realized due to this bill is not known at this time. The bill also appears to have a negative fiscal impact on the DEP, which will need to expend funds for staff time involved in developing the rule to implement this bill and to establish the program, as well as to develop and manage concessionaire agreements.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 260, F.S., was established to conserve, develop, and use Florida's natural resources for healthful and recreational purposes as well as to provide people access, where appropriate, to environmentally sensitive lands and wildlife. Chapter 260, F.S., also creates the Florida Greenways and Trail System and identifies the general powers of the Department of Environmental Protection (DEP). The Office of Greenways and Trails (OGT), an office within the DEP's Division of Recreation and Parks, facilitates the establishment of the Florida Greenways and Trails System. Among its responsibilities, OGT manages eight state trails and the Marjorie Harris Carr Cross Florida Greenway. OGT also subleases state acquired properties to local governments for management. Section 260.016, F.S., sets forth general powers that DEP is authorized to use in managing and overseeing the Florida Greenways and Trails System. These powers include charging user fees or rentals but do not specifically authorize DEP to sell naming rights or allow commercial displays. Currently, there is no mechanism for OGT to generate revenue through naming rights or advertising on any of these state owned properties.

Effect of Proposed Changes

The bill creates s. 260.0144, F.S., authorizing the DEP to enter into a agreement with not-for-profit entity or private business or entity for naming rights of state greenway and trail facilities or property or for commercial advertising to be displayed on state greenway and trail facilities or property.

A concession agreement must be administered by the DEP and must include the following requirements:

- Be for a minimum of one year, but can be for a longer period under a multi-year agreement, and can be terminated at any time by the DEP.
- Before installation, each name or advertising display must be approved by the DEP.
- The DEP must set materials and construction standards for all signage displayed.
- All costs of a display, including its development, construction, installation, operation, maintenance, and removal must be paid by the concessionaire.

Signage or displays must be limited to trailheads, trail intersections, directional or distance markers, interpretative exhibits, and parking areas. The size of any sign or display must be limited as follows:

- A sign or display located at a trailhead or parking area cannot exceed 16 square feet.
- All other signs or displays cannot exceed 4 square feet.

Naming rights of a facility or commercial advertising pursuant to a concession agreement under this section are for public relations or advertising purposes of a not-for-profit entity or private business or entity.

Proceeds from concession agreements must be distributed as follows:

Ninety percent must be deposited into the appropriate DEP trust fund that is the source of funding for management and operation of state greenway or trail facilities and properties.
Ten percent must be distributed, prorated by population, to district school boards and must be used to enhance funds for the school district's bicycle education program or Safe Route to Schools Program. The prorated share of these funds for a district that does not provide one of these education programs cannot be distributed to that district and must be deposited into the appropriate DEP trust fund.

The bill grants the DEP with the authority to adopt rules to administer this program.

B. SECTION DIRECTORY:

Section 1. Cites the act as the "John Anthony Wilson Bicycle Safety Act."

Section 2. Creates section 260.0144, F.S., authorizing the Department of Environmental Protection to enter into concession agreements for naming rights of state greenway and trail facilities or property or for commercial advertising to be displayed on state greenway and trail facilities or property if certain requirements are met; provides for the distribution of proceeds from such concession agreements.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The authority to enter into concession agreements for naming rights of state greenway and trail facilities and property and for commercial advertising on state greenway and trail facilities and property will result in an increase to certain DEP trust funds, however, the Revenue Estimating Conference has not considered this bill yet and, accordingly, the amount of revenue that might be realized due to this bill is not known at this time.

2. Expenditures:

According to the DEP, the department will need to expend funds for staff time involved in developing the rule to implement this bill and establish the program, as well as to develop and manage concessionaire agreements. The specific fiscal impact associated with that time is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill provides that 10% of the proceeds from the concession agreements for naming rights and advertising on state greenway and trail facilities and property must be distributed to district school boards for specified purposes, and, therefore, the bill appears to have a positive impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Advertising of brand names and services provided by non-profits and private sector businesses could have a potential positive fiscal impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The bill requires the DEP's approval prior to the installation of naming signage or an advertising display. It is not clear whether the intent of this language is to provide authority to regulate the content of a message communicated by a display or simply whether the signage meets material and construction standards. Regardless, the provision may give rise to claims based on alleged interference with constitutionally protected free speech if the DEP approves or disapproves a sign or display based on the content of the speech.

B. RULE-MAKING AUTHORITY:

This bill gives the DEP the authority to establish rules regarding naming rights and commercial advertisement on state greenway and trail facilities or property.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 337.407 and 479.11(8), F.S., prohibit advertising signs from being placed in the right-of-way of any road on the interstate highway system, the federal-aid primary highway system, the State Highway System, or the State Park Road System. Sign placement permitted by the bill could potentially conflict with these provisions, depending on the location.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to sale of advertising; creating the "John Anthony Wilson Bicycle Safety Act"; creating s. 260.0144, F.S.; providing for the Department of Environmental Protection to enter into concession agreements for naming rights of state greenway and trail facilities or property or commercial advertising to be displayed on state greenway and trail facilities or property; providing for distribution of proceeds from such concession agreements; providing an effective date.

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

Section 1. This act may be cited as the "John Anthony Wilson Bicycle Safety Act."

Section 2. Section 260.0144, Florida Statutes, is created to read:

260.0144 Naming rights or space for advertising.—The department may enter into a concession agreement with a not-for-profit entity or private business or entity for naming rights of state greenway and trail facilities or property or for commercial advertising to be displayed on state greenway and trail facilities or property.

(1) A concession agreement under this section shall be administered by the department and must include the requirements of subsections (3) and (4).

(2)(a) Naming rights or space for a commercial advertising

display may be provided through a concession agreement on certain state-owned greenway or trail facilities or property.

(b) Signage or displays erected under this section shall be limited to trailheads, trail intersections, directional or distance markers, interpretive exhibits, and parking areas.

(c) The size of any sign or display shall be limited as follows:

1. A sign or display located at a trailhead or parking area may not exceed 16 square feet.

2. All other signs or displays may not exceed 4 square feet.

(d) Naming rights of a facility or commercial advertising pursuant to a concession agreement under this section are for public relations or advertising purposes of a not-for-profit entity or private business or entity, and shall not be construed by that not-for-profit entity or private business or entity as having a relationship to any other actions of the department.

(3) A concession agreement under this section shall be for a minimum of 1 year but may be for a longer period under a multiyear agreement, and may be terminated at any time by the department.

(4)(a) Before installation, each name or advertising display must be approved by the department, as appropriate.

(b) The department shall set materials and construction standards for all signage displayed.

(c) All costs of a display, including its development, construction, installation, operation, maintenance, and removal shall be paid by the concessionaire.

(5) Proceeds from concession agreements under this section shall be distributed as follows:

(a) Ninety percent shall be deposited into the appropriate department trust fund that is the source of funding for management and operation of state greenway or trail facilities and properties.

(b) Ten percent shall be distributed, prorated by population, to district school boards and must be used to enhance funds for the school district's bicycle education program or Safe Route to Schools Program. The prorated share of such funds for a district that does not provide one of these education programs may not be distributed to that district and shall be deposited into the appropriate department trust fund.

(6) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2012.

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 Slosberg offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "John Anthony Wilson Bicycle Safety Act."

Section 2. Section 260.0144, Florida Statutes, is created to read:

260.0144 Sponsorship of state greenways and trails.—The department may enter into a concession agreement with a not-for-profit entity or private sector business or entity for naming rights of state greenway and trail facilities or property or for commercial sponsorship to be displayed on state greenway and trail facilities or property.

(1) A concession agreement under this section shall be administered by the department and must include the requirements of subsections (3) and (4).

(2)(a) Naming rights or space for a commercial sponsorship display may be provided through a concession agreement on certain state-owned greenway or trail facilities or property.

(b) Signage or displays erected under this section shall comply with the provisions of s. 337.407 and chapter 479, and shall be limited to trailheads, trail intersections, directional or distance markers, interpretive exhibits, and parking areas.

(c) The size of any sign or display shall be limited as follows:

1. A sign or display located at a trailhead or parking area may not exceed 16 square feet.

2. All other signs or displays may not exceed 4 square feet.

(d) Naming rights of a facility and commercial sponsorship pursuant to a concession agreement under this section are for public relations or advertising purposes of the not-for-profit entity or private sector business or entity, and shall not be construed by that not-for-profit entity or private sector business or entity as having a relationship to any other actions of the department.

(3) A concession agreement under this section shall be for a minimum of 1 year but may be for a longer period under a multiyear agreement, and may be terminated for just cause by the department with 60 days' advance notice.

(4)(a) Before installation, each name or sponsorship display must be approved by the department, as appropriate.

(b) The department shall set materials and construction standards for all signage displayed.

(c) All costs of a display, including its development, construction, installation, operation, maintenance, and removal, shall be paid by the concessionaire.

(5) This section does not create a proprietary or compensable interest in any sign or display site or location.

(6) Proceeds from concession agreements under this section shall be distributed as follows:

(a) Eighty-five percent shall be deposited into the appropriate department trust fund that is the source of funding for management and operation of state greenway and trail facilities and properties.

(b) Fifteen percent shall be deposited into the State Transportation Trust Fund for use in the Traffic and Bicycle Safety Education Program and the Safe Paths to School Program administered by the Department of Transportation.

(7) The department may adopt rules to administer this section.

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

Remove the entire title and insert:

An act relating to the sponsorship of state greenways and trails; creating the "John Anthony Wilson Bicycle Safety Act"; creating s. 260.0144, F.S.; providing for the Department of Environmental Protection to enter into concession agreements for naming rights of state greenway and trail facilities or property or for commercial advertising to be displayed on state greenway

and trail facilities or property; providing for distribution of proceeds from such concession agreements; providing an effective date.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 373 Environmental Permits
SPONSOR(S): Glorioso
TIED BILLS: None **IDEN./SIM. BILLS:** SB 602

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

SUMMARY ANALYSIS

The bill amends current law to require that the Department of Environmental Protection (DEP) and water management districts (WMDs) reduce or waive permit processing fees for an applicant created by special act, local ordinance, or interlocal agreement of counties or municipalities meeting specified population limits.

The bill amends current law directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The general permit applies statewide and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business.

The bill authorizes counties and municipalities that have created a community redevelopment area (CRA) or an urban infill and redevelopment area to adopt a stormwater adaptive management plan addressing the quantity and quality of stormwater discharges for the area and obtain a conceptual permit from the WMD or the DEP. The bill defines a "stormwater management plan" as a master drainage plan that, to the extent feasible:

- Improves the quality of stormwater runoff discharged from the project area.
- Controls the rate and volume of stormwater discharges to the extent that offsite flooding or other adverse water quantity impacts are not exacerbated by the proposed redevelopment project.
- Is designed based on a feasibility assessment of stormwater best management practices, including low impact development techniques and regional stormwater treatment systems, that consider the size and physical site characteristics of the project area.

The bill also directs the DEP and WMDs to establish conceptual permits for urban redevelopment projects or an urban infill and redevelopment area. The conceptual permit:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects located within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the stormwater management plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Cannot prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in section 373.413, F.S.
- Must be issued for a duration of at least 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

The bill provides that urban redevelopment projects that meet the requirements of the conceptual permit qualify for general permits authorizing construction and operation of the permitted system.

The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues and a cost savings for affected local governments. There may be an insignificant fiscal impact on those local governments that have already established either a community redevelopment area or an urban infill and redevelopment area. Those local governments would have to amend those plans if they wanted to obtain a conceptual permit. However, there may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Waiver or Reduction of Permit Fees

Section 218.075, F.S., provides that DEP and the WMDs must reduce or waive permit processing fees for certain specified small counties and municipalities with a population of 25,000 or less, or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers are approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

- Per capita taxable value is less than the statewide average for the current fiscal year;
- Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
- Any condition specified in s. 218.503(1), F.S., which results in the county or municipality being in a state of financial emergency;
- Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or
- A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality or a third party under contract with a county or municipality and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee shall not exceed $100.

Airside Stormwater Management

The Federal Aviation Authority (FAA) provides grants to the Florida Department of Transportation (DOT) Aviation Office for airport airside improvements. The grants have 18 month time frames, making it difficult to permit and complete a stormwater project within the required time to take advantage of the grant.

In 1998, the DOT, the Department of Environmental Protection (DEP) and three water management districts (WMDs) outlined a study to evaluate airport runway, taxiway and apron stormwater quality. In 1977, the FAA set limitations on stormwater designs on airports to limit wildlife strikes in an advisory circular[1]. The FAA found that stormwater management systems known as "wet ponds" attracted birds and posed a threat to airline safety. A joint study by the DEP and the FAA has evaluated chemical loading characteristics of airside runoff and how best management practices can help airports meet federal and state water quality standards.

Another phase of the study will be funded by the FAA once a general permit for these stormwater systems is developed and adopted. This phase will convert the wet pond at Orlando International Airport into a wet detention system that complies with the 1997 advisory circular. The system will be monitored for pollutant loading and remediation, including nutrients. About 30 percent of Florida's airports have soil and water table considerations that prevent the use of wet detention systems.

[1] U.S. Dep't of Transportation Federal Aviation Administration, Advisory Circular 150/5200-33, *Hazardous Wildlife Attractants On or Near Airports* (May 1997), available at http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/53bdbf1c5aa1083986256c690074ebab/$FILE/150-5200-33.pdf

Statement of Estimated Regulatory Costs

Section 120.541, F.S., provides that if a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after implementation of the rule, the agency shall prepare a statement of estimated regulatory costs. The statement of estimated regulatory costs must include:

- 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.
- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a description of the types of individuals likely to be affected by the rule.
- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.
- A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.
- An analysis of the impact on small businesses as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in s. 120.52, F.S. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.
- Any additional information that the agency determines may be useful.
- In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

If the adverse impact or regulatory costs of the rule exceed any of the criteria described above, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule cannot take effect until it is ratified by the Legislature.

Growth Policy Act

In 1999, the Florida Legislature enacted the Growth Policy Act[2] (Act) in order to provide incentives to promote urban infill and redevelopment. The Act authorizes local governments to designate urban infill and redevelopment areas for the purpose of targeting economic development, job creation, housing, transportation, crime prevention, neighborhood revitalization and preservation and land use incentives to encourage infill and redevelopment within urban centers. The Act defines an urban infill and redevelopment area as an area where:

[2] Sections 163.2511-163.2523, F.S.

- Public services (water and wastewater, transportation, schools, and recreation) are already available or are scheduled to be provided in the 5-year schedule of capital improvements;
- The area, or one or more neighborhoods within the area, suffers from pervasive poverty, unemployment, and general distress;[3]
- 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 percent of the area is within one-fourth mile of a transit stop, or a sufficient number of such transit stops will be made available concurrent with the designation; and
- The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or federal government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community program or similar program.[4]

Pursuant to s. 163.2517, F.S., local governments that want to designate urban infill and redevelopment areas must develop plans describing redevelopment objectives and strategies, or to amend existing plans. Local governments must also adopt urban infill and redevelopment plans by ordinance and amend their comprehensive plans to delineate urban infill and redevelopment area boundaries. Section 163.2520, F.S., provides that a local government with an adopted urban infill and redevelopment plan or plan employed in lieu thereof can issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of the plan.

Community Redevelopment Act

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969 (Act), was enacted in order to revitalize economically distressed areas in order to improve public welfare and increase the local tax base. The Act authorizes a county or municipality to create community redevelopment areas (CRAs) by adopting a resolution declaring the need for a CRA in order to redevelop slum and blighted areas.[5] CRAs are not permitted to levy or collect taxes; however, the local government is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated CRA to finance redevelopment projects within that area. To obtain this revenue, in addition to establishing a trust fund, a local government must create a community redevelopment agency,[6] designate an area or areas to be a Community Redevelopment Area (CRA), and approve a community redevelopment plan.[7] 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 pollutant loading in stormwater that runs off developed areas lead to flooding, water quality problems, and the loss of habitat.[8]

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[3] Section 290.0058, F.S., provides the definition for "general distress."
[4] Section 163.2514(2), F.S.
[5] Section 163.340(7), F.S., provides the definition for "slum area" and s. 163.340(8), F.S., provides the definition for "blighted area."
[6] Section 163.356, F.S.
[7] *See* ch. 163, part III, F.S.
[8] National Resources Defense Council. *Stormwater Strategies*, May 1999 report, *available at*: http://www.nrdc.org/water/pollution/storm/stoinx.asp (last visited March 24, 2011).

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)[9] by 80 percent or by 95 percent for Outstanding Florida Waters.[10]

In 1990, in response to legislation, the DEP developed and implemented the State Water Resource Implementation Rule (originally known as the State Water Policy rule).[11] The 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 percent 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 WMD stormwater treatment rules of the 1980s.

In 1999, the Florida Watershed Restoration Act was enacted leading to the implementation of Florida's water body restoration program and the establishment of Total Maximum Daily Loads (TMDLs). A TMDL is the maximum allowable pollutant a water body can absorb and still maintain its intended purpose, e.g., fishable/swimmable. Under the Clean Water Act, TMDLs must be developed for all water bodies that are not meeting their classification standards and are deemed to be impaired. There can be multiple TMDLs for one water body if there are multiple pollutants contributing to water quality standards violations. Since the program began, over 2000 impairments have been verified in Florida's surface waters, and nutrients have been identified as the major cause of such impairments. In order to restore impaired waters by reducing pollutant loadings to meet the allowable loadings established in a TMDL, the DEP creates a Basin Management Action Plan (BMAP). The BMAP represents a comprehensive set of strategies--permit limits on wastewater facilities, urban and agricultural best management practices, conservation programs, financial assistance and revenue generating activities, etc.--designed to implement the pollutant reductions established by the TMDL. These broad-based plans are developed with local stakeholders--they rely on local input and local commitment--and they are adopted by Secretarial Order to be enforceable.

Effect of Proposed Changes

The bill amends s. 218.075, F.S. to provide that the DEP and WMDs must reduce or waive permit processing fees for an entity created by special act, local ordinance, or interlocal agreement of counties or municipalities meeting specified population limits. The permit applicant must be an entity created by special act, local ordinance, or interlocal agreement.

The bill amends s. 373.118, F.S., directing the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The general permit applies statewide and must be administered by any WMD or any delegated local government pursuant to the operating agreements applicable to part IV of chapter 373. F.S., with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. It appears that this provision would allow the DEP to be exempt from the provisions in s. 120.541, F.S., requiring a statement of estimated regulatory costs to be prepared if the proposed rule

[9] Total Suspended Solid (TSS) is listed as a conventional pollutant under s. 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.
[10] 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.
[11] Chapter 62-40 F.A.C.

will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule.

The bill creates s. 373.4131, F.S., relating to conceptual permits for urban redevelopment projects. The bill provides that a municipality or county that has created a community redevelopment area or an urban infill and redevelopment area is authorized to 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[12] from the WMD or the DEP.

The bill defines a "stormwater management plan" as a master drainage plan that, to the extent feasible:

- Improves the quality of stormwater runoff discharged from the project area.
- Controls the rate and volume of stormwater discharges to the extent that offsite flooding or other adverse water quantity impacts are not exacerbated by the proposed redevelopment project.
- Is designed based on a feasibility assessment of stormwater best management practices, including low impact development techniques and regional stormwater treatment systems, that consider the size and physical site characteristics of the project area.

The bill also directs the DEP and WMDs to establish a conceptual permit for urban redevelopment projects or an urban infill and redevelopment area. The conceptual permits:

- Must allow for the rate and volume of stormwater discharges for stormwater management systems of urban redevelopment projects located within a CRA or an urban infill and redevelopment area to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.
- Must presume that stormwater discharges for stormwater management systems of urban redevelopment projects within a CRA or urban infill and redevelopment areas that demonstrate a net improvement of the quality of the discharged water that existed as of the date the stormwater management plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.
- Cannot prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems than provided in section 373.413, F.S.
- Must be issued for a duration of at least 20 years, and can be renewed, unless a shorter duration is requested by the applicant.

Urban redevelopment projects that meet the criteria established in the conceptual permit qualify for a general permit that authorizes construction and operation of the permitted system.

B. SECTION DIRECTORY:

Section 1. Amends s. 218.075, F.S., providing for an entity created by special act, local ordinance, or interlocal agreement of a county or municipality meeting specified population limits to receive certain reduced or waived permit processing fees; requiring that the project for which such fee reduction or waiver is sought serves a public purpose.

Section 2. Amends s. 373.118, F.S., requiring that the DEP initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; providing for statewide application of the general permit; providing for any WMD or delegated local government to administer

[12] In general, conceptual permits are individual permits for projects to be developed in phases that approve the design concepts of a phased master plan. Issuance of a conceptual permit is a determination that the conceptual plans are, within the extent of detail provided in the conceptual permit application, consistent with applicable rules at the time of issuance. Design concepts approved in a conceptual permit are not to be affected by subsequent rule changes so long as the permit is valid.

the general permit; providing that the rules are not subject to any special rulemaking requirements relating to small businesses.

Section 3. Creates s. 373.4131, F.S., authorizing municipalities and counties that have created a community redevelopment area or an urban infill and redevelopment area to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects; provides requirements for establishment of such permits by water management districts and the Department of Environmental Protection; provides that urban redevelopment projects that meet the criteria for a conceptual permit qualify for a noticed general permit.

Section 4. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact to state revenues.

2. Expenditures:

   According to the DEP analysis, there will be a small impact to the DEP, and possibly the water management districts, to conduct rule making for general permits for airside activities and potentially to create the conceptual permit for urban redevelopment projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The reduction or waiver of permit processing fees required in the bill appears to result in an indeterminate negative fiscal impact on WMDs. Entities created by special acts, local ordinances, or interlocal agreements of certain local governments will pay fewer permit fees so the savings would likely be passed on to the local government but without knowing how many of these entities exist, the actual effect is unknown.

2. Expenditures:

   According to the DEP analysis, there will possibly be a small impact to the water management districts, to conduct rule making for general permits for airside activities and potentially to create the conceptual permit for urban redevelopment projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be a time and cost savings for those cities or counties that meet the requirements of the conceptual permit. Those cities or counties would be able to obtain general permits during the duration of the conceptual permit, which are generally easier to obtain and more cost effective.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DEP to initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The permit applies statewide and must be administered by any WMD or delegated local government, with no additional rulemaking required. The bill also provides that the rules are not subject to any special rulemaking requirements related to small business. It appears that this provision would allow the DEP to be exempt from the provisions in s. 120.541, F.S., requiring a statement of estimated regulatory costs to be prepared if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DEP provided the following comments:

> The conceptual permits for urban redevelopment projects may create conflict with Federal Clean Water Act and with the Florida Watershed Restoration Act, s. 403.067, F.S., with respect to total maximum daily load (TMDL) implementation for water bodies with an adopted TMDL. The bill is silent as to how the stormwater requirements for urban redevelopment projects will have to address stormwater in a watershed with a TMDL or basin management action plan (BMAP) adopted pursuant to s. 403.067, F.S. If a TMDL or BMAP require additional stormwater treatment, it is unclear how the requirements of the proposed subsection will relate.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to environmental permits; amending s. 218.075, F.S.; providing for an entity created by special act, local ordinance, or interlocal agreement of a county or municipality to receive certain reduced or waived permit processing fees; requiring that the project for which such fee reduction or waiver is sought serves a public purpose; amending s. 373.118, F.S.; requiring that the Department of Environmental Protection initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports; providing for statewide application of the general permit; providing for any water management district or delegated local government to administer the general permit; providing that the rules are not subject to any special rulemaking requirements relating to small business; creating s. 373.4131, F.S.; authorizing certain municipalities and counties to adopt stormwater management plans and obtain conceptual permits for urban redevelopment projects; defining the term "stormwater management plan"; requiring the Department of Environmental Protection and water management districts to establish conceptual permits for urban redevelopment projects; providing permit requirements; providing that certain urban redevelopment projects qualify for a general permit; providing an effective date.

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

Section 1. Section 218.075, Florida Statutes, is amended to read:

218.075 Reduction or waiver of permit processing fees.—Notwithstanding any other provision of law, the Department of Environmental Protection and the water management districts shall reduce or waive permit processing fees for counties with a population of 50,000 or fewer ~~less~~ on April 1, 1994, until such counties exceed a population of 75,000 and municipalities with a population of 25,000 or fewer; an entity created by special act, local ordinance, or interlocal agreement of such counties or municipalities; ~~less,~~ or any county or municipality not included within a metropolitan statistical area. Fee reductions or waivers shall be approved on the basis of fiscal hardship or environmental need for a particular project or activity. The governing body must certify that the cost of the permit processing fee is a fiscal hardship due to one of the following factors:

(1) Per capita taxable value is less than the statewide average for the current fiscal year;

(2) Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;

(3) Any condition specified in s. 218.503(1) which results in the county or municipality being in a state of financial emergency;

(4) Ad valorem operating millage rate for the current fiscal year is greater than 8 mills; or

(5) A financial condition that is documented in annual financial statements at the end of the current fiscal year and indicates an inability to pay the permit processing fee during that fiscal year.

The permit applicant must be the governing body of a county or municipality, ~~or~~ a third party under contract with a county or municipality, or an entity created by special act, local ordinance, or interlocal agreement, and the project for which the fee reduction or waiver is sought must serve a public purpose. If a permit processing fee is reduced, the total fee may ~~shall~~ not exceed $100.

Section 2. Subsection (6) is added to section 373.118, Florida Statutes, to read:

373.118 General permits; delegation.—

(6) By July 1, 2012, the department shall initiate rulemaking to adopt a general permit for stormwater management systems serving airside activities at airports. The general permit applies statewide and shall be administered by any water management district or any delegated local government pursuant to the operating agreements applicable to part IV of this chapter, with no additional rulemaking required. These rules are not subject to any special rulemaking requirements related to small business.

Section 3. Section 373.4131, Florida Statutes, is created to read:

373.4131 Conceptual permits for urban redevelopment projects.—

(1) A municipality or county that has created a community redevelopment area or an urban infill and redevelopment area pursuant to chapter 163 may adopt a stormwater management plan that addresses the quantity and quality of stormwater discharges for the redevelopment or infill area and may obtain a conceptual permit from the water management district or the Department of Environmental Protection.

(2) For purposes of this section, the term "stormwater management plan" means a master drainage plan that, to the extent feasible:

(a) Improves the quality of stormwater runoff discharged from the project area.

(b) Controls the rate and volume of stormwater discharges to the extent that offsite flooding or other adverse water quantity impacts are not exacerbated by the proposed redevelopment project.

(c) Is designed based on a feasibility assessment of stormwater best management practices, including low impact development techniques and regional stormwater treatment systems, that consider the size and physical site characteristics of the project area.

(3) The department and water management districts shall establish conceptual permits for urban redevelopment projects created under part III of chapter 163 or an urban infill and redevelopment area designated under s. 163.2517. The conceptual permits:

(a) Must allow for the rate and volume of 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 to continue up to the maximum rate and volume of stormwater discharges within the area as of the date the stormwater management plan was adopted.

(b) Must presume that 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 stormwater management plan was adopted for any applicable pollutants of concern in the receiving water body do not cause or contribute to violations of water quality criteria.

(c) 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.

(d) Shall be issued for a duration of at least 20 years, and may be renewed, unless a shorter duration is requested by the applicant.

(4) Urban redevelopment projects that meet the criteria established in the conceptual permit pursuant to this section qualify for a general permit that authorizes construction and operation of the permitted system.

Section 4. This act shall take effect July 1, 2012.

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 Glorioso offered the following:

Amendment (with title amendment)

Remove line 141 and insert:

(5) Notwithstanding subsections (1) through (4), permits issued pursuant to this section may not conflict with the requirements of a federally approved program pursuant to s. 403.0885 or with the implementation of s. 403.067(7) regarding total maximum daily loads and basin management plans.

Section 4. This act shall take effect July 1, 2012.

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

Remove line 27 and insert:

qualify for a general permit; providing that permits issued pursuant to this section may not conflict with a federally

approved program or total maximum daily loads and basin management plans; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 463 Concealed Weapons or Firearms
SPONSOR(S): Kreegel and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 998

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

SUMMARY ANALYSIS

To obtain a concealed weapons license, a person must complete, under oath, an application with the Division of Licensing of the Department of Agriculture and Consumer Services, and must meet the following criteria:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed or has been convicted, or has been deemed a habitual offender, or has had two or more convictions within the three-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person, unless five years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least five years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;
- Has not been adjudicated an incapacitated person;
- Has not been committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence;
- Has not been issued an injunction that is currently in force and effect; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The bill provides that service members and veterans of the United States Armed Forces who were honorably discharged must be issued a license to carry a concealed weapon or firearm, regardless of age, as long as the applicant otherwise meets the concealed weapons permit requirements. Service members are defined as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces. The bill also requires that DACS accept fingerprints of an applicant administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties, or as otherwise provided by the Department of Licensing of DACS. Lastly, the bill provide that a nonresident of Florida who is a service member or veteran of the U.S. Armed Forces who was honorably discharged is exempt from the age requirement for carrying a concealed weapon or firearm, as long as the nonresident service member or veteran has in his or her immediate possession a valid license, from his or her state of residence, to carry a concealed weapon or concealed firearm and is a resident of the United States, as required under current law.

The bill appears to have a fiscal impact on state and local governments (See Fiscal Analysis Section below).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 790.01, F.S., provides that a person who carries a concealed weapon or electronic weapon or device on or about his or her person commits a first degree misdemeanor, and a person who carries a concealed firearm commits a third degree felony. However, these provisions in s. 790.01, F.S., do not apply to a person licensed to carry a concealed weapon or a concealed firearm pursuant to the provisions in s. 790.06, F.S.

Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms[1] to qualified persons. Each such license must bear a color photograph of the licensee. Licenses issued by the department are valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of the license can carry a concealed weapon or concealed firearm. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer.

Section 790.06(2), F.S., requires the department to issue a concealed weapons permit if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the three-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm by any one of the following:
    - Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;
    - Completion of any National Rifle Association firearms safety or training course;
    - Completion of any firearms safety or training course or class available to the general public offered by law enforcement, junior college, college or private or public

[1] Concealed weapon or concealed firearm is defined in s. 790.001, F.S., as a handgun, electronic weapon or device, tear gas gun, knife, billie, or other deadly weapon, but the terms do not include a machine gun.

institution or organization or firearms training school, utilizing instructors certified by the Department of Agriculture and Consumer Services;
    - Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
    - Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
    - Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or
    - Completion of any firearms training or safety course or class conducted by a state certified firearms instructor;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless five years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least five years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[2]

Section 790.06(3), F.S., provides that the department must deny a license if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged. The department must also revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.

Section 790.06(4), F.S., provides that the application for a license to carry concealed weapons must be completed, under oath, on a form promulgated by the department and must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with criteria contained within s. 790.06(2) and (3), F.S., described above;
- A statement that the applicant has been furnished a copy of this chapter of law and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to an question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.

Section 790.06(5), F.S., provides that the applicant for a license to carry a concealed weapon or firearm must submit to the department:

- A completed application described above;

[2] Section 790.06(2), F.S.

- A nonrefundable license fee not to exceed $85, if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed $70 for renewal of a statewide license;
- A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consume Services;
- A photocopy of a certificate or an affidavit or document showing that the applicant passed an approved firearm competency course or class; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 11/8 inches high.

In addition, s. 790.06(10), F.S., provides that the department is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S., described above;
- Develops or sustains a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is convicted of a felony that would make the licensee ineligible to possess a firearm;
- Is found guilty of a crime under the provisions of ch. 893, F.S., relating to drug abuse, or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser or is deemed a habitual offender;
- Is convicted of a second violation of s. 316.193, F.S., (driving under the influence), or a similar law of another state, within three years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person; or
- Is committed to a mental institution.[3]

Section 790.015, F.S., provides that nonresidents who are United States citizens, notwithstanding s. 790.01, F.S., must be at least 21 years of age and must have in his or her possession a valid license to carry a concealed weapon or firearm from his or her state of residence. Nonresidents are subject to the same laws regarding concealed weapons and firearms as residents of the state of Florida. If a nonresident who holds a valid license from their state of residence establishes legal residence in Florida, then their out of state license shall remain in effect for 90 days.

Currently, members and veterans of the United States Armed Forces are not provided any exemptions for licensure of a concealed weapon or firearm or exceptions from the requirements to obtain a license to carry a concealed weapon or firearm.

Effect of Proposed Changes

The bill creates s. 790.062, F.S., to provide that service members and veterans of the United States Armed Forces who were honorably discharged must be issued a license to carry a concealed weapon or firearm, regardless of age, as long as the applicant is otherwise qualified. Service members are defined as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.[4]

The bill also requires the department to accept fingerprints of an applicant administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties, or as otherwise provided in s. 790.06(5), F.S., described above.

Lastly, the bill amends s. 790.015, F.S., to provide that a nonresident of Florida who is a service member or veteran of the U.S. Armed Forces who was honorably discharged is exempt from the age requirement for carrying a concealed weapon or firearm, as long as the nonresident service member or veteran has in his or her immediate possession a valid license from his or her state of residence to

[3] Section 790.06(10), F.S.
[4] Section 250.01(19), F.S.

carry a concealed weapon or concealed firearm and is a resident of the United States, as required under current law.

B. SECTION DIRECTORY:

Section 1. Creates s. 790.062, F.S., providing an exception to the minimum age requirement for obtaining a license to carry a concealed weapon for members of the United States Armed Forces as well as honorably discharged veterans. It also provides that the department shall accept fingerprints from license applicants administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided in s. 790.06(5)(c), F.S.

Section 2. Amends s. 790.015, F.S., providing that members and veterans of the United States Armed Forces be granted reciprocity regardless of age if they meet certain other requirements in current law.

Section 3. Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the department, the Division of Licensing does anticipate an indeterminate increase in the volume of concealed weapon license applications and application fees.

2. Expenditures:

   According to department, the increase in the volume of concealed weapon license applications would result in increases in hard copy applications, forms, background checks, and other variable costs, the extent of which is unknown. All costs incurred would be covered by application license fees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   There is potential for minimal increased sales tax collections from local option portion, based on possible increased firearm sales for counties with significant military presence.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is potential for increased economic activity from increased sales of firearms to previously ineligible concealed weapon or firearm licensees, especially in areas with higher military presence.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to concealed weapons or firearms; creating s. 790.062, F.S.; providing that otherwise qualified members and veterans of the United States Armed Forces be issued a concealed weapon or firearm license regardless of age or United States residency in certain circumstances; providing additional methods for the taking of fingerprints from such license applicants; amending s. 790.015, F.S.; providing that members and veterans of the United States Armed Forces be granted reciprocity regardless of age; providing an effective date.

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

Section 1. Section 790.062, Florida Statutes, is created to read:

790.062 Members and veterans of United States Armed Forces; exceptions from licensure provisions.—

(1) Notwithstanding s. 790.06(2)(b), the Department of Agriculture and Consumer Services shall issue a license to carry a concealed weapon or firearm under s. 790.06 if the applicant is otherwise qualified and:

(a) Is a servicemember, as defined in s. 250.01; or

(b) Is a veteran of the United States Armed Forces who was discharged under honorable conditions.

(2) The Department of Agriculture and Consumer Services shall accept fingerprints of an applicant under this section

administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided for in 790.06(5)(c).

Section 2. Section 790.015, Florida Statutes, is amended to read:

790.015 Nonresidents who are United States citizens and hold a concealed weapons license in another state; reciprocity.—

(1) Notwithstanding s. 790.01, ~~a resident of the United States who is~~ a nonresident of Florida may carry a concealed weapon or concealed firearm while in this state if the nonresident:

(a) Is 21 years of age or older.~~; and~~

(b) Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

(c) Is a resident of the United States.

(2) A nonresident is subject to the same laws and restrictions with respect to carrying a concealed weapon or concealed firearm as a resident of Florida who is so licensed.

(3) If the resident of another state who is the holder of a valid license to carry a concealed weapon or concealed firearm issued in another state establishes legal residence in this state by:

(a) Registering to vote;~~, or~~

(b) Making a statement of domicile pursuant to s. 222.17;~~,~~ or

(c) Filing for homestead tax exemption on property in this state,

the license shall remain in effect for 90 days following the date on which the holder of the license establishes legal state residence.

(4) This section applies only to nonresident concealed weapon or concealed firearm licenseholders from states that honor Florida concealed weapon or concealed firearm licenses.

(5) The requirement of paragraph (1)(a) does not apply to a person who:

(a) Is a servicemember, as defined in s. 250.01; or

(b) Is a veteran of the United States Armed Forces who was discharged under honorable conditions.

Section 3. 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 Kreegel offered the following:

Amendment (with title amendment)

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

Remove line 6 and insert:

license regardless of age

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 663 Solid Waste Management Facilities
SPONSOR(S): Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 738

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

SUMMARY ANALYSIS

Currently, a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Current law also provides that permits are not required for certain solid waste disposal activities 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. Currently, the DEP's rules limit a permit's duration to five years, except for certain long-term care permits for closed facilities that may last up to 10 years.

The bill provides that a permit issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the authorized permit term. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after July 1, 2012.

The bill could have an upfront positive fiscal impact to state government, and an upfront negative fiscal impact to local governments that operate lined solid waste management facilities and choose to apply for the 20-year permit authorized in the bill. The bill does not appear to have a fiscal impact on state government over the long term, and appears to have an indeterminate positive fiscal impact over the long term on local governments that operate lined solid waste management facilities and choose to apply for the 20-year permit authorized in the bill. (See Fiscal Analysis Section below)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 403.707(1), F.S., provides that a solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the Department of Environmental Protection (DEP). Currently the DEP's rules limit permit duration to 5 years, except certain long-term care permits for closed facilities may last up to 10 years.

Section 403.707(2), F.S., provides that a permit 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:

- Disposal by persons of solid waste resulting from their own activities on their property, if such waste is ordinary household waste or rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations.
- Storage in containers by persons of solid waste resulting from their own activities on their property, if the solid waste is collected at least once a week.
- Disposal by persons of solid waste resulting from their own activities on their property if the environmental effects of such disposal on groundwater and surface waters are addressed or authorized by a site certification order issued under part II or a permit issued by the DEP under chapter 403, F.S., or rules adopted pursuant to this chapter; or addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the DEP.
- Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.
- 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.
- 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.
- 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.

Effect of Proposed Changes

The bill amends s. 403.707, F.S., to provide that a permit issued to a solid waste management facility that is designed with a leachate control system that meets the DEP's requirements must be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility must be prorated to the permit term authorized under this section of law. These provisions apply to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 403.707, F.S., extending the permit term for a solid waste management facility that is designed with a leachate control system meeting the requirements of the DEP; providing for the proration of the permit fee for existing permits; providing applicability.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the DEP analysis, extending the length of some solid waste permits to 20 years may result in reductions in the amount of time dedicated to permit review. The bill authorizes the DEP to charge up to four times more for a 20-year permit than it currently does for a 5-year permit. As a result, the DEP will likely collect more permit fees in the near future as facilities apply and pay for longer-term permits, but should start to see a significant decline in permit fees after five years because facilities will not be submitting renewal applications as frequently.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments below.

2. Expenditures:

   See Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DEP analysis, owners and operators of lined solid waste management facilities that opt for longer-term permits will see a significant increase in permit fees in the near future. However, the permit would not have to be renewed for 20 years, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately four-fold.

The owners and operators may benefit from the increased predictability that longer permits provide. It may be easier to obtain financing for these projects.

D. FISCAL COMMENTS:

According to the DEP analysis, local governments that operate lined solid waste management facilities and opt for longer-term permits would see permit fees increased. For example, a Class I landfill operation permit fee is currently $10,000 for a 5-year permit; if the bill becomes law, the permit fee will increase to a maximum of $40,000 for a 20-year permit. However, the permit would not have to be renewed for 20 years, meaning that the total amount of permit fees would be the same, while the costs associated with filing renewal applications would drop approximately 4-fold. In the long run such local governments should see significant cost savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to solid waste management facilities; amending s. 403.707, F.S.; specifying a permit term for a solid waste management facility that is designed with a leachate control system meeting the requirements of the Department of Environmental Protection; providing for the proration of the permit fee for existing permits; providing applicability; providing an effective date.

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

Section 1. Subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.—

(3)(a) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(b) A permit issued to a solid waste management facility that is designed with a leachate control system that meets department requirements shall be issued for a term of 20 years unless the applicant requests a shorter permit term. Existing permit fees for a qualifying solid waste management facility shall be prorated to the permit term authorized by this section. This paragraph applies to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after July 1, 2012.

Section 2. This act shall take effect July 1, 2012.

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 Perman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 403.707, Florida Statutes, is amended to read:

403.707 Permits.-

(3)(a) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(b) A permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system meeting department requirements shall be issued for a term of 20 years unless the applicant requests a shorter permit term. Notwithstanding the limitations of s. 403.087(6)(a), existing permit fees for a qualifying solid waste management facility shall be adjusted to the permit term

authorized by this section. This paragraph applies to a qualifying solid waste management facility that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

(c) A permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system meeting department requirements shall be renewed for a term of 10 years, unless the applicant requests a shorter term, if the following conditions are met:

1. The applicant has conducted the regulated activity at the same site for which the renewal is sought for at least 4 years and 6 months before the date that the permit application is received by the department; and

2. At the time of applying for the renewal permit:

a. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the department for violation of an applicable law or rule;

b. The department has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards or criteria or, if applicable, the applicant is completing corrective actions in accordance with applicable department rules; and

c. The applicant is in compliance with the applicable financial assurance requirements.

(d) The department may adopt rules to administer this subsection; however, the provisions of chapter 120 which require a statement of estimated regulatory cost and legislative

ratification do not apply to such rulemaking and the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(6)(a), permit fee caps for solid waste management facilities shall be prorated to reflect the extended permit term authorized by this subsection.

Section 2. Subsection (5) is added to section 403.709, Florida Statutes, to read:

403.709 Solid Waste Management Trust Fund; use of waste tire fees.—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(5) A solid waste landfill closure account is created within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities, if:

(a) The facility had or has a department permit to operate the facility;

(b) The permittee provided proof of financial assurance for closure in the form of an insurance certificate;

(c) The facility has been deemed to be abandoned or has been ordered to close by the department; and

(d) Closure will be accomplished in substantial accordance with a closure plan approved by the department.

The department has a reasonable expectation that the insurance company issuing the closure insurance policy will provide or reimburse most or all of the funds required to complete closing and long-term care of the facility. If the insurance company reimburses the department for the costs of closing or long-term

care of the facility, the department shall deposit the funds into the solid waste landfill closure account.

Section 3. Section 403.7125, Florida Statutes, is amended to read:

403.7125 Financial assurance ~~for closure~~.—

(1) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law. As used in this section, the term "owner or operator" means any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

(2) The owner or operator of a landfill owned or operated by a local or state government or the Federal Government shall establish a fee, or 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. However, the disposal of solid waste by persons on their own property, as described in s. 403.707(2), is exempt from this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the department an annual audit of the account. The audit shall be conducted by an independent certified public accountant. Failure to collect or report such revenue, except as allowed in subsection (3), is

a noncriminal violation punishable by a fine of not more than $5,000 for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund or the appropriate solid waste fund of the local government of jurisdiction.

(c) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

(d) The provisions of s. 212.055 which relate to raising of revenues for landfill closure or long-term maintenance do not relieve a landfill owner or operator from the obligations of this section.

(e) The owner or operator of any landfill that had established an escrow account in accordance with this section and the conditions of its permit prior to January 1, 2007, may continue to use that escrow account to provide financial assurance for closure of that landfill, even if that landfill is

not owned or operated by a local or state government or the Federal Government.

(3) An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide financial assurance to the department in lieu of the requirements of subsection (2). An owner or operator of any other landfill, or any other solid waste management facility designated by department rule, shall provide financial assurance to the department for the closure of the facility. Such financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with applicable closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) This section does not repeal, limit, or abrogate any other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

(5) The department shall by rule require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and that is required by department rule to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs shall be available for costs associated with undertaking corrective actions.

(6) ~~(5)~~ The department shall adopt rules to implement this

section.

Section 4. This act shall take effect July 1, 2012.

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

Remove lines 7-9 and insert:

Protection; requiring that existing permit fees be adjusted to the permit term; providing applicability; specifying a permit term for a solid waste management facility that does not have a leachate control system meeting the requirements of the department under certain conditions; authorizing the department to adopt rules; providing that the department is not required to submit the rules to the Environmental Regulation Commission for approval; requiring that permit fee caps for solid waste management facilities be prorated to reflect the extended permit term; amending s. 403.709, F.S.; creating a solid waste landfill closure account within the Solid Waste Management Trust Fund to fund the closing and long-term care of solid waste facilities under certain circumstances; requiring that the department deposit funds that are reimbursed into the solid waste landfill closure account; amending s. 403.7125, F.S.; requiring that the department require by rule that the owner or operator of a solid waste management facility receiving waste after a specified date provide financial assurance for the cost of completing

corrective action for violations of water quality standards; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691 Beach Management
SPONSOR(S): Frishe
TIED BILLS: None **IDEN./SIM. BILLS:** SB 758

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

SUMMARY ANALYSIS

Current law requires that a coastal construction permit be obtained from the Department of Environmental Protection (DEP) to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state. The DEP can require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

The bill specifies that reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence that is based on plans, studies, and credible expertise that accounts for naturally occurring variables that might be reasonably expected. The bill also specifies that the DEP and permit applicants must negotiate in good faith on DEP-proposed permit conditions, as well as specific provisions and requirements associated with requisite monitoring and mitigation plans, before the issuance of the notice of intent and transmittal of the permit. The time period between the applicant receiving a notice of intent and the final notice to proceed cannot be used to circumvent the time limits in the Administrative Procedures Act

In addition, the bill authorizes the DEP to issue permits in advance of the issuance of an incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities not begin until the incidental take authorization is issued.

The bill directs the DEP to adopt rules to address standard mixing zone criteria and anti-degradation requirements for turbidity generation for permits that involve excavation and placement of sediment in order to eliminate the need for variances, except within Outstanding Florida waters and aquatic preserves.

The bill provides that applications for permits must be made to the DEP upon such terms and conditions as set forth by rule. If the DEP requests additional information as part of the permit process, the DEP must cite applicable statutory and rule provisions that justify any item listed in a request for additional information. The DEP cannot issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such guidelines by rule.

The bill authorizes the DEP to issue a joint coastal construction permit/environmental resource permit, and specifies that the joint permits must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

The bill requires the DEP to maintain active beach restoration and nourishment project listings on its website by fiscal year. The bill also requires the DEP to notify the Executive Office of the Governor and the Legislature regarding any significant changes in individual project funding levels and indicate where additional dollars are intended to be used. The bill requires the DEP to summarize project activities for the current fiscal year, funding status, and changes to annual project lists must be prepared by the DEP and included with the DEP's submission of its annual legislative budget request. The bill requires the DEP to notify the Executive Office of the Governor and the Legislature when a local project sponsor releases funding and indicate how project dollars will be used.

Lastly, the bill exempts certain de minimis exploratory activities associated with beach restoration and nourishment from the environmental resource permitting requirements adopted pursuant to Part IV of chapter 373, F.S.. A de minimis determination must be made by the DEP within 30 days after receipt of request.

The bill appears to have an insignificant negative fiscal impact on the DEP due to costs associated with rulemaking required under the bill, and from the loss of permit fees collected resulting from the provision in the bill exempting certain activities from permitting requirements. The bill appears to have a positive fiscal impact on local governments (See Fiscal Analysis Section below).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 161.041, F.S.

Current Situation

Section 161.041(1), F.S., requires that a coastal construction permit be obtained from the Department of Environmental Protection (DEP) to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state.

Section 161.041(2), F.S., provides that the DEP can authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including:

- Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;
- Design features of the proposed structures or activities; and
- Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such a permit.

Section 161.041(3), F.S., provides that the DEP can also require engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

In addition, section 161.041(4), F.S., authorizes the DEP, as a condition to the granting of a coastal construction permit, to require mitigation, financial or other assurances acceptable to the DEP to assure performance of conditions of a permit, or to enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must be based upon clearly defined scientific principles.

Current law also provides that the permit application is not considered "complete" until the agency determines that it has all of the information it needs to approve or deny the application. To obtain additional information that the DEP needs (and is not contained in the original permit application) to make a decision on whether to issue a permit, the DEP will submit a request for additional information (RAI) to the applicant for this information. The DEP 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. However, there is no time limit in current law 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 before deeming an application complete.

In 2011, the Secretary of the DEP established an RAI policy for the permitting process with the following guidelines:

- 1st RAI- will require a mandatory review by the permitting supervisor. The RAI can be signed by the permit processor or the permitting supervisor.
- 2nd RAI- must be signed by the program administrator.

- 3rd RAI- must be signed by the district director or bureau chief. In addition, each district and division must submit a monthly report through the Deputy Secretary for Regulatory Programs of the 3rd RAIs issued and an explanation of why the RAI was issued.
- 4th RAI or more- will require the DEP Secretary's approval prior to issuing the 4th or more RAIs.

Effect of Proposed Changes

The bill amends s. 161.041(3), F.S., to specify that reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence that is based on plans, studies, and credible expertise that accounts for naturally occurring variables that might be reasonably expected.

The bill creates s. 161.041(5), F.S., requiring the DEP and permit applicants to negotiate in good faith on DEP-proposed permit conditions, as well as specific provisions and requirements associated with requisite monitoring and mitigation plans, before the issuance of the notice of intent and transmittal of the permit. The time period between the applicant receiving a notice of intent and the final notice to proceed may not be used to circumvent the time limits in chapter 120, F.S., or the Legislature's expressed intent to simplify and expedite the regulatory process for beach nourishment and inlet management projects when they are declared to be in the public interest.

The bill also creates s. 161.041(6), F.S., authorizing the DEP to issue a coastal construction permit in advance of the issuance of any incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities can not begin until the incidental take authorization is issued.

In addition, the bill creates s. 161.041(7), F.S., directing the DEP to adopt rules to address standard mixing zone criteria and anti-degradation requirements for turbidity generation for permits that involve the excavation and placement of sediment in order to eliminate the need for variances, except within Outstanding Florida Waters and aquatic preserves, and to reduce the need for other variances issued pursuant to ss. 373.414[1] or 403.201[2], F.S. The DEP must consider the legislative declaration that beach nourishment projects are in the public interest when processing variance requests.

The bill also creates s. 161.041(8), F.S., to provide that applications for permits must be made to the DEP upon such terms and conditions as set forth by rule. If the DEP requests additional information as part of the permit process, the DEP must cite applicable statutory and rule provisions that justify any item listed in a request for additional information. The DEP cannot issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such guidelines by rule.

The bill creates s. 161.041(9), F.S., to provide that the Legislature intends to simplify the permitting process for the periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects under the joint coastal permit process. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope and past performance of the project indicates that it has performed according to design expectations. The bill also directs the DEP to amend certain chapters of the Florida Administrative Code (F.A.C.) to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

[1] Section 373.414, F.S., provides additional criteria to permit applicants for activities in surface waters and wetlands such as providing reasonable assurance that a proposed activity will be clearly in the public interest for activities that are within an Outstanding Florida Water. The statute also provides for the applicability of variances to environmental resource permits for certain activities in surface waters and wetlands.

[2] Section 403.201, F.S., provides guidelines for granting variances.

Section 2. Creates s. 161.0413, F.S.

Current Situation

Under s. 161.055, F.S., the DEP can initiate the concurrent processing of applications for coastal construction permits, environmental resource permits, or dredge and fill permits, and sovereign submerged lands proprietary authorizations. These permits and authorizations, which were previously issued separately and by different state agencies, are now consolidated into a single permit from the DEP called a "joint coastal permit".

A joint coastal permit is required for activities that meet all of the following criteria:

- Located on Florida's natural sandy beaches facing the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida or associated inlets;
- Activities that extend seaward of the mean high water line;
- Activities that extend into sovereign submerged lands; and
- Activities that are likely to affect the distribution of sand along the beach[3].

Activities that require a joint coastal permit include beach restoration or nourishment; construction of erosion control structures such as groins and breakwaters; public fishing piers; maintenance of inlets and inlet-related structures; and dredging of navigation channels that include disposal of dredged material onto the beach or in the near shore area.

Effect of Proposed Changes

The bill creates s. 161.0413, F.S., authorizing the DEP to issue a joint coastal permit for activities falling under s. 161.041, F.S. (permits for beach and shore preservation) and part IV of chapter 373 (permits for management and storage of surface waters). The bill specifies that joint coastal permits must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

Section 3. Amends s. 161.101, F.S.

Current Situation

Section 161.101, F.S., provides that the DEP must determine beaches that are critically eroded and in need of restoration and nourishment and can authorize appropriations to pay up to 75 percent of the actual costs for restoring and nourishing a critically eroded beach. The local government in which the beach is located will be responsible for the balance of such costs. Whenever a beach erosion control project has been authorized by Congress for federal financial participation in accordance with any Act of Congress relating to beach erosion control in which nonfederal participation is required, it is the policy of the state to assist with an equitable share of the funds to the extent that funds are available, as determined by the DEP. The DEP is also authorized to enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of federal state, and other local governments and political entities, or any agencies or representatives thereof, for the purpose of improving, furthering, and expediting the beach management program.

With regard to a project approved in accordance with s. 161.161, F.S.[4], the DEP is authorized to pay from legislative appropriations specifically provided for these purposes an amount up to 75 percent of the costs of contractual services, including, but not limited to, the costs for:

- Feasibility and related planning studies.

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[3] Department of Environmental Protection website, http://www.dep.state.fl.us/beaches/programs/envpermt.htm

[4] Section 161.161, provides the procedure for approval of beach restoration and management projects and requires the DEP to develop and maintain a comprehensive long-term management plan for the restoration and maintenance of the state's critically eroded beaches.

- Design.
- Construction.
- Monitoring. The state shall cost-share in all biological and physical monitoring requirements which are based upon scientifically based criteria.

A project, in order to receive state funds, shall provide for adequate public access, protect natural resources, and provide protection for endangered and threatened species. The DEP cannot fund projects that provide only recreational benefits. All funded activities must have an identifiable beach erosion control or beach preservation benefit directed toward maintaining or enhancing sand in the system. Activities ineligible for cost-sharing include, but are not limited to:

- Recreational structures such as piers, decks, and boardwalks.
- Park activities and facilities except for erosion control.
- Aesthetic vegetation.
- Water quality components of stormwater management systems.
- Experimental or demonstration projects unless favorably peer-reviewed or scientifically documented.
- Hard structures unless designed for erosion control or to enhance beach nourishment project longevity or bypassing performance.
- Operations and maintenance, with the exception of nourishment.
- Maintenance and repair of over-walks.
- Navigation construction, operation, and maintenance activities, except those elements whose purpose is to place or keep sand on adjacent beaches.

Section 161.101, F.S., also provides that the intent of the Legislature in preserving and protecting Florida's sandy beaches is to direct beach erosion control appropriations to the state's most severely eroded beaches, and to prevent further adverse impact caused by improved, modified, or altered inlets, coastal armoring, or existing upland development. In establishing annual project funding priorities, the DEP shall seek formal input from local coastal governments, beach and general government interest groups, and university experts. Criteria to be considered by the DEP in determining annual funding priorities must include:

- The severity of erosion conditions, the threat to existing upland development, and recreational and/or economic benefits.
- The availability of federal matching dollars.
- The extent of local government sponsor financial and administrative commitment to the project, including a long-term financial plan with a designated funding source or sources for initial construction and periodic maintenance.
- Previous state commitment and involvement in the project.
- The anticipated physical performance of the proposed project, including the frequency of periodic planned nourishment.
- The extent to which the proposed project mitigates the adverse impact of improved, modified, or altered inlets on adjacent beaches.
- Innovative, cost-effective, and environmentally sensitive applications to reduce erosion.
- Projects that provide enhanced habitat within or adjacent to designated refuges of nesting sea turtles.
- The extent to which local or regional sponsors of beach erosion control projects agree to coordinate the planning, design, and construction of their projects to take advantage of identifiable cost savings.
- The degree to which the project addresses the state's most significant beach erosion problems.
- In the event that more than one project qualifies equally under the provisions of this subsection, the DEP shall assign funding priority to those projects that are ready to proceed.

Section 161.101(20), F.S., provides that the DEP must maintain a current project listing and may, in its discretion and depending upon the availability of local resources and changes in the criteria listed above, revise the project listing.

Effect of Proposed Changes

The bill amends s. 161.101(20), F.S., to require the DEP to maintain active project listings on its website by fiscal year in order to provide transparency regarding those projects receiving funding and the funding amounts, and to facilitate legislative reporting and oversight. The bill also provides that in consideration of this intent:

- The DEP must notify the Executive Office of the Governor and the Legislature regarding any significant changes in the funding levels of a given project as initially requested in the DEP's budget submission and subsequently included in approved annual funding allocations. The bill defines the term "significant" to mean those changes exceeding 25 percent of a project's original allocation. If there is surplus funding, notification must be provided to the Executive Office of the Governor and the Legislature to indicate whether additional dollars are intended to be used for inlet management, offered for reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.
- The DEP must prepare a summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists and the summary must be included with the DEP's submission of its annual legislative budget request.
- A local project sponsor can at any time release, in whole or in part, appropriated project dollars by formal notification to the DEP, which must notify the Executive office of the Governor and the Legislature. Notification must indicate how the project dollars are intended to be used.

Section 4. Amends s. 373.406, F.S.

Current Situation

Section 373.406, F.S., specifically exempts certain activities from the environmental resource permitting requirements adopted pursuant to Part IV of Chapter 373, F.S.

Effect of Proposed Changes

The bill amends s. 373.406, F.S., to create an additional permit exemption for the following de minimis exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

- The collection of geotechnical, geophysical and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.
- Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.
- Incidental excavation associated with any of the activities listed under the two bullets above.

A determination of whether any other activity is de minimis and therefore exempt from the permitting process must be made by the DEP within 30 days after receipt of the request unless the applicant requests additional time.

Section 5. Provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 161.041, F.S., specifying that demonstration to the DEP of the adequacy of a project's design and construction is supported by certain evidence; requiring the permit applicant and the DEP to negotiate in good faith; authorizing the DEP to issue permits for an incidental take authorization under certain circumstances; requiring the DEP to adopt certain rules involving the excavation and placement of sediment; requiring the DEP to justify items listed in a request for additional information; requiring the DEP to adopt guidelines by rule; providing legislative intent with

regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the DEP to amend specified rules to streamline such permitting.

Section 2. Creates s. 161.0413, F.S., providing for joint coastal permits for certain beach-related projects; providing for the permit life of joint permits.

Section 3. Amends s. 161.101, F.S., requiring the DEP to maintain certain beach management project information on its website; requiring the DEP to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels.

Section 4. Amends s. 373.406, F.S., providing a permit exemption for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities; requiring a DEP determination of a de minimis permit exemption to be provided within a certain time.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The DEP may see a decrease in permit fees collected due to the provision in the bill exempting certain activities from permitting requirements.

2. Expenditures:

   The DEP could experience a cost savings associated with issuing long-term permits for multiple events without the need of detailed review when there are no substantive changes to the project. There will also be a minor cost associated with the DEP rulemaking. The cost is not currently known, however, the DEP can accomplish the rulemaking with its current budget.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments could see a cost savings associated with streamlining current regulations, including the issuance of long-term permits for multiple events without the need for detailed DEP review when there are no substantive changes to the project.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector could see a cost savings associated with streamlining current regulations, including the issuance of long-term permits for multiple events without the need for detailed DEP review when there are no substantive changes to the project.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county of municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the DEP to adopt rules to address standard mixing zone criteria and anti-degradation requirements for turbidity generation for permits that involve the excavation and placement of sediment for the purpose of eliminating variances, except within Outstanding Florida Waters and aquatic preserves

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DEP provided the following comments:

> The bill would require rulemaking to address mixing zones and anti-degradation requirements for turbidity. As drafted, it does not limit the rulemaking to beach and inlet projects. The broad reference to "excavation and placement of sediment" on lines 133-134, would capture other types of dredge and fill projects. The general reference to reducing the need for "other variances" (line 136) issued under section 373.414, F.S., or section 403.201, F.S., would include subject matter unrelated to beach restoration.

The bill creates a new section 161.0413, F.S., authorizing the DEP to issue a joint coastal permit for activities falling under both s. 161.041, F.S., and part IV of Chapter 373, F.S. However, s. 161.055, F.S., appears to already grant the DEP with this authority. It is unclear why this new language is needed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to beach management; amending s. 161.041, F.S.; specifying that demonstration to the Department of Environmental Protection of the adequacy of a project's design and construction is supported by certain evidence; requiring the permit applicant and the department to negotiate in good faith; authorizing the department to issue permits for an incidental take authorization under certain circumstances; requiring the department to adopt certain rules involving the excavation and placement of sediment; requiring the department to justify items listed in a request for additional information; requiring the department to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the department to amend specified rules to streamline such permitting; creating s. 161.0413, F.S.; providing for joint coastal permits for certain beach-related projects; providing for the permit life of joint permits; amending s. 161.101, F.S.; requiring the department to maintain certain beach management project information on its website; requiring the department to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels; amending s. 373.406, F.S.; providing a permit exemption for certain specified exploratory activities relating to

beach restoration and nourishment projects and inlet management activities; requiring a department determination of a de minimis permit exemption to be provided within a certain time; providing an effective date.

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

Section 1. Section 161.041, Florida Statutes, is amended to read:

161.041 Permits required.—

(1) If a ~~any~~ person, firm, corporation, county, municipality, township, special district, or ~~any~~ public agency desires to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures ~~if~~ of a solid or highly impermeable design~~,~~ upon state sovereignty lands ~~of Florida,~~ below the mean high-water line of any tidal water of the state, a coastal construction permit must be obtained from the department before ~~prior to~~ the commencement of such work. The department may exempt interior tidal waters of the state from the permit requirements of this section. ~~No such development shall interfere,~~

(a) Except during construction, such development may not interfere with the public use ~~by the public~~ of any area of a beach seaward of the mean high-water line unless the department determines that the ~~such~~ interference is unavoidable for purposes of protecting the beach or an ~~any~~ endangered upland structure. ~~The department may require,~~ As a condition of ~~to~~ granting permits under this section, the department may require the provision of alternative access if ~~when~~ interference with public access along the beach is unavoidable. The width of such alternate access may not be required to exceed the width of the access that will be obstructed as a result of the permit being granted. ~~Application for coastal construction permits as defined above shall be made to the department upon such terms and conditions as set forth by rule of the department.~~

(b) Except for the deepwater ports identified in s. 403.021(9)(b), the department may ~~shall~~ not issue a ~~any~~ permit for the construction of a coastal inlet jetty or the excavation or maintenance of such an inlet if the activity authorized by the permit will have a significant adverse impact on the sandy beaches of this state without a mitigation program approved by the department. In evaluating the mitigation program, the department shall consider ~~take into consideration~~ the benefits of the long-term sand management plan of the permittee and the overall public benefits of the inlet activity.

(2) The department may authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including:

(a) Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;

(b) Design features of the proposed structures or activities; and

(c) Potential effects ~~impacts~~ of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such ~~a~~ permit.

(3) The department may require ~~such~~ engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects. Reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence that is based on plans, studies, and credible expertise that accounts for naturally occurring variables that might reasonably be expected.

(4) The department may, as a condition to ~~the~~ granting ~~of~~ a permit under this section, require mitigation, financial, or other assurances acceptable to the department as ~~may be~~ necessary to assure performance of the conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must ~~shall~~ be based upon clearly defined scientific principles. The department may also require notice of the required permit conditions ~~required~~ and the contractual agreements entered into pursuant to ~~the provisions of~~ this subsection to be filed in the public records

of the county in which the permitted activity is located.

(5) Department-proposed permit conditions as well as specific provisions and requirements associated with requisite monitoring and mitigation plans must be negotiated in good faith by the agency and the applicant before the issuance of the notice of intent and transmittal of the permit. The subsequent time period between the applicant receiving a notice of intent and the final notice to proceed may not be used to circumvent the time limits in chapter 120 or the Legislature's expressed intent to simplify and expedite the regulatory process for beach nourishment and inlet management projects pursuant to s. 161.0413 when they are declared to be in the public interest pursuant to s. 161.088.

(6) Notwithstanding any other provision of law, the department may issue permits pursuant to this part in advance of the issuance of an incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities not begin until the incidental take authorization is issued.

(7) The department shall adopt rules to address standard mixing zone criteria and antidegradation requirements for turbidity generation for permits that involve the excavation and placement of sediment in order to eliminate the need for variances, except within Outstanding Florida Waters and aquatic preserves, and to reduce the need for other variances issued pursuant to s. 373.414 or s. 403.201. In processing variance requests, the department must consider the legislative

declaration that, pursuant to s. 161.088, beach nourishment projects are in the public interest.

(8) Application for permits shall be made to the department upon such terms and conditions as set forth by rule.

(a) If, as part of the permit process, the department requests additional information, it must cite applicable statutory and rule provisions that justify any item listed in a request for additional information.

(b) The department may not issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such guidelines by rule.

(9) The Legislature intends to simplify the permitting process for the periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects under the joint coastal permit process. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope and past performance of the project indicates that it has performed according to design expectations. The department shall amend chapters 62B-41 and 62B-49 of the Florida Administrative Code to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

Section 2. Section 161.0413, Florida Statutes, is created to read:

161.0413 Joint coastal permits.—

(1) The department is authorized to issue a joint coastal permit for activities falling under both s. 161.041 and part IV

of chapter 373.

(2) Joint coastal permits must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

Section 3. Subsection (20) of section 161.101, Florida Statutes, is amended to read:

161.101 State and local participation in authorized projects and studies relating to beach management and erosion control.—

(20) The department shall maintain active ~~a current~~ project listings on its website by fiscal year in order to provide transparency regarding those projects receiving funding and the funding amounts, and to facilitate legislative reporting and oversight. In consideration of this intent: ~~listing and may, in its discretion and dependent upon the availability of local resources and changes in the criteria listed in subsection (14), revise the project listing.~~

(a) The department shall notify the Executive Office of the Governor and the Legislature regarding any significant changes in the funding levels of a given project as initially requested in the department's budget submission and subsequently included in approved annual funding allocations. The term "significant" means those changes exceeding 25 percent of a project's original allocation. If there is surplus funding, notification shall be provided to the Executive Office of the Governor and the Legislature to indicate whether additional dollars are intended to be used for inlet management pursuant to s. 161.143, offered for reversion as part of the next

appropriations process, or used for other specified priority projects on active project lists.

(b) A summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists shall be prepared by the department and included with the department's submission of its annual legislative budget request.

(c) A local project sponsor may at any time release, in whole or in part, appropriated project dollars by formal notification to the department, which shall notify the Executive Office of the Governor and the Legislature. Notification must indicate how the project dollars are intended to be used.

Section 4. Subsection (13) is added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.—The following exemptions shall apply:

(13) Notwithstanding subsection (6) and s. 403.813, this section, and any rule or order adopted pursuant thereto, may not require a permit for the following de minimis exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

(a) The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

(b) Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

(c) Incidental excavation associated with any of the activities listed under paragraph (a) or paragraph (b).

A determination of whether any other activity is de minimis and therefore exempt from the permitting process must be made by the department within 30 days after receipt of the request unless the applicant requests additional time.

Section 5. This act shall take effect July 1, 2012.

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 Frishe offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 161.041, Florida Statutes, is amended to read:

161.041 Permits required.—

(1) If a ~~any~~ person, firm, corporation, county, municipality, township, special district, or ~~any~~ public agency desires to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures ~~if~~ of a solid or highly impermeable design~~,~~ upon state sovereignty lands

~~of Florida,~~ below the mean high-water line of any tidal water of the state, a coastal construction permit must be obtained from the department before ~~prior to~~ the commencement of such work. The department may exempt interior tidal waters of the state from the permit requirements of this section. ~~No such development shall interfere,~~

(a) Except during construction, such development may not interfere with the public use ~~by the public~~ of any area of a beach seaward of the mean high-water line unless the department determines that the ~~such~~ interference is unavoidable for purposes of protecting the beach or an ~~any~~ endangered upland structure. ~~The department may require,~~ As a condition of ~~to~~ granting permits under this section, the department may require the provision of alternative access if ~~when~~ interference with public access along the beach is unavoidable. The width of such alternate access may not be required to exceed the width of the access that will be obstructed as a result of the permit being granted. ~~Application for coastal construction permits as defined above shall be made to the department upon such terms and conditions as set forth by rule of the department.~~

(b) Except for the deepwater ports identified in s. 403.021(9)(b), the department shall not issue a ~~any~~ permit for the construction of a coastal inlet jetty or the excavation or maintenance of such an inlet if the activity authorized by the permit will have a significant adverse impact on the sandy beaches of this state without a mitigation program approved by the department. In evaluating the mitigation program, the department shall consider ~~take into consideration~~ the benefits of the long-term sand management plan of the permittee and the

overall public benefits of the inlet activity.

(2) The department may authorize an excavation or erection of a structure at any coastal location upon receipt of an application from a property or riparian owner and upon consideration of facts and circumstances, including:

(a) Adequate engineering data concerning inlet and shoreline stability and storm tides related to shoreline topography;

(b) Design features of the proposed structures or activities; and

(c) Potential effects ~~impacts~~ of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system or coastal inlet, which, in the opinion of the department, clearly justify such ~~a~~ permit.

(3) The department may require ~~such~~ engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects. Reasonable assurance is demonstrated if the permit applicant provides competent substantial evidence based on plans, studies, and credible expertise that accounts for naturally occurring variables that might reasonably be expected.

(4) The department may, as a condition to ~~the~~ granting ~~of~~ a permit under this section, require mitigation, financial, or other assurances acceptable to the department as ~~may be~~ necessary to assure performance of the conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. Biological and environmental monitoring conditions included in the permit must ~~shall~~ be based upon

clearly defined scientific principles. The department may also require notice of the required permit conditions ~~required~~ and the contractual agreements entered into pursuant to ~~the provisions of~~ this subsection to be filed in the public records of the county in which the permitted activity is located.

(5) Notwithstanding any other provision of law, the department may issue permits pursuant to this part in advance of the issuance of an incidental take authorization provided under the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition that requires that such authorized activities not begin until the incidental take authorization is issued.

(6) The department shall adopt rules to address standard mixing zone criteria and antidegradation requirements for turbidity generation for beach management and inlet bypassing permits that involve the excavation and placement of sediment in order to reduce or eliminate the need for variances. In processing variance requests, the department must consider the legislative declaration that, pursuant to s. 161.088, beach nourishment projects are in the public interest.

(7) Application for permits shall be made to the department upon such terms and conditions as set forth by rule.

(a) If, as part of the permit process, the department requests additional information, it must cite applicable statutory and rule provisions that justify any item listed in a request for additional information.

(b) The department may not issue guidelines that are enforceable as standards for beach management, inlet management, and other erosion control projects without adopting such

guidelines by rule.

(8) The Legislature intends to simplify and expedite the permitting process for the periodic maintenance of previously permitted and constructed beach nourishment and inlet management projects under the joint coastal permit process. A detailed review of a previously permitted project is not required if there have been no substantial changes in project scope and past performance of the project indicates that the project has performed according to design expectations. The department shall amend chapters 62B-41 and 62B-49, Florida Administrative Code, to streamline the permitting process for periodic beach maintenance projects and inlet sand bypassing activities.

(9) Joint coastal permits issued for activities falling under this section and part IV of chapter 373 must allow for two maintenance or dredging disposal events or a permit life of 15 years, whichever is greater.

Section 2. Subsection (20) of section 161.101, Florida Statutes, is amended to read:

161.101 State and local participation in authorized projects and studies relating to beach management and erosion control.—

(20) The department shall maintain active ~~a current~~ project listings on its website by fiscal year in order to provide transparency regarding those projects receiving funding and the funding amounts, and to facilitate legislative reporting and oversight. In consideration of this intent: ~~listing and may, in its discretion and dependent upon the availability of local resources and changes in the criteria listed in subsection (14), revise the project listing.~~

(a) The department shall notify the Executive Office of the Governor and the Legislature regarding any significant changes in the funding levels of a given project as initially requested in the department's budget submission and subsequently included in approved annual funding allocations. The term "significant change" means those changes exceeding 25 percent of a project's original allocation. If there is surplus funding, notification shall be provided to the Executive Office of the Governor and the Legislature to indicate whether additional dollars are intended to be used for inlet management pursuant to s. 161.143, offered for reversion as part of the next appropriations process, or used for other specified priority projects on active project lists.

(b) A summary of specific project activities for the current fiscal year, funding status, and changes to annual project lists shall be prepared by the department and included with the department's submission of its annual legislative budget request.

(c) A local project sponsor may at any time release, in whole or in part, appropriated project dollars by formal notification to the department, which shall notify the Executive Office of the Governor and the Legislature. Notification must indicate how the project dollars are intended to be used.

Section 3. Paragraph (v) is added to subsection (1) of section 403.813, Florida Statutes, to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated

with the following types of projects; however, except as otherwise provided in this subsection, nothing in this subsection relieves an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph (1) or subparagraph (2).

Section 4. This act shall take effect July 1, 2012.

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

Remove the entire title and insert:

An act relating to beach management; amending s. 161.041, F.S.; specifying that demonstration to the Department of Environmental

Protection of the adequacy of a project's design and construction is supported by certain evidence; authorizing the department to issue permits for an incidental take authorization under certain circumstances; requiring the department to adopt certain rules involving the excavation and placement of sediment; requiring the department to justify items listed in a request for additional information; requiring the department to adopt guidelines by rule; providing legislative intent with regard to permitting for periodic maintenance of certain beach nourishment and inlet management projects; requiring the department to amend specified rules to streamline such permitting; amending s. 161.101, F.S.; requiring the department to maintain certain beach management project information on its website; requiring the department to notify the Governor's Office and the Legislature concerning any significant changes in project funding levels; amending s. 403.813, F.S.; providing a permit exception for certain specified exploratory activities relating to beach restoration and nourishment projects and inlet management activities; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821 Packing of Agricultural Products
SPONSOR(S): Albritton
TIED BILLS: None **IDEN./SIM. BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham	Blalock
2) Finance & Tax Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law specifically exempts from sales and use taxes, electricity used directly or indirectly for production or processing of agricultural products on the farm. Packing houses located on a farm are exempt from these taxes under this provision, but packinghouses not located on a farm are subject to these taxes on electricity consumed.

The bill amends current law to specifically provide that electricity used directly or indirectly for packing, or used directly or indirectly in a packinghouse is also exempt from these taxes.

The bill defines a packinghouse to mean any building or structure where fruits and vegetables are packed or otherwise prepared for market or shipment in fresh form for wholesale distribution. The exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail.

The bill appears to have a fiscal impact on state government revenues (see Fiscal Comments section). The bill exempts packinghouses from certain local taxes and fees, and therefore, also appears to have a fiscal impact on local governments. The November 10, 2011, Revenue Estimating Conference estimated that the provisions of this bill would result in a recurring negative fiscal impact of $900,000 to the state and $200,000 to local governments, for a total recurring impact of $1.1 million.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.08(5)(e), F.S., exempts electricity used directly or indirectly for production or processing of agricultural products on the farm from the taxes imposed by chapter 212, F.S., which include sales, rental, use, consumption, distribution, and storage taxes. Packinghouses located on a farm are exempt from theses taxes under this provision, but packinghouses not located on a farm are subject to these taxes on the electricity consumed.

Effect of Proposed Changes

The bill amends s. 212.08(5)(e), F.S., to specifically provide that electricity used directly or indirectly for packing, or used directly or indirectly in a packinghouse is also exempt from the taxes imposed by chapter 212, F.S. The bill also defines a packinghouse to mean any building or structure where fruits and vegetables are packed or otherwise prepared for market or shipment in fresh form for wholesale distribution.

Lastly, the bill specifies that the tax exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., providing a tax exemption for electricity used directly or indirectly in a packinghouse; providing a definition for packinghouse; and providing clarification of the exemption.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The November 10, 2011, Revenue Estimating Conference estimated that the provisions of this bill would result in a recurring negative fiscal impact of $900,000 to the state.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The November 10, 2011, Revenue Estimating Conference estimated that the provisions of this bill would result in a recurring negative fiscal impact of $200,000 to local governments.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons operating a packinghouse for the packaging of fruits and vegetables for market or shipment in fresh form for wholesale distribution will no longer pay certain taxes for the electricity used in the packinghouse.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, or the Florida Constitution may apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of the House.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the packing of agricultural products; amending s. 212.08, F.S.; providing an exemption from the tax on sales, use, and other transactions for electricity used by packinghouses; defining the term "packinghouse"; providing an effective date.

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

Section 1. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(e) *Gas or electricity used for certain agricultural purposes.*—

1. Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

2. Electricity used directly or indirectly for production, packing, or processing of agricultural products on the farm, or used directly or indirectly in a packinghouse, is exempt from the tax imposed by this chapter. As used in this subsection, the term "packinghouse" means any building or structure where fruits and vegetables are packed or otherwise prepared for market or shipment in fresh form for wholesale distribution. The exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827 Limited Agricultural Associations
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		RC Cunningham	Blalock AFB
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. Under current law, no member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association. Many LAAs in other states are converting to not-for-profit corporations, but there is no efficient way to seamlessly convert an LAA into a not-for-profit corporation under Florida law.

The bill provides a process that allows LAAs to convert to a corporation not-for-profit. The bill also requires a $35 filing fee for a certificate of conversion of a LAA to a domestic corporation to be collected by the Department of State (department).

The bill authorizes an LAA to convert to a domestic corporation not-for-profit by filing the following documents to the department:

- A certificate of conversion, which must be executed by an authorized person and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation.

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation. However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of law pertaining to not-for-profit corporations, but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The effective date of this bill is upon becoming law.

The bill appears to have a positive fiscal impact on state government revenues by requiring LAAs that choose to convert to a not-for-profit domestic corporation to pay a $35 filing fee to the Department of State for a certificate of conversion. Currently no LAAs are paying fees to the Department of State. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Limited agricultural associations (LAAs) have existed in Florida since the 1940's and mostly consist of the 60 county farm bureaus and 140,000 members that comprise the Florida Farm Bureau. Under current law, any three or more persons engaged in agricultural pursuits may form an LAA and exercise all the powers granted by the laws of this state to LAAs. No member of an LAA can be held personally responsible for any of the claims against or the indebtedness and obligations of the association.[1]

The articles of association must be subscribed by the original members and acknowledged by one of the original members before an officer of the state authorized to take acknowledgements and administer oaths. Two copies of the articles of association, together with a certificate of the Department of State stating that there is no other LLA within the state having the same name, is required to be filed with the clerk of the circuit court in the county where the principal place of business of the association is to be located. The proposed articles of association must be endorsed and approved by the circuit judge. Upon endorsement by the circuit judge, the articles of association must be recorded by the clerk of the circuit court. The clerk of the circuit court must then transmit a copy of the articles of association to the Department of State for filing. The Department of State and the clerk of the court are entitled to a fee of $5.25 for services rendered in connection with the formation of the LAA.[2]

The articles of association must set forth:

- The name of the LAA and the location of the principal place of business.
- The purpose for which the LAA is formed.
- The term of existence for the LAA.
- Which officers will conduct the business of the LAA, as well as the names of the officers who will conduct the business until their successors are eligible to serve.[3]
- The number, to be not less than three, of the LAA's managing committee members.[4]
- The fact that the members may not be held personally liable for any claims against or indebtedness and obligations of the LAA.

The name of the proposed LAA must be different from that of any other LLA in the state and must include the words "Limited Agricultural Association" or the letters "LAA" to distinguish it from a natural person, firm, co-partnership or corporation.

Each LAA must adopt bylaws within 30 days after organization. The bylaws must provide for such matters as the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assignability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the LAA and the election, powers, and duties of its officers.

LAAs can be dissolved if the members present a petition of dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the

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[1] Section 604.10, F.S.
[2] Section 604.11, F.S.
[3] Officers must be members of the LAA.
[4] Managing committee members must be members of the LAA.

association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.[5]

According to the Florida Farm Bureau, many Farm Bureaus in other states have converted LAAs to not-for-profit corporations, but there is no efficient way to seamlessly convert an LAA into a not-for-profit corporation under Florida law.

Any business corporation incorporated under the laws of Florida, which is engaged solely in carrying out the purposes and objects for which nonprofit corporations are authorized under Florida law to carry out, may change its corporate nature from a business corporation to that of a nonprofit corporation. Upon approval of the conversion, the resulting nonprofit corporation will succeed to the rights, liabilities, and assets of its corporate predecessor;[6] in turn, its rights, powers, immunities, duties, and liabilities as a business corporation will cease and determine, and it will instead become subject to all the rights, powers, immunities, duties, and liabilities of nonprofit corporations under Florida law.[7]

The conversion from business to nonprofit status is accomplished by the filing of a petition for conversion in the circuit court of the county wherein the corporation seeking to convert has its principal place of business, in the name of the corporation, signed by an officer of the corporation and under its corporate seal, setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed.[8] It must be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file the petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities, and the proposed articles of incorporation, signed by the president and secretary of the petitioning corporation.[9]

If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, the judge will approve the articles of incorporation by endorsing his or her approval on such. Thereafter the articles, endorsed with the judge's approval, are sent to the Florida Department of State (department).[10]

Upon receipt of the articles, and upon the payment of all taxes due the state by the petitioning corporation, if any, the department will issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of specified filing fees, the department will file the articles of incorporation. Thenceforth, the petitioning corporation will be a nonprofit corporation under the name adopted in the articles of incorporation.[11]

Effect of Proposed Changes

The bill amends s. 604.14, F.S., to provide that LAAs may convert to a corporation not-for-profit in accordance with s. 617.1809, F.S. The bill also amends s. 617.0122, F.S. to include a $35 fee for a certificate of conversion of a limited agricultural association to a domestic corporation.

Section 617.1809, F.S., is created to provide a method for conversion of an LAA to a domestic corporation not-for-profit. An LAA may convert to a domestic corporation not-for-profit by filing the following documents to the department:

[5] Section 604.14, F.S.
[6] Section 617.1805, F.S.
[7] Section 617.1807, F.S.
[8] Section 617.1805, F.S.
[9] Section 617.1806, F.S.
[10] Section 617.1807, F.S.
[11] Section 617.1807, F.S.

- A certificate of conversion, which must be executed by a person authorized in S. 617.01201(6), F.S.,[12] and such other persons that may be required in the association's articles of association or bylaws; and
- Articles of incorporation;[13]

The certificate of conversion must include:

- The date upon which the association was initially formed;
- The name of the association immediately before filing the certificate of conversion;
- The name of the domestic corporation as set forth in its articles of incorporation; and
- The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion must be a date certain and the same as the effective date of the articles of incorporation.

When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the LAA is converted to a domestic corporation, and the corporation becomes subject to the provisions in chapter 617, F.S.[14] However, the existence of the corporation is deemed to have commenced when the LAA was initially formed. The conversion of an LAA to a domestic corporation does not affect any obligation or liability of the LAA that was incurred before the conversion. When the conversion takes effect, all rights, privileges, and powers of the converting LAA, all property, real, personal and mixed, and all debts due to the LAA, as well as all other assets and causes of action belonging to the LAA, are vested in the domestic corporation to which the LAA is converted and are the property of the corporation as they were of the LAA. The title to any real property that is vested by deed or otherwise in the converting LAA does not revert and is not impaired by the operation of chapter 617, F.S., but all rights of creditors and all liens upon any property of the LAA are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

The LAA is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute a dissolution of the LAA, but is a continuation of the LAA's existence in the form of a domestic corporation. Before the LAA can file a certificate of conversion with the department, unless the LAA's bylaws or articles of conversion specify otherwise, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved in the same manner as the approval for conversion. The converting LAA may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record can also contain other provisions relating to conversion, including, but not limited to the right of the converting LAA to abandon the proposed conversion or an effective date for the conversion.

B. SECTION DIRECTORY:

Section 1: Amends s. 604.14, F.S.; to provide that a limited agricultural association may convert to a corporation not-for-profit.

Section 2: Amends s. 617.1809, F.S., to provide a $35 fee to file a certificate of conversion of a limited agricultural association to a domestic corporation.

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[12] Section 617.01201(6), F.S. The document must be executed: by a director of a domestic or foreign corporation, or by its president or by another of its officers; if directors or officers have not been selected or the corporation has not been formed, by an incorporator; or if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by the fiduciary.

[13] Must be in compliance with s. 617.0202, F.S., and be executed by a person authorized in s. 617.01201(6), F.S.; a fee of $35 shall be collected by the department documents delivered for filing, s. 617.0122(1), F.S.

[14] Chapter 617, F.S., is the "Florida Not For Profit Corporation Act."

Section 3: Creates 617.1809, F.S., providing a process for LAAs to convert to a not-for-profit corporation.

Section 4: Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill requires that LAAs that seek to convert to a not-for-profit domestic corporation to pay a filing fee of $35 to the Department of State for a certificate of conversion of a limited agricultural association to a domestic corporation. Currently no LAAs are paying fees to the Department of State. If the estimated 60 LAAs were to opt to become a NPDC, the additional revenue from the conversion would be $4,200. Furthermore, each year NPDCs are required to submit an annual report to the Department of State, along with a fee of $61.25. Thus, if the estimated 60 LAAs were to convert to a NPDC, the Department of State would receive $3,675 in recurring yearly fees from the annual reports.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

LAAs that wish to take advantage of the provisions in the bill and convert to a not-for-profit corporation will have to pay the $35 filing fee required in the bill. Currently no LAAs are paying fees to the Department of State.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to limited agricultural associations; amending s. 604.14, F.S.; providing for the conversion of limited agricultural associations to corporations not for profit; conforming provisions; amending s. 617.0122, F.S.; specifying a fee for filing a limited agricultural association's certificate of conversion to a domestic corporation; creating s. 617.1809, F.S.; defining the term "limited agricultural association" for purposes of the act; providing procedures for conversion of a limited agricultural association to a domestic corporation not for profit; requiring the filing of a certificate of conversion and articles of incorporation with the Department of State; providing for the effective date of the conversion; providing that the conversion does not affect any obligation or liability of the association; providing that all rights, property, and obligations of the association are vested in the corporation; specifying that the association is not required to wind up its affairs or pay its liabilities and distribute its assets; providing for the association's approval before the certificate of conversion is filed; authorizing the association to provide a plan or other record of conversion; providing an effective date.

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

Section 1. Section 604.14, Florida Statutes, is amended to read:

604.14 Limited agricultural association; dissolution; conversion to a corporation not for profit.—

(1) A ~~Any~~ limited agricultural association may be dissolved upon the presentation by its members of a petition for dissolution to a ~~the~~ circuit judge of the circuit in which the association's ~~wherein its~~ principal place of business is located. The ~~Such~~ judge may issue any ~~make all~~ orders necessary for ~~to the~~ preservation of the rights of the members and creditors and the winding up of the affairs of the association. ~~Such~~ Notice of hearing on the petition for dissolution must ~~shall~~ be given as ~~may by~~ the judge deems ~~be deemed~~ proper.

(2) A limited agricultural association may convert to a corporation not for profit in accordance with s. 617.1809.

Section 2. Subsection (22) of section 617.0122, Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section to read:

617.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees on documents delivered to the department for filing:

(22) Certificate of conversion of a limited agricultural association to a domestic corporation: $35.

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department

is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 3. Section 617.1809, Florida Statutes, is created to read:

617.1809 Limited agricultural association; conversion to a domestic corporation not for profit.—

(1) As used in this section, the term "limited agricultural association" or "association" means a limited agricultural association formed under ss. 604.09-604.14.

(2) A limited agricultural association may convert to a domestic corporation not for profit by filing the following documents with the department in accordance with s. 617.01201:

(a) A certificate of conversion, which must be executed by a person authorized in s. 617.01201(6) and such other persons that may be required in the association's articles of association or bylaws.

(b) Articles of incorporation, which must comply with s. 617.0202 and be executed by a person authorized in s. 617.01201(6).

(3) The certificate of conversion must include:

(a) The date upon which the association was initially formed under ss. 604.09-604.14.

(b) The name of the association immediately before filing the certificate of conversion.

(c) The name of the domestic corporation as set forth in its articles of incorporation.

(d) The effective date of the conversion. If the conversion does not take effect upon filing the certificate of conversion and articles of incorporation, the delayed effective date for the conversion, subject to the limitation in s. 617.0123(2), must be a date certain and the same as the effective date of the articles of incorporation.

(4) When the certificate of conversion and articles of incorporation are filed with the department, or upon the delayed effective date, the association is converted to the domestic corporation, and the corporation becomes subject to this chapter. However, notwithstanding s. 617.0123, the existence of the corporation is deemed to have commenced when the association was initially formed under ss. 604.09-604.14.

(5) Conversion of a limited agricultural association to a domestic corporation does not affect any obligation or liability of the association that was incurred before the conversion.

(6) When a conversion takes effect under this section, all rights, privileges, and powers of the converting association, all property, real, personal, and mixed, and all debts due to the association, as well as all other assets and causes of action belonging to the association, are vested in the domestic corporation to which the association is converted and are the property of the corporation as they were of the association. The title to any real property that is vested by deed or otherwise in the converting association does not revert and is not impaired by the operation of this chapter, but all rights of

creditors and all liens upon any property of the association are preserved unimpaired, and all debts, liabilities, and duties of the association attach to the domestic corporation and are enforceable against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation.

(7) The limited agricultural association is not required to wind up its affairs or pay its liabilities and distribute its assets. Conversion does not constitute a dissolution of the association but is a continuation of the association's existence in the form of the domestic corporation.

(8) Before a limited agricultural association may file a certificate of conversation with the department, unless otherwise specified in the association's articles of association or bylaws, the conversion must be approved by a majority vote of the association's members, and the articles of incorporation must be approved by the same authorization required for approval of the conversion. As part of the approval, the converting association may provide a plan or other record of conversion which describes the manner and basis of converting the membership interests in the association into membership interests in the domestic corporation. The plan or other record may also contain other provisions relating to the conversion, including, but not limited to, the right of the converting association to abandon the proposed conversion or an effective date for the conversion that is consistent with paragraph (3)(d).

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Agriculture
SPONSOR(S): Albritton
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1184

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

SUMMARY ANALYSIS

This bill addresses several issues relating to agriculture in the state.

- Current law provides that a county cannot charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances. Current law also provides that any county that, before March 1, 2009, had adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, under certain circumstances. The bill replaces the word "county" with "governmental entity" in the provisions described above to expand, from just counties to counties, municipalities, and regional governmental entities, the types governmental entities that are not authorized to charge the assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances.
- Current law provides that a person who uses motor fuel for agricultural or aquacultural purposes in farm equipment that has not been driven or operated upon the public highways of the state is entitled to a refund of state taxes imposed on the motor fuel. The public highway use restriction does not apply to the movement of a farm vehicle or farm equipment between farms. The bill adds citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above. The bill also amends the Florida Uniform Traffic Control Law to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by such machinery.
- The bill revises the powers and duties of the Department of Agriculture and Consumer Services (department) to include enforcing the state laws and rules relating to the use of commercial feed stocks. In addition, the bill requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.
- The bill also provides that a person, who knowingly enters any nonpublic area of a farm, and without prior written consent of the farm's owner or the owner's authorized representative, operates the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation commits a first degree misdemeanor. The offense is punishable by a term of imprisonment not exceeding one year or a fine of $1,000. The bill provides definitions and certain exceptions. The effective date for this provision of the bill is October 1, 2012.

The bill appears to have a fiscal impact on state and local governments by exempting certain individuals from state and local fees and taxes. However, the Revenue Estimating Conference has not yet reviewed this legislation, so the fiscal impacts are currently indeterminate. The bill may also result in additional court and jail costs by increasing the number of people charged with misdemeanors for filming certain farm operations.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1

Present Situation

In 2011, the Legislature overrode the veto of CS/HB 7103, which passed the House and Senate during the 2010 Legislative Session. CS/HB 7103, in part, amended s. 163.3162(3)(b), F.S., to provide that a county cannot charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP), or works-of-the-district permit or implements best management practices (BMPs)[1].

In addition, CS/HB 7103 amended s. 163.3162(3)(c), F.S., to provide that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;[2]
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of CS/HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands.

Effect of Proposed Changes

The bill creates s. 163.3162(2)(d), F.S., to define the term "governmental entity" as "having the same meaning as provided in s. 164.1031, F.S."[3], and amends ss. 163.3162(3)(b) and 163.3162(3)(c), F.S., by replacing the word "county" with the words "governmental entity" in the provisions of those sections described above. This has the effect of expanding, from just counties to counties, local governments and regional governmental entities, the types of governmental entities that are prohibited from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has an NPDES permit, ERP, or works-of-the-district permit or

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[1] The BMPs must have been adopted as rules under Chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

[2] *Id*

[3] Governmental entity is defined in s. 164.1031, F.S., to include local and regional governmental entities. "Local governmental entities" includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. "Regional governmental entities" includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

implements best management practices (BMPs), and that can continue, if certain requirements are met, to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural.

Section 2

Present Situation

Section 206.41(4)(c), F.S., provides that a person who uses motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes that has paid the local option fuel tax, an additional tax designated as the "State Comprehensive Enhanced Transportation System Tax," or fuel sales tax, is entitled to a refund of such tax. For the purpose of establishing what activities qualify for the tax refund, "agricultural and aquacultural purposes" means "motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction from being driven or operated upon the public highways of the State does not apply to the movement of a farm vehicle or farm equipment between farms.

Effect of Proposed Changes

The bill amends s. 206.41(4)(c), F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

Section 3

Present Situation

Section 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., provides that, notwithstanding any other provisions of law, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law.

Effect of Proposed Changes

The bill amends s. 316.515(5)(a), F.S., to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by specified equipment.

Sections 4 and 5

Present Situation

The Department of Agriculture and Consumer Services (department) has the authority pursuant to s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds.

Chapter 580, F.S., provides for the regulation of commercial feed and feedstuff. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and provides that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable, and must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, non-nutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and their products, which are used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feedstuff.
- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required by Florida law.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribe feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.

Effect of Proposed Changes

The bill amends s. 570.07, F.S., to give the department the authority to enforce laws and rules of the state relating to the use of commercial feed and feedstuff.

The bill also amends s. 580.036, F.S., to authorize the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

Section 6

Present Situation

Chapter 810, F.S., provides various penalties for trespassing, ranging from a first degree felony to a third degree misdemeanor. Other than video voyeurism, Florida law does not provide penalties for covert video or audio recording in agricultural production areas.

In order to expose animal abuse on farms and in agricultural processing facilities around the country, certain people pose as potential employees and record activities on the farm or processing facility using hidden cameras. In late 2010, an undercover investigator for the Humane Society of the United States (HSUS) was employed at the Cal-Maine egg plant in Waelder, Texas for 28 days.[4] A video obtained by the investigator while posing as an employee documents claims of unsanitary conditions and cruel treatment of the animals and was posted on the HSUS website. Another group, Mercy for Animals, a

[4] See http://vegan.com/blog/2010/11/17/hsus-undercover-investigation-at-texas-cal-maine-egg-farm/html (Last visited on 1/2/12)

non-profit animal rights organization focused on promoting a vegetarian diet, sends undercover investigators into agricultural processing facilities to document claims of inhumane treatment of animals and posts these videos on the internet.[5]

Effect of Proposed Changes

The bill creates s. 810.127, F.S., to provide that a person who knowingly enters upon any nonpublic area of a farm and, without prior written consent of the farm's owner or the owner's authorized representative, operates the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation commits a first degree misdemeanor. The offense is punishable by a term of imprisonment not exceeding one year or a fine of $1,000. This provision does not apply to:

- An employee or agent of the Department of Agriculture and Consumer Services acting under s. 570.15, F.S.
- An employee or agent of the Department of Business and Professional Regulation acting under Chapter 450, F.S.
- A law enforcement officer conducting a lawful inspection or investigation.
- Any other government employee conducting official regulatory business.
- An engineer or his or her agent or employee acting under s. 471.027, F.S.
- A land surveyor and mapper or his or her subordinate, agent, or employee, as necessary for conducting any activity under chapter 472, F.S.
- A person acting on behalf of an insurer for inspection, underwriting, or claims purposes.

The bill defines "audio or video recording function" to mean "the capability of a camera, an audio or video recorder, or any other device to record, store, transfer, broadcast, or transmit sound or images by means of any technology now known or later developed, regardless of the recording media or format, including, but not limited to, photographs or film; magnetic storage , including audio cassette tapes, videocassette tapes, hard disk drives, and floppy disk drives; flash memory, including memory cards, flash drives, and solid state drives; optical disc storage media, including compact discs, digital versatile discs, and blu-ray discs; streaming media; and any other electrical, magnetic, optical, or form of data storage. "Farm", "farm operation", and "farm product" have the same meaning as provided in s. 823.14, F.S.[6] For the purposes of this section of law, the term "farm" also includes any other land upon which a legal farm operation is being conducted and upon which farm products are being produced. This provision of the bill takes effect October 1, 2012.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S.; providing a definition for "governmental entity;" and, replacing "county" with "governmental entity" in some but not all instances in the section.

Section 2: Amends s. 206.41, F.S.; adding citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

Section 3: Amends s. 316.515, F.S.; revising the Florida Uniform Traffic Control Law to allow the use of citrus harvesting equipment and citrus fruit loaders; and, authorizing the transport of citrus.

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[5] See http://www.mercyforanimals.org/html (Last visited on 1/2/12)

[6] Section 823.14, F.S., defines "farm" as "the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products". "Farm operation" means "all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor". "Farm product" means "any plant, as defined in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom".

Section 4: Amends s. 570.07, F.S.; revising the powers and duties of the Department of Agriculture and Consumer Services to include enforcing the state laws and rules relating to the use of commercial stock feed.

Section 5: Amends s. 580.036, F.S.; revising the powers and duties of the Department of Agriculture and Consumer Services requiring the department to adopt rules establishing standards relating to commercial feed or feedstuff.

Section 6: Creates s. 810.27, F.S.; providing an effective date; providing definitions; prohibiting the knowing entry on agricultural land for the purpose of audio or video recording purposes without express permission of the owner; providing exceptions; and, providing penalties.

Section 7: Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   By providing a tax refund for fuel taxes on citrus harvesting equipment or citrus fruit loaders, the state will experience a loss of sales tax revenue. Because this bill has not yet been reviewed by the conference, the fiscal impact on state government is indeterminate at this time.

2. Expenditures:

   The new criminal provision created in the bill may result in a negative fiscal impact to courts and the criminal justice system..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   In 2009, the Revenue Estimating Conference (conference) made the following comment regarding identical legislation that is in section 1 of the bill: "Provisions of this bill that prohibit a county or municipality from imposing an assessment or fee for stormwater management on certain lands will have a negative indeterminate impact on local government revenues as determined by the conference."

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

The bill provides relief to citrus producers who pay certain taxes on motor fuel for use in citrus harvesting equipment or citrus fruit loaders.

Persons who are convicted of conducting audio or video surveillance on a farm without the owner's permission may incur a fine of $1,000.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits a governmental entity from imposing an assessment or fee for stormwater management on certain lands. However, because this legislation has not yet been reviewed by the Revenue Estimating Conference, it is unclear if the reduction in revenues meets the threshold of the mandate or if an exemption applies.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to agriculture; amending s. 163.3162, F.S.; defining the term "governmental entity"; prohibiting certain governmental entities from charging stormwater management assessments or fees on certain bona fide farm operations except under certain circumstances; providing for applicability; amending s. 206.41, F.S.; revising the definition of the term "agricultural and aquacultural purposes" for purposes of the required refund of state taxes imposed on motor fuel used for such purposes; amending s. 316.515, F.S.; revising the Florida Uniform Traffic Control Law to authorize the use of citrus harvesting equipment and citrus fruit loaders to transport certain agricultural products and to authorize the use of certain motor vehicles to transport citrus; amending s. 570.07, F.S.; revising the powers and duties of the Department of Agricultural and Consumer Services to enforce laws and rules relating to the use of commercial stock feeds; amending s. 580.036, F.S.; authorizing the department to adopt rules establishing certain standards for regulating commercial feed or feedstuff; requiring the department to consult with the Commercial Feed Technical Council in the development of such rules; creating s. 810.127, F.S.; defining terms; prohibiting the knowing entry upon and unauthorized recording of sounds or images of a farm

or farm operation; providing for applicability; providing a penalty; providing effective dates.

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

Section 1. Paragraph (d) is added to subsection (2) of section 163.3162, Florida Statutes, and paragraphs (b), (c), and (i) of subsection (3) of that section are amended to read:

163.3162 Agricultural Lands and Practices.—

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

(d) "Governmental entity" has the same meaning as provided in s. 164.1031.

(3) DUPLICATION OF REGULATION.—Except as otherwise provided in this section and s. 487.051(2), and notwithstanding any other law, including any provision of chapter 125 or this chapter:

(b) A governmental entity ~~county~~ may not charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, if the farm operation has a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit or implements best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program.

(c) For each governmental entity ~~county~~ that, before March 1, 2009, adopted a stormwater utility ordinance or resolution,

adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the governmental entity's ~~county's~~ intent to use the uniform method of collection pursuant to s. 197.3632 for such stormwater ordinances, the governmental entity ~~county~~ may continue to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural pursuant to s. 193.461, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

1. The implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program;

2. The stormwater quality and quantity measures required as part of a National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit; or

3. The implementation of best management practices or alternative measures which the landowner demonstrates to the governmental entity ~~county~~ to be of equivalent or greater stormwater benefit than those provided by implementation of best management practices adopted as rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of a

National Pollutant Discharge Elimination System permit, environmental resource permit, or works-of-the-district permit.

(i) The provisions of this subsection that limit a governmental entity's ~~county's~~ authority to adopt or enforce any ordinance, regulation, rule, or policy, or to charge any assessment or fee for stormwater management, apply only to a bona fide farm operation as described in this subsection.

Section 2. Paragraph (c) of subsection (4) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(4)

(c)1. Any person who uses any motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes on which fuel the tax imposed by paragraph (1)(e), paragraph (1)(f), or paragraph (1)(g) has been paid is entitled to a refund of such tax.

2. For the purposes of this paragraph, "agricultural and aquacultural purposes" means motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction does not apply to the movement of a farm vehicle, ~~or~~ farm equipment, citrus harvesting equipment, or citrus fruit loaders between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

3. For the purposes of this paragraph, "commercial fishing

and aquacultural purposes" means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

4. For the purposes of this paragraph, "commercial aviation purposes" means motor fuel used in the operation of aviation ground support vehicles or equipment, no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state.

Section 3. Paragraph (a) of subsection (5) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT; AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, <u>citrus harvesting equipment, citrus fruit loaders,</u> and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized for the purpose of transporting peanuts, grains, soybeans, <u>citrus,</u> cotton, hay, straw, or other

perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and rules of the Department of Transportation.

Section 4. Paragraph (c) of subsection (16) of section 570.07, Florida Statutes, is amended to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(16) To enforce the state laws and rules relating to:

(c) Registration, labeling, inspection, sale, <u>use,</u> composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(n) is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(n) must use the standards and fines set forth in

the pertinent statutes or any rules adopted by the department pursuant to those statutes.

Section 5. Paragraph (g) is added to subsection (2) of section 580.036, Florida Statutes, to read:

580.036 Powers and duties.—

(2) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to enforce the provisions of this chapter. These rules shall be consistent with the rules and standards of the United States Food and Drug Administration and the United States Department of Agriculture, when applicable, and shall include:

(g) Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. Such standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council created under s. 580.151.

Section 6. Effective October 1, 2012, section 810.127, Florida Statutes, is created to read:

810.127 Unauthorized entry and use of recording device on farm; penalties.—

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

(a) "Audio or video recording function" means the capability of a camera, an audio or video recorder, or any other device to record, store, transfer, broadcast, or transmit sound or images by means of any technology now known or later

developed, regardless of the recording media or format, including, but not limited to, photographs or film; magnetic storage, including audio cassette tapes, videocassette tapes, hard disk drives, and floppy disk drives; flash memory, including memory cards, flash drives, and solid state drives; optical disc storage media, including compact discs, digital versatile discs, and blu-ray discs; streaming media; and any other electrical, magnetic, optical, or form of data storage.

(b) "Farm" has the same meaning as provided in s. 823.14. For purposes of this section, the term also includes any other land upon which a legal farm operation is being conducted and upon which farm products are being produced.

(c) "Farm operation" has the same meaning as provided in s. 823.14.

(d) "Farm product" has the same meaning as provided in s. 823.14.

(2) A person may not knowingly enter upon any nonpublic area of a farm and, without the prior written consent of the farm's owner or the owner's authorized representative, operate the audio or video recording function of any device with the intent of recording sound or images of the farm or farm operation.

(3) This section does not apply to:

(a) An employee or agent of the Department of Agriculture and Consumer Services acting under s. 570.15.

(b) An employee or agent of the Department of Business and Professional Regulation acting under chapter 450.

(c) A law enforcement officer conducting a lawful inspection or investigation.

(d) Any other government employee conducting official regulatory business.

(e) An engineer or his or her agent or employee acting under s. 471.027.

(f) A land surveyor and mapper or his or her subordinate, agent, or employee, as necessary for conducting any activity under chapter 472.

(g) A person acting on behalf of an insurer for inspection, underwriting, or claims purposes.

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

Section 7. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4121 Comprehensive Statewide Water Conservation Program
SPONSOR(S): Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham PC	Blalock MFB
2) State Affairs Committee			

SUMMARY ANALYSIS

This bill repeals an obsolete requirement for the Department of Environmental Protection to report by December 1, 2005, on the progress made in developing a statewide water conservation report.

Under current law, the Legislature finds that the social, economic, and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. Current law also provides that the Legislature encourages the use of efficient, effective, and affordable water conservation measures. Where water is provided by a public water supply utility, the legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. To implement these findings, current law directs the Department of Environmental Protection (DEP), in cooperation with the water management districts (WMDs) and other stakeholders, to develop a comprehensive statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which will provide an integrated statewide database for the collection, evaluation, and dissemination of quantitative and qualitative information on public water supply conservation programs and practices and their effectiveness;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices to assist public water supply utilities in the design and implementation of goal-based, utility-specific water conservation plans.

The DEP is required to submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program described above. The report must include any statutory changes and funding necessary for the continued development and implementation of the program. The DEP has submitted the required report.

The bill repeals this provision in current law requiring the DEP to submit this report since it is obsolete and no longer effective.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under s. 373.227(1), F.S., the Legislature finds that the social, economic, and cultural conditions of the state relating to the use of public water supply vary by service area and that public water supply utilities must have the flexibility to tailor water conservation measures to best suit their individual circumstances. Section 373.227(1), F.S., also provides that water is provided by a public water supply utility, the Legislature intends that a variety of conservation measures be made available and used to encourage efficient water use. To implement these findings, S. 373.227(2), F.S., directs the Department of Environmental Protection (DEP), in cooperation with the water management districts (WMDs) and other stakeholders, to develop a comprehensive statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which will provide an integrated statewide database for the collection, evaluation, and dissemination of quantitative and qualitative information on public water supply conservation programs and practices and their effectiveness;
- Develops a standardized water conservation planning process for utilities; and
- Develop and maintain a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices to assist public water supply utilities in the design and implementation of goal-based, utility-specific water conservation plans.

Section 373.227(5), F.S., directs the DEP to submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program described above. The report must include any statutory changes and funding necessary for the continued development and implementation of the program. The DEP has submitted the required report.

Effect of Proposed Changes

This bill repeals s. 373.227(5), F.S., requiring the DEP to submit the report described above since it is obsolete and no longer effective.

B. SECTION DIRECTORY:

Section 1. Repeals the requirement that the DEP submit a report by December 1, 2005, to the President of the Senate, the Speaker of the House of Representatives, and the appropriate subcommittees of the Senate and the House of Representatives on the progress made in implementing the water conservation program.

Section 2. Provides an effective date of July 1, 2012.

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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the comprehensive statewide water conservation program; amending s. 373.227, F.S.; repealing an obsolete provision requiring the Department of Environmental Protection to submit a specified report to the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive committees of the Legislature; providing an effective date.

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

Section 1. Subsection (6) of section 373.227, Florida Statutes, is renumbered as subsection (5), and present subsection (5) of that section is amended to read:

373.227 Water conservation; legislative findings; legislative intent; objectives; comprehensive statewide water conservation program requirements.—

~~(5) By December 1, 2005, the department shall submit a written report to the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive committees of the Senate and the House of Representatives on the progress made in implementing the comprehensive statewide water conservation program for public water supply required by this section. The report must include any statutory changes and funding requests necessary for the continued development and implementation of the program.~~

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4123 Federal Environmental Permitting
SPONSOR(S): Burgin
TIED BILLS: None **IDEN./SIM. BILLS:** SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham RC	Blalock MFB
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill repeals an obsolete reporting requirement related to the development of a mechanism or plan to consolidate federal and state wetland permitting programs.

The dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP), and the federal Clean Water Act (Act) requires the same person to obtain a 404 permit from the U.S. Army Corps of Engineers (USCOE) if the wetlands in question fall within the jurisdiction of the Act. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the USCOE. The SPGP 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 the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: 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; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was 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. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House 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 stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

The bill repeals the provision in the law requiring the DEP to file the report described above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Florida's wetlands includes permitting by both the state and 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 (Act). 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 certain activities that occur in or near the nation's wetlands and surface waters. The regulatory plan is intended to control the dredging and filling of 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 dredging and filling of wetlands is regulated under both Florida and federal law. Florida law requires a person seeking to dredge or fill wetlands to obtain an Environmental Resource Permit (ERP) from the Department of Environmental Protection (DEP), and the federal Clean Water Act (Act) requires the same person to obtain a 404 permit from the U.S. Army Corps of Engineers (USCOE) if the wetlands in question fall within the jurisdiction of the Act. To reduce duplication of regulation and streamline the permitting process, the state has worked with the federal government to develop a state programmatic general permit (SPGP) for certain activities impacting wetlands. The SPGP process allows the DEP to issue a single permit and eliminates individual review by the USCOE. The SPGP 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 the projects are limited as well. Wetland impacts allowed in a SPGP usually range from 5,000 square feet to one acre. Activities covered by the current SPGP include, but are not limited to: 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; and maintenance dredging of canals and channels.

To further reduce duplication of regulation and streamline the permitting process for certain activities impacting wetlands, the DEP was 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. The law required that the mechanism or plan analyze and propose the development of an expanded state programmatic general permit program. The DEP was also directed to file with the Speaker of the House 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 stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives. The DEP has fulfilled these requirements.

Effect of Proposed Changes

This bill repeals s. 373.4144(2), F.S., requiring the DEP 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 stated above and to coordinate with the Florida Congressional Delegation on any necessary changes to federal law to implement the directives.

B. SECTION DIRECTORY:

Section 1. Repeals s. 373.4144(2), F.S., directing the DEP to file a report with the Speaker of the House of Representatives and the President of the Senate proposing any required federal and state statutory changes that would be necessary to accomplish consolidation state and federal wetland permitting programs, and to coordinate with the Florida congressional Delegation on any necessary changes to federal law.

Section 2. Provides an effective date of July 1, 2012.

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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to federal environmental permitting; amending s. 373.4144, F.S.; repealing provisions directing the Department of Environmental Protection to file specified reports with the Speaker of the House of Representatives and the President of the Senate and to coordinate with the Florida Congressional Delegation on certain matters; providing an effective date.

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

Section 1. Section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.—

(1) 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) 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.~~

(2)~~(3)~~ ~~Nothing in~~ This section does not ~~shall be construed to~~ preclude the department from pursuing 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 2. This act shall take effect July 1, 2012.