

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 197 Surface Water Resource Protection Programs
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council	_____	Deslatte	Hamby
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill makes changes to address discrepancies between Northwest Florida’s Environmental Resource Permitting (ERP) program and the rest of the state’s ERP program. To provide consistency throughout the state’s ERP program, the bill:

- Ensures that the variance provisions of s. 403.201, F.S., are applicable to the Northwest Florida ERP program.
- Ensures that state surface water quality standards do not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit issued under the northwest Florida ERP program.

The bill removes the requirement for the Northwest Florida Water Management District, the Suwannee River Water management District, or a financially disadvantaged small local government to provide a 50-percent match of cash or in-kind services towards the implementation of the surface water improvement and management (SWIM) projects.

The bill amends s. 373.4595, F.S., to provide that nothing in the section affects the authority of the Department of Environmental Protection (DEP) or the South Florida Water Management District (SFWMD) to adopt basin-specific criteria under Part IV of this chapter to prevent harm to the water resources of the SFWMD.

Furthermore, the proposed bill eliminates the requirements that the SFWMD, prior to authorizing a discharge into works of the district, require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loadings over that of existing land uses.

There is no fiscal impact on the state. As stated above, the bill removes the requirement for the NFWFMD, the Suwannee River WMD, or a financially disadvantaged small local government to provide a 50-percent match of cash or in-kind services towards SWIM projects.

The bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Environmental Resource Permit Program

Under part IV of Chapter 373, F.S., the Department of Environmental Protection (DEP) regulates actions that affect Florida's surface waters through several programs, one of which is the Environmental Resource Permit (ERP) Program. The ERP Program regulates activities involving the alteration of surface water flows. This includes upland construction that generates stormwater runoff, as well as dredging and filling in wetlands and other surface waters. The ERP Program is in effect throughout the State except for the portion of the Panhandle covered by the Northwest Florida Water Management District (NFWWMD). This exception from the ERP program is currently being phased out as required by s. 373.4145, F.S.

Northwest Florida

In lieu of an ERP program within the NFWWMD, the DEP and the NFWWMD operate a Wetland Resource Permit program. The Wetland Resource Permit program regulates any dredging, filling, or construction in, on, or over waters and wetlands that are connected, either naturally or artificially, to other bays, bayous, streams, rivers, lakes, estuaries, natural lakes that are not wholly owned by one person other than the State, or the Gulf of Mexico. This program is split such that the DEP regulates stormwater and dredge and fill activities, while the NFWWMD operates a management and storage of surface water permit program and regulates silviculture activities affecting water resources. Upon completion of rules being developed pursuant to s. 373.4145, F.S., the DEP and the NFWWMD will implement an ERP program in place of the current Wetland Resource Permit program.

During the 2006 Legislative Session, the Legislature passed HB 7163 (chapter 2006-228, L.O.F) to provide a phased approach for implementation of environmental resource permitting (ERP) in Northwest Florida (NWF). The act requires the DEP and the NFWWMD to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for stormwater management by January 1, 2007, and for the Management and Storage of Surface Waters, by January 1, 2008.

The act provides the following rulemaking criteria:

- The DEP shall initiate rulemaking within 60 days after the effective date of the bill.
- The rules shall apply the least restrictive measures and criteria adopted in other WMDs.
- The intent of the rules is to minimally impact property interests and shall take into account the rural nature, current development trends, and abundant natural resources of the district relative to the permitting thresholds and requirements.
- The rules shall capture the existing exemptions available to all other WMDs currently in rule or in statute, and specifically:
 - The current statutory exemption for the repair, stabilization, or paving of county maintained roads, and the repair or replacement of bridges, consistent with the provisions of s. 403.813(2)(t), F.S.

- The alteration of a wholly-owned artificial surface water created entirely from uplands that does not connect to waters of the state, except those created for the purpose of providing mitigation.

The act requires the DEP and the NFWFMD to enter into an operating management agreement that delegates to the water management district the responsibility for managing ERP in NWF to the extent “resources allow” including, at a minimum, the responsibility for regulating silviculture and agriculture.

On or before October 1, 2006, the DEP was required to enter into negotiations with any local government that requests to be delegated the responsibilities of environmental permitting in order to minimize duplicative permitting programs and to increase governmental efficiency. The DEP was required to submit a report to the Speaker of the House of Representatives and to the President of the Senate by March 1, 2007, of the progress made in this delegation process.

The act also provides that if there is no appropriation to fund the program in any given fiscal year, law governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with the act. The act appropriated the sum of \$2,740,000 for the 2006-07 fiscal year from General Revenue to the DEP for the operational expenditures of the NFWFMD to implement this act.

Variances

Section 373.414(17), F.S., provides that the variance provisions of s. 403.201, F.S., are applicable to the provisions of this section (which addresses additional criteria for activities in surface waters and wetlands) or any rule adopted pursuant hereto. The water management governing boards and the DEP are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part. Section 403.201, F.S., provides that upon application, the DEP in its discretion may grant a variance from the provisions of this act or the rules and regulations adopted pursuant hereto. Variances and renewals thereof may be granted for any one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason must prescribe a timetable for the taking of the measures required.
- To relieve or prevent hardship of a kind other than those provided for above. Such variances and renewals thereof must each be limited to a period of 24 months.

The section provides that no variance may be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.7221, F.S. The DEP must publish notice, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the DEP department must afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the department within 14 days of published notice, the department may proceed to final agency action without a hearing. The DEP may require by rule a processing fee for and may prescribe such time limits and other conditions to the granting of a variance as it deems appropriate.

Stormwater Management Systems

Section 373.4142, F.S., provides that state surface water quality standards applicable to waters of the state, as defined in s. 403.031(13), F.S., shall not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or noticed exemption issued pursuant to chapter 17-25, Florida Administrative Code; a valid permit issued on or subsequent to April 1, 1986, within the Suwannee River Water Management District or the St. Johns River Water Management District pursuant to this part; a valid permit issued on or subsequent to March 1, 1988, within the Southwest Florida Water Management District pursuant to this part; or a valid permit issued on or subsequent to January 6, 1982, within the South Florida Water Management District pursuant to this part. Such inapplicability of state water quality standards shall be limited to that part of the stormwater management system located upstream of a manmade water control structure permitted, or approved under a noticed exemption, to retain or detain stormwater runoff in order to provide treatment of the stormwater. The additional use of such a stormwater management system for flood attenuation or irrigation shall not divest the system of the benefits of this exemption. This section shall not affect the authority of the department and water management districts to require reasonable assurance that the water quality within such stormwater management systems will not adversely impact public health, fish and wildlife, or adjacent waters.

Surface Water Improvement and Management (SWIM)

Section 33 of the 2006 Implementing Bill provided that in order to implement Specific Appropriations 1820 and 1821 and section 32 of the 2006-2007 General Appropriations Act, subsection (6) is added to section 373.459, F.S., to read:

(6)(a) The match requirement of subsection (2) shall not apply to the Suwannee River Water Management District, the Northwest Florida Water Management District, or a financially disadvantaged small local government as defined in s. 403.885(5).

(b) Notwithstanding the requirements of subsection (3), the Ecosystem Management and Restoration Trust Fund and the Water Protection and Sustainability Trust Fund shall be used for the deposit of funds appropriated by the Legislature for the purposes of ss. 373.451-373.4595. The department shall administer all funds appropriated to or received for surface water improvement and management activities. Expenditure of the moneys shall be limited to the costs of details planning and plan and program implementation for priority surface water bodies. Moneys from the funds shall not be expended for, construction or expansion of, treatment facilities for domestic or industrial waste disposal.

(c) Notwithstanding the requirements of subsection (4), the department shall authorize the release of money from the funds in accordance with the provisions of s. 373.501(2) and procedures in s. 373.59(4) and (5).

(d) Notwithstanding the requirements of subsection (5), moneys in the Ecosystem Restoration and Management Trust Fund that are not needed to meet current obligations incurred under this section shall be transferred to the State Board of Administration, to the credit of the trust fund, to be invested in the manner provided by law. Interest received on such investments shall be credited to the trust fund.

(e) This subsection expires July 1, 2007.

Lake Okeechobee Watershed Phosphorous Control Program

In 2000, the Legislature created the Lake Okeechobee Protection Program (s. 373.4595, F.S.) requiring the SFWMD, the Department of Agriculture and Consumer Services, and the Department of Environmental Protection to implement programs and projects that will restore the Lake and its watershed. The Legislature determined that improving the hydrology and water quality of the Lake is essential to the restoration and protection of the Everglades and that it is "imperative for the state, local

governments, and agricultural and environmental communities to commit to restoring and protecting the Lake and downstream receiving waters.” The Legislature also determined that phosphorous loads from the Lake Okeechobee watershed have contributed to excessive phosphorous levels in the Lake and downstream receiving waters and that a “reduction in the levels of phosphorous levels will benefit the ecology of these systems.”

As part of the Lake Okeechobee Protection Program, s. 373.4595(3)(c), F.S., creates the Lake Okeechobee Watershed Phosphorous Control Program. The Lake Okeechobee Watershed Phosphorus Control Program is designed to be a multifaceted approach to reducing phosphorus loads by improving the management of phosphorus sources within the Lake Okeechobee watershed through continued implementation of existing regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and utilization of alternative technologies for nutrient reduction.

Section 373.4595(3)(c)2., F.S., provides that nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067, F.S., and designed to achieve the objectives of the Lake Okeechobee Protection Program, shall be implemented on an expedited basis. The DEP and the water management district are required to develop an interagency agreement pursuant to ss. 373.046 and 373.406(5), F.S., that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement must address measures to be taken by the department and the district during any best management practice reevaluation. The DEP and the district are directed to work with the University of Florida’s Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067(7)(c), F.S., the department, in consultation with the district and affected parties, must develop interim measures, best management practices, or other measures necessary for Lake Okeechobee phosphorus load reduction. Development of nonagricultural nonpoint source best management practices is required to initially focus on priority basins. The department, the district, and affected parties must conduct an ongoing program for improvement of existing and development of new interim measures or best management practices. The DEP is required to adopt technology-based standards under the district’s WOD program for nonagricultural nonpoint sources of phosphorus.

Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source must implement interim measures or best management practices and be subject to the provisions of s. 403.067(7), F.S. The department and district are required to provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds. The district or the department must conduct monitoring at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices. Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the department and the district must institute a reevaluation of the best management practices.

Section 373.4595(3)(c)9., F.S., provides that prior to authorizing a discharge into works of the district, the district shall require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loading over that of existing land uses.

Proposed Changes

ERP and Northwest Florida

The proposed bill amends s. 373.414, F.S., to ensure that the variance provisions of s. 403.201, F.S., are applicable to the NWF ERP program. This provides consistency throughout the state in the ERP program.

The proposed bill amends s. 373.4142, F.S., to ensure that state surface water quality standards do not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit issued under the NWF ERP program. This provides consistency throughout the state in the ERP program.

Surface Water Improvement and Management

The proposed bill amends s. 373.459, F.S. permanently removing the requirements for the NFWFMD, the Suwannee River Water Management District, or a financially disadvantaged small local government to provide a 50-percent match of cash or in-kind services towards the implementation of the SWIM projects.

Lake Okeechobee

The proposed bill amends s. 373.4595, F.S., to provide that nothing in the section affects the authority of the DEP or the SFWMD to adopt basin-specific criteria under Part IV of Chapter 373 to prevent harm to the water resources of the SFWMD.

Furthermore, the proposed bill eliminates the requirements that the SFWMD, prior to authorizing a discharge into works of the district, require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loadings over that of existing land uses.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.414, F.S., providing the variance provisions of s. 403.201, F.S., are applicable to activities regulated under s. 373.4145, F.S.

Section 2. Amends s. 373.4142, F.S., providing the state water quality standards shall not apply within a stormwater management system in accordance with a valid permit or exemption under s. 373.4145, F.S, within the NFWFMD.

Section 3. Amends s. 373.459, F.S., removing the requirement for the Northwest Florida Water Management District, the Suwannee River Water Management District, or a disadvantaged local government to provide a 50-percent match towards the implementation of the surface water improvement and management districts.

Section 4. Amends s. 373.4595, F.S., providing that the section does not affect the authority of the DEP or the SFWMD to adopt basin-specific criteria under Part IV of Chapter 373, F.S.; eliminating the requirement that the SFWMD, prior to authorizing a discharge into works of the district, require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loadings over that of existing land uses.

Section 5. This act shall take effect July 1, 2007.

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:

The bill removes the requirement for the Northwest Florida Water Management District, the Suwannee River Water management District, or a financially disadvantaged small local government to provide a 50-percent match of cash or in-kind services towards the implementation of the surface water improvement and management (SWIM) projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A