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# **Agriculture & Natural Resources Subcommittee**

## **MEETING PACKET**

**Tuesday, March 15, 2011**

**12:30 PM**

**Reed Hall (102 HOB)**

**Dean Cannon  
Speaker**

**Steve Crisafulli  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Agriculture & Natural Resources Subcommittee

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

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

**Location:** Reed Hall (102 HOB)

**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 125 Sexual Activities Involving Animals by Kiar

HB 389 Surface Water Improvement and Management Plans and Programs by Glorioso

HB 949 Pest Control by Smith

HB 991 Environmental Permitting by Patronis

**Consideration of the following proposed committee substitute(s):**

PCS for HB 239 -- Numeric Nutrient Water Quality Criteria

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

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 125 Sexual Activities Involving Animals

SPONSOR(S): Kiar

TIED BILLS: None IDEN./SIM. BILLS: SB 344

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

<sup>1</sup> *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)

<sup>2</sup> Section 800.01, F.S.

<sup>3</sup> Section 828.12, F.S.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

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

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

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

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

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

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

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

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

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<sup>4</sup> Ascione, Frank R., Ph.D.; (1993). Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychology. *Anthrozoos*, 6 (4): 226-247.

<sup>5</sup> Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A. (1986). Murderers Who Rape and Mutilate. *Journal of Interpersonal Violence*, 1: 273-287.

<sup>6</sup> Association for the Treatment of Sexual Abusers, 26<sup>th</sup> Annual Conference, San Diego, California; *Sexual Behavior Predictors of Sexual Abuse of Children*

<sup>7</sup> *Franklin v. State*, 257 So. 2d 21 (Fla. 1971)

<sup>8</sup> Section 800.01, F.S.

<sup>9</sup> Section 828.12, F.S.

## **Effect of Proposed Changes**

The bill creates section 828.126, F.S., prohibiting persons from knowingly engaging in “sexual conduct” or “sexual contact” with an animal for the purpose of sexual gratification of the person.<sup>10</sup>

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

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

Animal husbandry<sup>11</sup>, conformation judging practices, or accepted veterinary medical practices are not subject to the provisions of the bill.

### **B. SECTION DIRECTORY:**

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

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See FISCAL COMMENTS section.

#### **2. Expenditures:**

See FISCAL COMMENTS section.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

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

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

<sup>11</sup> The agricultural practice of breeding and raising livestock

<sup>12</sup> Section 775.08, F.S.

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

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

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

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

None

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>13</sup> Article VII, Section 18; Florida Constitution

1                   A bill to be entitled  
 2           An act relating to sexual activities involving animals;  
 3           creating s. 828.126, F.S.; providing definitions;  
 4           prohibiting knowing sexual conduct or sexual contact with  
 5           an animal; prohibiting specified related activities;  
 6           providing penalties; providing that the act does not apply  
 7           to certain husbandry, conformation judging, and veterinary  
 8           practices; providing an effective date.

9  
 10   Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1.   Section 828.126, Florida Statutes, is created  
 13   to read:

14           828.126 Sexual activities involving animals.—

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

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

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

28           (2) A person may not:



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

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

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

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

40 (3) A person who violates this section commits a  
 41 misdemeanor of the first degree, punishable as provided in s.  
 42 775.082 or s. 775.083.

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 125 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative(s) Kiar offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 828.02, Florida Statutes, is amended to  
8 read:

9 828.02 Definitions.—

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

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

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

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

35 Section 2. Subsections (5)-(8) are added to section  
36 828.12, Florida Statutes, to read:

37 828.12 Cruelty to animals.-

38 (5) A person may not:

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 125 (2011)

Amendment No.

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

50 (6) A person who violates subsection (5) commits a  
51 misdemeanor of the first degree, punishable as provided in s.  
52 775.082 or s. 775.083.

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

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

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

61 -----  
62 **T I T L E A M E N D M E N T**

63 Remove the entire title and insert:

64 An act relating to animal cruelty; amending s. 828.02,  
65 F.S.; providing definitions; creating s. 828.126, F.S.;  
66 prohibiting knowing sexual conduct or sexual contact with  
67 an animal; prohibiting specified related activities;  
68 providing penalties; providing that the act does not apply  
69 to certain husbandry, conformation judging, and veterinary  
70 practices; providing a definition; providing an effective  
71 date.  
72



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 389 Surface Water Improvement and Management Plans and Programs

**SPONSOR(S):** Glorioso

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 934

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

### SUMMARY ANALYSIS

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

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

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

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

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

<sup>1</sup> Chapter 163, Part II, F.S.

<sup>2</sup> Office of Program Policy Analysis and Government Accountability February, 2004 report. On file with staff.

<sup>3</sup> Chapter 163, Part III, F.S.

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

STORAGE NAME: h0389.ANRS.DOCX

DATE: 3/11/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Growth Management

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

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

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

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

##### Stormwater

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

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<sup>4</sup> Chapter 163, Part III, F.S.

<sup>5</sup> Section 163.353, F.S.

<sup>6</sup> Section 163.356, F.S.

pollutant loading in stormwater that runs off developed areas is leading to flooding, water quality problems, and loss of habitat.<sup>7</sup>

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)<sup>8</sup> by 80%, or by 95% for Outstanding Florida Waters.<sup>9</sup>

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

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

### **Effect of Proposed Changes**

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

#### **B. SECTION DIRECTORY:**

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

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

<sup>7</sup> NRDC 1999 Report "Stormwater Strategies." <http://www.nrdc.org/water/pollution/storm/stoinx.asp>

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

<sup>9</sup> 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.

<sup>10</sup> Chapter 62-40 F.A.C.

<sup>11</sup> Section 403.067, F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

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

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

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

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 389

2011

1                                   A bill to be entitled  
 2           An act relating to surface water improvement and  
 3           management plans and programs; amending s. 373.453, F.S.;  
 4           requiring water management districts to establish  
 5           permitting programs for urban redevelopment projects  
 6           located in specified redevelopment areas; providing for  
 7           the development of stormwater adaptive management plans to  
 8           address water quantity discharge for such redevelopment  
 9           areas; providing for certain discharge rates in such  
 10          redevelopment areas; requiring stormwater discharges in  
 11          such redevelopment areas to meet state water quality  
 12          standards; providing water quality criteria for such  
 13          discharges; providing an effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17          Section 1. Subsection (7) is added to section 373.453,  
 18          Florida Statutes, to read:

19                373.453 Surface water improvement and management plans and  
 20          programs.—

21                (7) (a) Each water management district shall establish a  
 22          permitting program for urban redevelopment projects located  
 23          within a community redevelopment area created under chapter 163  
 24          or an urban infill and redevelopment area designated under s.  
 25          163.2517.

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

HB 389

2011

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

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

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
 2 Resources Subcommittee  
 3 Representative(s) Glorioso offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Section 373.4131, Florida Statutes, is created to  
 8 read:

9 373.4131. Urban Redevelopment Projects. -

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

Amendment No. 1

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

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

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

Amendment No. 1

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

48 Section 2.. This act shall take effect July 1, 2011.  
49

50 -----

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

52 Remove the entire title and insert:

53 An act relating to urban redevelopment projects; creating s.  
54 373.4131, F.S.; providing that a city or county that has created  
55 a community redevelopment area or an urban infill and  
56 redevelopment area may adopt stormwater adaptive management  
57 plans and obtain a conceptual permit; provides that urban  
58 redevelopment projects that meet the criteria of the conceptual  
59 permit will qualify as a Noticed General Permit; requires the  
60 conceptual permit to allow for the rate and volume of stormwater  
61 discharge for stormwater management systems of urban  
62 redevelopment projects to continue up to the maximum rate and  
63 volume of discharge within the areas as of the date the plan was  
64 adopted; requires the conceptual permit to allow for stormwater  
65 discharges for urban redevelopment projects to demonstrate a net  
66 improvement of the quality of the discharged water that existed  
67 as of the date the plan was adopted for pollutants of concern;  
68 provides the conceptual permit may not prescribe additional or  
69 more stringent limitations than provided in this section;  
70 provides conceptual permits may be issued for a duration of 20  
71 years; provides an effective date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Agriculture & Natural Resources Subcommittee, Rulemaking & Regulation Subcommittee, Agriculture & Natural Resources Appropriations Subcommittee, and State Affairs Committee.

SUMMARY ANALYSIS

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

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers.

The bill authorizes the Department of Agriculture of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations.

The bill also establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents.

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

The bill will generate \$21,000 in FY 2011-12, \$15,000 in FY 2012-13, and \$21,200 in FY 2013-14 from fees generated through the pest control customer contact centers and through the limited certification category for commercial wildlife management personnel.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Insurance Coverage**

##### Current Situation

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

##### Effect of Proposed Changes

The bill increases:

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

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

#### **Pest Control Customer Contact Centers**

##### Current Situation

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

##### Effect of Proposed Changes

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

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

<sup>4</sup> The license fee must be at least \$600 and not more than \$1,000.

<sup>5</sup> The renewal fee must be at least \$600 and not more than \$1,000.

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

## **Certification for Commercial Wildlife Management Personnel**

### Current Situation

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

### Effect of Proposed Changes

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

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

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

## **Fumigation Notice**

### Current Situation

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

### Effect of Proposed Changes

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

## **B. SECTION DIRECTORY:**

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

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

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

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

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

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

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

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	2011-12	2012-13	2013-14
<u>Customer Contact Center License*</u>	\$ 6,000	-	\$ 6,000
<u>Limited Certification Wildlife Limited Certification Exam**</u>	15,000	7,500	7,500
<u>Limited Certification Renewal***</u>	-	7,500	7,500
	<u>\$ 21,000</u>	<u>\$15,000</u>	<u>\$ 21,000</u>

\*Based on 10 licenses issued per year at \$600 each, renewing biennially.

\*\*Based on 100 exams the first year, 50 the second and third years, at \$150 each.

\*\*\*Based on 100 renewals at \$75 each.

2. Expenditures:			
Inspections*	\$ 15,860	\$ 15,860	\$ 15,860
License Issuance**	<u>1,097</u>	<u>499</u>	<u>1,595</u>
	\$ 16,957	\$ 16,359	\$ 17,455

\*FY 09-10 unit cost per inspection, 20 inspections at \$793.

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 3. Revenues:

None

#### 4. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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1 A bill to be entitled

2 An act relating to pest control; amending s. 482.051,  
3 F.S.; providing rule changes that allow operators to  
4 provide certain emergency notice to the Department of  
5 Agriculture and Consumer Services by facsimile or  
6 electronic means; amending s. 482.071, F.S.; increasing  
7 the minimum bodily injury and property damage insurance  
8 coverage required for pest control businesses; creating s.  
9 482.072, F.S.; providing for licensure by the department  
10 of pest control customer contact centers; providing  
11 application requirements; providing for fees, licensure  
12 renewal, penalties, licensure expiration, and transfer of  
13 licenses; creating s. 482.157, F.S.; providing for the  
14 certification of commercial wildlife trappers; providing  
15 certification requirements, examination requirements, and  
16 fees; limiting the scope of work permitted by certificate  
17 holders; clarifying that licensees and certificateholders  
18 who practice accepted pest control methods are immune from  
19 liability for violating laws prohibiting cruelty to  
20 animals; amending s. 482.226, F.S.; increasing the minimum  
21 financial responsibility requirements for licensees that  
22 perform certain inspections; providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26 Section 1. Subsection (4) of section 482.051, Florida  
27 Statutes, is amended to read:

28 482.051 Rules.—The department has authority to adopt rules

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

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

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

49 |       482.071 Licenses.—

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

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57 (a) Bodily injury: \$250,000 ~~\$100,000~~ each person and  
 58 \$500,000 ~~\$300,000~~ each occurrence; and property damage: \$250,000  
 59 ~~\$50,000~~ each occurrence and \$500,000 ~~\$100,000~~ in the aggregate;  
 60 or

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

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

65 482.072 Pest control customer contact centers.-

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

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

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



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

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

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

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

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

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

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113 such work.

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

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

120 (b) Notwithstanding any other provision of this chapter:

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

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

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

133 482.157 Limited certification for commercial wildlife  
 134 management personnel.—

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

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

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141 applicant who:

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

147 (b) Passes the departmental examination; and

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

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

164 (4) Certification under this section does not authorize:

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

168 (b) Operation of a pest control business; or

169           (c) Supervision of a certified person.  
 170           (5) Persons licensed under this chapter who practice  
 171 accepted pest control methods are immune from liability under s.  
 172 828.12.

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

175           482.226 Wood-destroying organism inspection report; notice  
 176 of inspection or treatment; financial responsibility.—

177           (6) Any licensee that performs wood-destroying organism  
 178 inspections in accordance with subsection (1) must meet minimum  
 179 financial responsibility in the form of errors and omissions  
 180 (professional liability) insurance coverage or bond in an amount  
 181 no less than \$250,000 ~~\$50,000~~ in the aggregate and \$250,000  
 182 ~~\$25,000~~ per occurrence, or demonstrate that the licensee has  
 183 equity or net worth of no less than \$500,000 ~~\$100,000~~ as  
 184 determined by generally accepted accounting principles  
 185 substantiated by a certified public accountant's review or  
 186 certified audit. The licensee must show proof of meeting this  
 187 requirement at the time of license application or renewal  
 188 thereof.

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

Amendment No. /

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative Smith offered the following:

4  
5 **Amendment**

6 Remove line 100 and insert:  
7 business licensees for whom it solicits business are owned in  
8 common by a

Amendment No. **2**

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative Smith offered the following:

4  
5  
6  
7  
8

**Amendment**

Remove line 169 and insert:

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

Amendment No. **3**

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative Smith offered the following:

4  
5 **Amendment**



6 Remove line 181 and insert:  
7 no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000

HB 991



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

### SUMMARY ANALYSIS

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

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

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

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

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DATE: 3/14/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

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

###### *Current Situation*

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

###### *Effect of Proposed Changes*

The bill amends s. 120.569, F.S., to provide that the notice described above, including any items required by the uniform rules adopted pursuant to s. 120.54(5), F.S.<sup>1</sup>, may be provided via a link to a publicly available Internet website. The bill also provides that for any proceeding arising under Chapters 373<sup>2</sup>, 378<sup>3</sup>, or 403<sup>4</sup>, F.S., if a nonapplicant petitions as a third party to challenge an agency's issuance of a license or conceptual approval, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence.

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

###### *Current Situation*

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

###### *Effect of Proposed Changes*

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

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

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

<sup>3</sup> Chapter 378, F.S., directs the DEP to authorize permits for phosphate land reclamation and resource extraction reclamation.

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

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

**Current Situation**

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

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

**Effect of Proposed Changes**

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

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

**Current Situation**

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

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

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

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

### Effect of Proposed Changes

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

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

### Current Situation

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

### Effect of Proposed Changes

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

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

### Current Situation

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

### Effect of Proposed Changes

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

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

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

#### Current Situation

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

#### Effect of Proposed Changes

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

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

#### Current Situation

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

#### **E-permitting**

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

#### **Self certification**

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

<sup>7</sup> <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf>

<sup>8</sup> See <http://www.flwaterpermits.com/>

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

### Effect of Proposed Change

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

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

#### Current Situation

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

#### Effect of Proposed Changes

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

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

#### Current Situation

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

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

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

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

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

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

#### Effect of Proposed Changes

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

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

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

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

#### Current Situation

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

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

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

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

### Effect of Proposed Changes

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

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

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

#### Current Situation-Florida

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

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

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

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

<sup>12</sup> See discussion of Rule 62-4.070(5), F.A.C., under section on Chapter 403.

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



## Chapter 403, F.S.

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

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

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

## Chapter 373, F.S.

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

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

## Chapter 161, F.S.

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

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<sup>14</sup> s. 403.021, F.S.

<sup>15</sup> s. 403.087, F.S.

<sup>16</sup> s. 403.087(1), F.S.

<sup>17</sup> Rule 62-4.070(1), F.A.C.

<sup>18</sup> See, e.g., Rule 62-620.320, F.A.C. (for wastewater facilities, the DEP considers violations of rules related to wastewater facilities or activities when it makes the "reasonable assurance" determination); s. 403.707(8), F.S. (for solid waste facilities, the DEP may deny a permit application for repeated violations of statutes, rules, orders, or permit terms or conditions and is deemed to be irresponsible under the DEP's rules).

<sup>19</sup> s. 373.016(4)(a), F.S.

<sup>20</sup> s. 373.413, F.S.

<sup>21</sup> s. 373.4132, F.S.

<sup>22</sup> s. 373.4136, F.S.

<sup>23</sup> Rule 40B-400.104(2), (3), F.A.C.

<sup>24</sup> s. 161.041, F.S.

### Current Situation – Federal

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

### Effect of Proposed Changes

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

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

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

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

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

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

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<sup>25</sup> EPA's Performance Track website, <http://www.epa.gov/performance-track/> (last visited Mar. 10, 2011).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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

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

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

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

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

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

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

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

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

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

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

Current Situation

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

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

- The permit holder has refused lawful inspection under s. 403.091, F.S.<sup>28</sup>

### Effect of Proposed Changes

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

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

### Current Situation

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

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

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

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

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

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

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

<sup>29</sup> See *Florida Wildlife Federation v. Dept. of Environmental Regulation*, 390 So.2d 64 (Fla. 1980).

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

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

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

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

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

### Effect of Proposed Changes

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

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

#### Current Situation

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

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

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

### Effect of Proposed Changes

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

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

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

### Current Situation

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

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

### Effect of Proposed Changes

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

<sup>30</sup> Section 403.814(1), F.S.

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

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

**Current Situation**

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

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

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

**Effect of Proposed Changes**

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

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

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

**Current Situation**

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

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

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

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

Certified projects receive the following benefits:

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

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



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

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

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

- A project funded and operated by a local government and located within that government's jurisdiction;
- A project, the primary purpose of which is to:
- Affect the final disposal of solid waste, biomedical waste, or hazardous waste in the state,
  - Produce electrical power (unless the production of electricity is incidental and not the project's primary function),
  - Extract natural resources, produce oil, or construct, maintain, or
  - Operate an oil, petroleum, natural gas, or sewage pipeline

### Effect of Proposed Changes

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

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

### Current Situation

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

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

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

method for tracking transportation concurrency, an application for transportation concurrency and a review process.<sup>33</sup>

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

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

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

### Effect of Proposed Changes

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

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

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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

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

**Current Situation**

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

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

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

**Effect of Proposed Changes**

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

**Section 26 provides an effective date.**

This act shall take effect upon becoming law.

**B. SECTION DIRECTORY:**

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

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

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

<sup>35</sup> 33 U.F.R. s. 332.3(b), [http://edocket.access.gpo.gov/cfr\\_2009/julqtr/pdf/33cfr332.3.pdf](http://edocket.access.gpo.gov/cfr_2009/julqtr/pdf/33cfr332.3.pdf)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 26.** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

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

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

## 2. Expenditures:

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

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

### Direct Private Sector Costs:

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

### Direct Private Sector Benefits:

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

## D. FISCAL COMMENTS:

The following are comments from the DEP analysis:

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

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None

#### **B. RULE-MAKING AUTHORITY:**

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

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





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29 the applicant believes that a request for additional  
30 information is not authorized by law or rule; extending  
31 the period for an applicant to timely submit additional  
32 information, notwithstanding certain provisions of the  
33 Administrative Procedure Act; amending s. 163.3184, F.S.;  
34 redefining the term "affected person" for purposes of the  
35 adoption process for a comprehensive plan or plan  
36 amendments to include persons who can show that their  
37 substantial interest will be affected by the plan or  
38 amendment; amending s. 163.3215, F.S.; redefining the term  
39 "aggrieved or adversely affected party" for purposes of  
40 standing to enforce local comprehensive plans; deleting a  
41 requirement that the adverse interest exceed in degree the  
42 general interest shared by all persons; amending s.  
43 166.033, F.S.; prohibiting a municipality from requiring  
44 an applicant to obtain a permit or approval from another  
45 state or federal agency as a condition of approving a  
46 development permit; authorizing a county to attach certain  
47 disclaimers to the issuance of a development permit;  
48 creating s. 166.0447, F.S.; providing that the  
49 construction and operation of a biofuel processing  
50 facility or renewable energy generating facility and the  
51 cultivation of bioenergy is a valid and permitted land use  
52 within the unincorporated area of a municipality;  
53 prohibiting any requirement that the owner or operator of  
54 such a facility obtain comprehensive plan amendments, use  
55 permits, waivers, or variances, or pay any fee in excess  
56 of a specified amount; amending s. 373.026, F.S.;

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57 requiring the Department of Environmental Protection to  
58 expand its use of Internet-based self-certification  
59 services for exemptions and permits issued by the  
60 department and water management districts; amending s.  
61 373.4141, F.S.; requiring that a request by the department  
62 or a water management district that an applicant provide  
63 additional information be accompanied by the signature of  
64 specified officials of the department or district;  
65 reducing the time within which the department or district  
66 must approve or deny a permit application; providing that  
67 an application for a permit that is required by a local  
68 government and that is not approved within a specified  
69 period is deemed approved by default; amending s.  
70 373.4144, F.S.; providing legislative intent with respect  
71 to the coordination of regulatory duties among specified  
72 state and federal agencies; requiring that the department  
73 report annually to the Legislature on efforts to expand  
74 the state programmatic general permit or regional general  
75 permits; providing for a voluntary state programmatic  
76 general permit for certain dredge and fill activities;  
77 amending s. 373.441, F.S.; requiring that certain counties  
78 or municipalities apply by a specified date to the  
79 department or water management district for authority to  
80 require certain permits; providing that following such  
81 delegation, the department or district may not regulate  
82 activities that are subject to the delegation; amending s.  
83 403.061, F.S., relating to the use of online self-  
84 certification; conforming provisions to changes made by

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85 | the act; creating s. 403.0874, F.S.; providing a short  
86 | title; providing legislative findings and intent with  
87 | respect to the consideration of the compliance history of  
88 | a permit applicant; providing for applicability;  
89 | specifying the period of compliance history to be  
90 | considered is issuing or renewing a permit; providing  
91 | criteria to be considered by the Department of  
92 | Environmental Protection; authorizing expedited review of  
93 | permit issuance, renewal, modification, and transfer;  
94 | providing for a reduced number of inspections; providing  
95 | for extended permit duration; authorizing the department  
96 | to make additional incentives available under certain  
97 | circumstances; providing for automatic permit renewal and  
98 | reduced or waived fees under certain circumstances;  
99 | requiring the department to adopt rules that are binding  
100 | on a water management district or local government that  
101 | has been delegated certain regulatory duties; amending ss.  
102 | 161.041 and 373.413, F.S.; specifying that s. 403.0874,  
103 | F.S., authorizing expedited permitting, applies to  
104 | provisions governing beaches and shores and surface water  
105 | management and storage; amending s. 403.087, F.S.;  
106 | revising conditions under which the department is  
107 | authorized to revoke a permit; amending s. 403.412, F.S.;  
108 | eliminating a provision limiting a requirement for  
109 | demonstrating injury in order to seek relief under the  
110 | Environmental Protection Act; amending s. 403.814, F.S.;  
111 | providing for issuance of general permits for the  
112 | construction, alteration, and maintenance of certain

113 surface water management systems without the action of the  
 114 department or a water management district; specifying  
 115 conditions for the general permits; amending s. 380.06,  
 116 F.S.; exempting a proposed solid mineral mine or a  
 117 proposed addition or expansion of an existing solid  
 118 mineral mine from provisions governing developments of  
 119 regional impact; providing certain exceptions; amending  
 120 ss. 380.0657 and 403.973, F.S.; authorizing expedited  
 121 permitting for certain inland multimodal facilities and  
 122 for commercial or industrial development projects that  
 123 individually or collectively will create a minimum number  
 124 of jobs; providing for a project-specific memorandum of  
 125 agreement to apply to a project subject to expedited  
 126 permitting; providing for review and certification of a  
 127 business as eligible for expedited permitting by the  
 128 Secretary of Environmental Protection rather than by the  
 129 Office of Tourism, Trade, and Economic Development;  
 130 amending s. 163.3180, F.S.; providing an exemption to the  
 131 level-of-service standards adopted under the Strategic  
 132 Intermodal System for certain inland multimodal  
 133 facilities; specifying project criteria; amending s.  
 134 373.4137, F.S., relating to transportation projects;  
 135 revising legislative findings with respect to the options  
 136 for mitigation; revising certain requirements for  
 137 determining the habitat impacts of transportation  
 138 projects; providing for the release of certain mitigation  
 139 funds held for the benefit of a water management district  
 140 if a project is excluded from a mitigation plan; revising

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

143

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

145

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

149 120.569 Decisions which affect substantial interests.—

150 (1) The provisions of this section apply in all  
 151 proceedings in which the substantial interests of a party are  
 152 determined by an agency, unless the parties are proceeding under  
 153 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
 154 120.57(1) applies whenever the proceeding involves a disputed  
 155 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
 156 applies in all other cases. If a disputed issue of material fact  
 157 arises during a proceeding under s. 120.57(2), ~~then,~~ unless  
 158 waived by all parties, the proceeding under s. 120.57(2) shall  
 159 be terminated and a proceeding under s. 120.57(1) shall be  
 160 conducted. Parties shall be notified of any order, including a  
 161 final order. Unless waived, a copy of the order shall be  
 162 delivered or mailed to each party or the party's attorney of  
 163 record at the address of record. Each notice shall inform the  
 164 recipient of any administrative hearing or judicial review that  
 165 is available under this section, s. 120.57, or s. 120.68; shall  
 166 indicate the procedure which must be followed to obtain the  
 167 hearing or judicial review; and shall state the time limits that  
 168 ~~which~~ apply. Notwithstanding any other provision of law, notice

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

173 (2)

174 (p) For any proceeding arising under chapter 373, chapter  
 175 378, or chapter 403, if a nonapplicant petitions as a third  
 176 party to challenge an agency's issuance of a license or  
 177 conceptual approval, the petitioner initiating the action has  
 178 the burden of ultimate persuasion and, in the first instance,  
 179 has the burden of going forward with the evidence.

180 Notwithstanding subsection (1), this paragraph applies to  
 181 proceedings under s. 120.574.

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

185 120.60 Licensing.—

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

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197 the applicant believes the agency's request for additional  
198 information is not authorized by law or rule, the agency, at the  
199 applicant's request, shall proceed to process the application.  
200 An application is complete upon receipt of all requested  
201 information and correction of any error or omission for which  
202 the applicant was timely notified or when the time for such  
203 notification has expired. An application for a license must be  
204 approved or denied within 60 ~~90~~ days after receipt of a  
205 completed application unless a shorter period of time for agency  
206 action is provided by law. The 60-day ~~90-day~~ time period is  
207 tolled by the initiation of a proceeding under ss. 120.569 and  
208 120.57. Any application for a license which is not approved or  
209 denied within the 60-day ~~90-day~~ or shorter time period, within  
210 15 days after conclusion of a public hearing held on the  
211 application, or within 45 days after a recommended order is  
212 submitted to the agency and the parties, whichever action and  
213 timeframe is latest and applicable, is considered approved  
214 unless the recommended order recommends that the agency deny the  
215 license. Subject to the satisfactory completion of an  
216 examination if required as a prerequisite to licensure, any  
217 license that is considered approved shall be issued and may  
218 include such reasonable conditions as are authorized by law. Any  
219 applicant for licensure seeking to claim licensure by default  
220 under this subsection shall notify the agency clerk of the  
221 licensing agency, in writing, of the intent to rely upon the  
222 default license provision of this subsection, and may not take  
223 any action based upon the default license until after receipt of  
224 such notice by the agency clerk.

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

227 125.0112 Biofuels and renewable energy.—The construction  
 228 and operation of a biofuel processing facility or a renewable  
 229 energy generating facility, as defined in s. 366.91(2)(d), and  
 230 the cultivation and production of bioenergy, as defined pursuant  
 231 to s. 163.3177, shall be considered by a local government to be  
 232 a valid industrial, agricultural, and silvicultural use  
 233 permitted within those land use categories in the local  
 234 comprehensive land use plan. If the local comprehensive plan  
 235 does not specifically allow for the construction of a biofuel  
 236 processing facility or renewable energy facility, the local  
 237 government shall establish a specific review process that may  
 238 include expediting local review of any necessary comprehensive  
 239 plan amendment, zoning change, use permit, waiver, variance, or  
 240 special exemption. Local expedited review of a proposed biofuel  
 241 processing facility or a renewable energy facility does not  
 242 obligate a local government to approve such proposed use. A  
 243 comprehensive plan amendment necessary to accommodate a biofuel  
 244 processing facility or renewable energy facility shall, if  
 245 approved by the local government, be eligible for the  
 246 alternative state review process in s. 163.32465. The  
 247 construction and operation of a facility and related  
 248 improvements on a portion of a property under this section does  
 249 not affect the remainder of the property's classification as  
 250 agricultural under s. 193.461.

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



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253           125.022 Development permits.—When a county denies an  
254 application for a development permit, the county shall give  
255 written notice to the applicant. The notice must include a  
256 citation to the applicable portions of an ordinance, rule,  
257 statute, or other legal authority for the denial of the permit.  
258 As used in this section, the term "development permit" has the  
259 same meaning as in s. 163.3164. A county may not require as a  
260 condition of approval for a development permit that an applicant  
261 obtain a permit or approval from any other state or federal  
262 agency. Issuance of a development permit by a county does not in  
263 any way create any rights on the part of the applicant to obtain  
264 a permit from another state or federal agency and does not  
265 create any liability on the part of the county for issuance of  
266 the permit if the applicant fails to fulfill its legal  
267 obligations to obtain requisite approvals or fulfill the  
268 obligations imposed by another state or a federal agency. A  
269 county may attach such a disclaimer to the issuance of a  
270 development permit, and may include a permit condition that all  
271 other applicable state or federal permits be obtained before  
272 commencement of the development. This section does not prohibit  
273 a county from providing information to an applicant regarding  
274 what other state or federal permits may apply.

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

277           161.032 Application review; request for additional  
278 information.—

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

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

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

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

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309 163.3184, Florida Statutes, is amended to read:

310 163.3184 Process for adoption of comprehensive plan or  
311 plan amendment.—

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

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

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

333 163.3215 Standing to enforce local comprehensive plans  
334 through development orders.—

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

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

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

351 166.033 Development permits.—When a municipality denies an  
 352 application for a development permit, the municipality shall  
 353 give written notice to the applicant. The notice must include a  
 354 citation to the applicable portions of an ordinance, rule,  
 355 statute, or other legal authority for the denial of the permit.  
 356 As used in this section, the term "development permit" has the  
 357 same meaning as in s. 163.3164. A municipality may not require  
 358 as a condition of approval for a development permit that an  
 359 applicant obtain a permit or approval from any other state or  
 360 federal agency. Issuance of a development permit by a  
 361 municipality does not in any way create any right on the part of  
 362 an applicant to obtain a permit from another state or federal  
 363 agency and does not create any liability on the part of the  
 364 municipality for issuance of the permit if the applicant fails

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

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

376 166.0447 Biofuels and renewable energy.—The construction  
 377 and operation of a biofuel processing facility or a renewable  
 378 energy generating facility, as defined in s. 366.91(2)(d), and  
 379 the cultivation and production of bioenergy, as defined pursuant  
 380 to s. 163.3177, are each a valid industrial, agricultural, and  
 381 silvicultural use permitted within those land use categories in  
 382 the local comprehensive land use plan and for purposes of any  
 383 local zoning regulation within an unincorporated area of a  
 384 municipality. Such comprehensive land use plans and local zoning  
 385 regulations may not require the owner or operator of a biofuel  
 386 processing facility or a renewable energy generating facility to  
 387 obtain any comprehensive plan amendment, rezoning, special  
 388 exemption, use permit, waiver, or variance, or to pay any  
 389 special fee in excess of \$1,000 to operate in an area zoned for  
 390 or categorized as industrial, agricultural, or silvicultural  
 391 use. This section does not exempt biofuel processing facilities  
 392 and renewable energy generating facilities from complying with

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393 building code requirements. The construction and operation of a  
 394 facility and related improvements on a portion of a property  
 395 pursuant to this section does not affect the remainder of that  
 396 property's classification as agricultural pursuant to s.  
 397 193.461.

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

400 373.026 General powers and duties of the department.—The  
 401 department, or its successor agency, shall be responsible for  
 402 the administration of this chapter at the state level. However,  
 403 it is the policy of the state that, to the greatest extent  
 404 possible, the department may enter into interagency or  
 405 interlocal agreements with any other state agency, any water  
 406 management district, or any local government conducting programs  
 407 related to or materially affecting the water resources of the  
 408 state. All such agreements shall be subject to the provisions of  
 409 s. 373.046. In addition to its other powers and duties, the  
 410 department shall, to the greatest extent possible:

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

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

423 373.4141 Permits; processing.—

424 (1) Within 30 days after receipt of an application for a  
 425 permit under this part, the department or the water management  
 426 district shall review the application and shall request  
 427 submittal of all additional information the department or the  
 428 water management district is permitted by law to require. If the  
 429 applicant believes any request for additional information is not  
 430 authorized by law or rule, the applicant may request a hearing  
 431 pursuant to s. 120.57. Within 30 days after receipt of such  
 432 additional information, the department or water management  
 433 district shall review it and may request only that information  
 434 needed to clarify such additional information or to answer new  
 435 questions raised by or directly related to such additional  
 436 information. If the applicant believes the request of the  
 437 department or water management district for such additional  
 438 information is not authorized by law or rule, the department or  
 439 water management district, at the applicant's request, shall  
 440 proceed to process the permit application. In order to ensure  
 441 the proper scope and necessity for the information requested, a  
 442 second request for additional information, if any, must be  
 443 signed by the supervisor of the project manager. A third request  
 444 for additional information, if any, must be signed by the  
 445 division director who oversees the program area. A fourth  
 446 request for additional information, if any, must be signed by  
 447 the assistant secretary of the department or the assistant  
 448 executive director of the district. Any additional request for

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

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

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

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

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

466 373.4144 Federal environmental permitting.—

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

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

476 (b) Authorize the Department of Environmental Protection



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

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

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

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

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

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

539 (3) Nothing in this section shall be construed to preclude  
 540 the department from pursuing a series of regional general  
 541 permits for construction activities in wetlands or surface  
 542 waters or complete assumption of federal permitting programs  
 543 regulating the discharge of dredged or fill material pursuant to  
 544 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
 545 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
 546 Act of 1899, so long as the assumption encompasses all dredge  
 547 and fill activities in, on, or over jurisdictional wetlands or  
 548 waters, including navigable waters, within the state.

549 Section 13. Present subsections (3), (4), and (5) of  
 550 section 373.441, Florida Statutes, are renumbered as subsections  
 551 (5), (6), and (7), respectively, and new subsections (3) and (4)  
 552 are added to that section, to read:

553 373.441 Role of counties, municipalities, and local  
 554 pollution control programs in permit processing; delegation.-

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

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

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

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

570 403.061 Department; powers and duties.—The department  
571 shall have the power and the duty to control and prohibit  
572 pollution of air and water in accordance with the law and rules  
573 adopted and promulgated by it and, for this purpose, to:

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

584  
585 The department shall implement such programs in conjunction with  
586 its other powers and duties and shall place special emphasis on  
587 reducing and eliminating contamination that presents a threat to  
588 humans, animals or plants, or to the environment.

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

591 403.0874 Incentive-based permitting program.-

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

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

606 (3) APPLICABILITY.-

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

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

616 1. Environmental permitting or authorization laws that

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

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

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

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

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

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

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

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

652 (5) COMPLIANCE INCENTIVES.—

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

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

666 2. Priority review of permit application;

667 3. Reduced number of routine compliance inspections;

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

670 5. Longer permit period durations.

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

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

675 1. Reductions in actual or permitted discharges or  
 676 emissions;

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

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

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

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

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

698 2. Reduced or waived application fees.

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



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

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

714 161.041 Permits required.—

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

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

720 373.413 Permits for construction or alteration.—

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

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

726 403.087 Permits; general issuance; denial; revocation;  
 727 prohibition; penalty.—

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

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

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

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

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

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

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

746 403.412 Environmental Protection Act.—

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

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

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

777 403.814 General permits; delegation.-

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

- 783 (a) The total project area is less than 10 acres;
- 784 (b) The total project area involves less than 2 acres of

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785 impervious surface;

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

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

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

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

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

797 380.06 Developments of regional impact.—

798 (24) STATUTORY EXEMPTIONS.—

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

813  
 814 If a use is exempt from review as a development of regional  
 815 impact under paragraphs (a)-(s), but will be part of a larger  
 816 project that is subject to review as a development of regional  
 817 impact, the impact of the exempt use must be included in the  
 818 review of the larger project, unless such exempt use involves a  
 819 development of regional impact that includes a landowner,  
 820 tenant, or user that has entered into a funding agreement with  
 821 the Office of Tourism, Trade, and Economic Development under the  
 822 Innovation Incentive Program and the agreement contemplates a  
 823 state award of at least \$50 million.

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

826 380.0657 Expedited permitting process for economic  
 827 development projects.-

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

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

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841 403.973 Expedited permitting; amendments to comprehensive  
842 plans.—

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

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

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

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

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

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

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

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897 modification.

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

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

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

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



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

929 (e) Establishment of a process for the adoption and review  
 930 of any comprehensive plan amendment needed by any certified  
 931 project within 90 days after the submission of an application  
 932 for a comprehensive plan amendment. However, the memorandum of  
 933 agreement may not prevent affected persons as defined in s.  
 934 163.3184 from appealing or participating in this expedited plan  
 935 amendment process and any review or appeals of decisions made  
 936 under this paragraph; and

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

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

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

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

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

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

974 163.3180 Concurrency.—

975 (10) (a) Except in transportation concurrency exception  
 976 areas, with regard to roadway facilities on the Strategic  
 977 Intermodal System designated in accordance with s. 339.63, local  
 978 governments shall adopt the level-of-service standard  
 979 established by the Department of Transportation by rule.

980 However, if the Office of Tourism, Trade, and Economic

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981 Development concurs in writing with the local government that  
 982 the proposed development is for a qualified job creation project  
 983 under s. 288.0656 or s. 403.973, the affected local government,  
 984 after consulting with the Department of Transportation, may  
 985 provide for a waiver of transportation concurrency for the  
 986 project. For all other roads on the State Highway System, local  
 987 governments shall establish an adequate level-of-service  
 988 standard that need not be consistent with any level-of-service  
 989 standard established by the Department of Transportation. In  
 990 establishing adequate level-of-service standards for any  
 991 arterial roads, or collector roads as appropriate, which  
 992 traverse multiple jurisdictions, local governments shall  
 993 consider compatibility with the roadway facility's adopted  
 994 level-of-service standards in adjacent jurisdictions. Each local  
 995 government within a county shall use a professionally accepted  
 996 methodology for measuring impacts on transportation facilities  
 997 for the purposes of implementing its concurrency management  
 998 system. Counties are encouraged to coordinate with adjacent  
 999 counties, and local governments within a county are encouraged  
 1000 to coordinate, for the purpose of using common methodologies for  
 1001 measuring impacts on transportation facilities for the purpose  
 1002 of implementing their concurrency management systems.

1003 (b) There shall be a limited exemption from Strategic  
 1004 Intermodal System adopted level-of-service standards for new or  
 1005 redevelopment projects consistent with the local comprehensive  
 1006 plan as inland multimodal facilities receiving or sending cargo  
 1007 for distribution and providing cargo storage, consolidation,  
 1008 repackaging, and transfer of goods, and which may, if developed

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1009 as proposed, include other intermodal terminals, related  
 1010 transportation facilities, warehousing and distribution  
 1011 facilities, and associated office space, light industrial,  
 1012 manufacturing, and assembly uses. The limited exemption applies  
 1013 if the project meets all of the following criteria:

1014 1. The project will not cause the adopted level-of-service  
 1015 standards for the Strategic Intermodal System facilities to be  
 1016 exceeded by more than 150 percent within the first 5 years of  
 1017 the project's development.

1018 2. The project, upon completion, would result in the  
 1019 creation of at least 50 full-time jobs.

1020 3. The project is compatible with existing and planned  
 1021 adjacent land uses.

1022 4. The project is consistent with local and regional  
 1023 economic development goals or plans.

1024 5. The project is proximate to regionally significant road  
 1025 and rail transportation facilities.

1026 6. The project is proximate to a community having an  
 1027 unemployment rate, as of the date of the development order  
 1028 application, which is 10 percent or more above the statewide  
 1029 reported average.

1030 Section 25. Subsections (1) and (2), paragraph (c) of  
 1031 subsection (3), and subsection (4) of section 373.4137, Florida  
 1032 Statutes, are amended to read:

1033 373.4137 Mitigation requirements for specified  
 1034 transportation projects.-

1035 (1) The Legislature finds that environmental mitigation  
 1036 for the impact of transportation projects proposed by the

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1037 Department of Transportation or a transportation authority  
 1038 established pursuant to chapter 348 or chapter 349 can be more  
 1039 effectively achieved by regional, long-range mitigation planning  
 1040 rather than on a project-by-project basis. It is the intent of  
 1041 the Legislature that mitigation to offset the adverse effects of  
 1042 these transportation projects be funded by the Department of  
 1043 Transportation and be carried out by the water management  
 1044 districts, including the use of mitigation banks and any other  
 1045 mitigation options that satisfy state and federal requirements,  
 1046 including, but not limited to, 33 U.S.C. s. 332.3(b) established  
 1047 pursuant to this part.

1048 (2) Environmental impact inventories for transportation  
 1049 projects proposed by the Department of Transportation or a  
 1050 transportation authority established pursuant to chapter 348 or  
 1051 chapter 349 shall be developed as follows:

1052 (a) By July 1 of each year, the Department of  
 1053 Transportation or a transportation authority established  
 1054 pursuant to chapter 348 or chapter 349 which chooses to  
 1055 participate in this program shall submit to the water management  
 1056 districts a list copy of its projects in the adopted work  
 1057 program and an environmental impact inventory of habitats  
 1058 addressed in the rules adopted pursuant to this part and s. 404  
 1059 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
 1060 by its plan of construction for transportation projects in the  
 1061 next 3 years of the tentative work program. The Department of  
 1062 Transportation or a transportation authority established  
 1063 pursuant to chapter 348 or chapter 349 may also include in its  
 1064 environmental impact inventory the habitat impacts of any future

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1065 transportation project. The Department of Transportation and  
 1066 each transportation authority established pursuant to chapter  
 1067 348 or chapter 349 may fund any mitigation activities for future  
 1068 projects using current year funds.

1069 (b) The environmental impact inventory shall include a  
 1070 description of these habitat impacts, including their location,  
 1071 acreage, and type; state water quality classification of  
 1072 impacted wetlands and other surface waters; any other state or  
 1073 regional designations for these habitats; and a list ~~survey~~ of  
 1074 threatened species, endangered species, and species of special  
 1075 concern affected by the proposed project.

1076 (3)

1077 (c) Except for current mitigation projects in the  
 1078 monitoring and maintenance phase and except as allowed by  
 1079 paragraph (d), the water management districts may request a  
 1080 transfer of funds from an escrow account no sooner than 30 days  
 1081 prior to the date the funds are needed to pay for activities  
 1082 associated with development or implementation of the approved  
 1083 mitigation plan described in subsection (4) for the current  
 1084 fiscal year, including, but not limited to, design, engineering,  
 1085 production, and staff support. Actual conceptual plan  
 1086 preparation costs incurred before plan approval may be submitted  
 1087 to the Department of Transportation or the appropriate  
 1088 transportation authority each year with the plan. The conceptual  
 1089 plan preparation costs of each water management district will be  
 1090 paid from mitigation funds associated with the environmental  
 1091 impact inventory for the current year. The amount transferred to  
 1092 the escrow accounts each year by the Department of

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1093 Transportation and participating transportation authorities  
 1094 established pursuant to chapter 348 or chapter 349 shall  
 1095 correspond to a cost per acre of \$75,000 multiplied by the  
 1096 projected acres of impact identified in the environmental impact  
 1097 inventory described in subsection (2). However, the \$75,000 cost  
 1098 per acre does not constitute an admission against interest by  
 1099 the state or its subdivisions nor is the cost admissible as  
 1100 evidence of full compensation for any property acquired by  
 1101 eminent domain or through inverse condemnation. Each July 1, the  
 1102 cost per acre shall be adjusted by the percentage change in the  
 1103 average of the Consumer Price Index issued by the United States  
 1104 Department of Labor for the most recent 12-month period ending  
 1105 September 30, compared to the base year average, which is the  
 1106 average for the 12-month period ending September 30, 1996. Each  
 1107 quarter, the projected acreage of impact shall be reconciled  
 1108 with the acreage of impact of projects as permitted, including  
 1109 permit modifications, pursuant to this part and s. 404 of the  
 1110 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
 1111 of funds shall be adjusted accordingly to reflect the acreage of  
 1112 impacts as permitted. The Department of Transportation and  
 1113 participating transportation authorities established pursuant to  
 1114 chapter 348 or chapter 349 are authorized to transfer such funds  
 1115 from the escrow accounts to the water management districts to  
 1116 carry out the mitigation programs. Environmental mitigation  
 1117 funds that are identified or maintained in an escrow account for  
 1118 the benefit of a water management district may be released if  
 1119 the associated transportation project is excluded in whole or  
 1120 part from the mitigation plan. For a mitigation project that is

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1121 in the maintenance and monitoring phase, the water management  
 1122 district may request and receive a one-time payment based on the  
 1123 project's expected future maintenance and monitoring costs. Upon  
 1124 disbursement of the final maintenance and monitoring payment,  
 1125 the department or the participating transportation authorities'  
 1126 obligation will be satisfied, the water management district will  
 1127 have continuing responsibility for the mitigation project, and  
 1128 the escrow account for the project established by the Department  
 1129 of Transportation or the participating transportation authority  
 1130 may be closed. Any interest earned on these disbursed funds  
 1131 shall remain with the water management district and must be used  
 1132 as authorized under this section.

1133 (4) Prior to March 1 of each year, each water management  
 1134 district, in consultation with the Department of Environmental  
 1135 Protection, the United States Army Corps of Engineers, the  
 1136 Department of Transportation, participating transportation  
 1137 authorities established pursuant to chapter 348 or chapter 349,  
 1138 and other appropriate federal, state, and local governments, and  
 1139 other interested parties, including entities operating  
 1140 mitigation banks, shall develop a plan for the primary purpose  
 1141 of complying with the mitigation requirements adopted pursuant  
 1142 to this part and 33 U.S.C. s. 1344. In developing such plans,  
 1143 the districts shall utilize sound ecosystem management practices  
 1144 to address significant water resource needs and shall focus on  
 1145 activities of the Department of Environmental Protection and the  
 1146 water management districts, such as surface water improvement  
 1147 and management (SWIM) projects and lands identified for  
 1148 potential acquisition for preservation, restoration or



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1149 enhancement, and the control of invasive and exotic plants in  
 1150 wetlands and other surface waters, to the extent that such  
 1151 activities comply with the mitigation requirements adopted under  
 1152 this part and 33 U.S.C. s. 1344. In determining the activities  
 1153 to be included in such plans, the districts shall also consider  
 1154 the purchase of credits from public or private mitigation banks  
 1155 permitted under s. 373.4136 and associated federal authorization  
 1156 and shall include such purchase as a part of the mitigation plan  
 1157 when such purchase would offset the impact of the transportation  
 1158 project, provide equal benefits to the water resources than  
 1159 other mitigation options being considered, and provide the most  
 1160 cost-effective mitigation option. The mitigation plan shall be  
 1161 submitted to the water management district governing board, or  
 1162 its designee, for review and approval. At least 14 days prior to  
 1163 approval, the water management district shall provide a copy of  
 1164 the draft mitigation plan to any person who has requested a  
 1165 copy.

1166 (a) For each transportation project with a funding request  
 1167 for the next fiscal year, the mitigation plan must include a  
 1168 brief explanation of why a mitigation bank was or was not chosen  
 1169 as a mitigation option, including an estimation of identifiable  
 1170 costs of the mitigation bank and nonbank options to the extent  
 1171 practicable.

1172 (b) Specific projects may be excluded from the mitigation  
 1173 plan, in whole or in part, and shall not be subject to this  
 1174 section upon the election ~~agreement~~ of the Department of  
 1175 Transportation, ~~or~~ a transportation authority if applicable, or  
 1176 ~~and~~ the appropriate water management district ~~that the inclusion~~

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1177 | ~~of such projects would hamper the efficiency or timeliness of~~  
1178 | ~~the mitigation planning and permitting process. The water~~  
1179 | ~~management district may choose to exclude a project in whole or~~  
1180 | ~~in part if the district is unable to identify mitigation that~~  
1181 | ~~would offset impacts of the project.~~

1182 |       Section 26. This act shall take effect upon becoming a  
1183 | law.

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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

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1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative Patronis offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (1) of section 120.569, Florida  
8 Statutes, is amended, and paragraph (p) is added to subsection  
9 (2) of that section, to read:

10 120.569 Decisions which affect substantial interests.—

11 (1) The provisions of this section apply in all  
12 proceedings in which the substantial interests of a party are  
13 determined by an agency, unless the parties are proceeding under  
14 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
15 120.57(1) applies whenever the proceeding involves a disputed  
16 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
17 applies in all other cases. If a disputed issue of material fact  
18 arises during a proceeding under s. 120.57(2), ~~then,~~ unless  
19 waived by all parties, the proceeding under s. 120.57(2) shall

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

34 (2)

35 (p) For any proceeding arising under chapter 373, chapter  
36 378, or chapter 403, if a nonapplicant petitions as a third  
37 party to challenge an agency's issuance of a license or  
38 conceptual approval, the petitioner initiating the action has  
39 the burden of ultimate persuasion and, in the first instance,  
40 has the burden of going forward with the evidence.

41 Notwithstanding subsection (1), this paragraph applies to  
42 proceedings under s. 120.574.

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

46 120.60 Licensing.—

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47 (1) Upon receipt of a license application, an agency shall  
48 examine the application and, within 30 days after such receipt,  
49 notify the applicant of any apparent errors or omissions and  
50 request any additional information the agency is permitted by  
51 law to require. An agency may not deny a license for failure to  
52 correct an error or omission or to supply additional information  
53 unless the agency timely notified the applicant within this 30-  
54 day period. The agency may establish by rule the time period for  
55 submitting any additional information requested by the agency.  
56 For good cause shown, the agency shall grant a request for an  
57 extension of time for submitting the additional information. If  
58 the applicant believes the agency's request for additional  
59 information is not authorized by law or rule, the agency, at the  
60 applicant's request, shall proceed to process the application.  
61 An application is complete upon receipt of all requested  
62 information and correction of any error or omission for which  
63 the applicant was timely notified or when the time for such  
64 notification has expired. An application for a license must be  
65 approved or denied within 60 ~~90~~ days after receipt of a  
66 completed application unless a shorter period of time for agency  
67 action is provided by law. The 60-day ~~90-day~~ time period is  
68 tolled by the initiation of a proceeding under ss. 120.569 and  
69 120.57. Any application for a license which is not approved or  
70 denied within the 60-day ~~90-day~~ or shorter time period, within  
71 15 days after conclusion of a public hearing held on the  
72 application, or within 45 days after a recommended order is  
73 submitted to the agency and the parties, whichever action and  
74 timeframe is latest and applicable, is considered approved

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

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

88 125.0112 Biofuels and renewable energy.--The construction  
89 and operation of a biofuel processing facility or a renewable  
90 energy generating facility, as defined in s. 366.91(2)(d), and  
91 the cultivation and production of bioenergy, as defined pursuant  
92 to s. 163.3177, shall be considered by a local government to be  
93 a valid industrial, agricultural, and silvicultural use  
94 permitted within those land use categories in the local  
95 comprehensive land use plan. If the local comprehensive plan  
96 does not specifically allow for the construction of a biofuel  
97 processing facility or renewable energy facility, the local  
98 government shall establish a specific review process that may  
99 include expediting local review of any necessary comprehensive  
100 plan amendment, zoning change, use permit, waiver, variance, or  
101 special exemption. Local expedited review of a proposed biofuel  
102 processing facility or a renewable energy facility does not

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

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

114 125.022 Development permits.—When a county denies an  
115 application for a development permit, the county shall give  
116 written notice to the applicant. The notice must include a  
117 citation to the applicable portions of an ordinance, rule,  
118 statute, or other legal authority for the denial of the permit.  
119 As used in this section, the term "development permit" has the  
120 same meaning as in s. 163.3164. A county may not require as a  
121 condition of approval for a development permit that an applicant  
122 obtain a permit or approval from any other state or federal  
123 agency. Issuance of a development permit by a county does not in  
124 any way create any rights on the part of the applicant to obtain  
125 a permit from another state or federal agency and does not  
126 create any liability on the part of the county for issuance of  
127 the permit if the applicant fails to fulfill its legal  
128 obligations to obtain requisite approvals or fulfill the  
129 obligations imposed by another state or a federal agency. A  
130 county may attach such a disclaimer to the issuance of a

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

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

138 161.032 Application review; request for additional  
139 information.-

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

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



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

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

171 166.033 Development permits.—When a municipality denies an  
172 application for a development permit, the municipality shall  
173 give written notice to the applicant. The notice must include a  
174 citation to the applicable portions of an ordinance, rule,  
175 statute, or other legal authority for the denial of the permit.  
176 As used in this section, the term "development permit" has the  
177 same meaning as in s. 163.3164. A municipality may not require  
178 as a condition of approval for a development permit that an  
179 applicant obtain a permit or approval from any other state or  
180 federal agency. Issuance of a development permit by a  
181 municipality does not in any way create any right on the part of  
182 an applicant to obtain a permit from another state or federal  
183 agency and does not create any liability on the part of the  
184 municipality for issuance of the permit if the applicant fails  
185 to fulfill its legal obligations to obtain requisite approvals  
186 or fulfill the obligations imposed by another state or federal

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

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

196 166.0447 Biofuels and renewable energy.—The construction  
197 and operation of a biofuel processing facility or a renewable  
198 energy generating facility, as defined in s. 366.91(2)(d), and  
199 the cultivation and production of bioenergy, as defined pursuant  
200 to s. 163.3177, are each a valid industrial, agricultural, and  
201 silvicultural use permitted within those land use categories in  
202 the local comprehensive land use plan and for purposes of any  
203 local zoning regulation within an unincorporated area of a  
204 municipality. Such comprehensive land use plans and local zoning  
205 regulations may not require the owner or operator of a biofuel  
206 processing facility or a renewable energy generating facility to  
207 obtain any comprehensive plan amendment, rezoning, special  
208 exemption, use permit, waiver, or variance, or to pay any  
209 special fee in excess of \$1,000 to operate in an area zoned for  
210 or categorized as industrial, agricultural, or silvicultural  
211 use. This section does not exempt biofuel processing facilities  
212 and renewable energy generating facilities from complying with  
213 building code requirements. The construction and operation of a  
214 facility and related improvements on a portion of a property

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215 pursuant to this section does not affect the remainder of that  
216 property's classification as agricultural pursuant to s.  
217 193.461.

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

220 373.026 General powers and duties of the department.—The  
221 department, or its successor agency, shall be responsible for  
222 the administration of this chapter at the state level. However,  
223 it is the policy of the state that, to the greatest extent  
224 possible, the department may enter into interagency or  
225 interlocal agreements with any other state agency, any water  
226 management district, or any local government conducting programs  
227 related to or materially affecting the water resources of the  
228 state. All such agreements shall be subject to the provisions of  
229 s. 373.046. In addition to its other powers and duties, the  
230 department shall, to the greatest extent possible:

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

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

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243 373.4141 Permits; processing.—

244 (1) Within 30 days after receipt of an application for a  
245 permit under this part, the department or the water management  
246 district shall review the application and shall request  
247 submittal of all additional information the department or the  
248 water management district is permitted by law to require. If the  
249 applicant believes any request for additional information is not  
250 authorized by law or rule, the applicant may request a hearing  
251 pursuant to s. 120.57. Within 30 days after receipt of such  
252 additional information, the department or water management  
253 district shall review it and may request only that information  
254 needed to clarify such additional information or to answer new  
255 questions raised by or directly related to such additional  
256 information. If the applicant believes the request of the  
257 department or water management district for such additional  
258 information is not authorized by law or rule, the department or  
259 water management district, at the applicant's request, shall  
260 proceed to process the permit application. In order to ensure  
261 the proper scope and necessity for the information requested, a  
262 second request for additional information, if any, must be  
263 signed by the supervisor of the project manager. A third request  
264 for additional information, if any, must be signed by the  
265 division director who oversees the program area. A fourth  
266 request for additional information, if any, must be signed by  
267 the assistant secretary of the department or the assistant  
268 executive director of the district. Any additional request for  
269 information must be signed by the secretary of the department or  
270 the executive director of the district.

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

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

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

280 373.4144 Federal environmental permitting.—

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

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

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

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

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

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

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

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

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

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355 permits for construction activities in wetlands or surface  
356 waters or complete assumption of federal permitting programs  
357 regulating the discharge of dredged or fill material pursuant to  
358 s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended,  
359 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors  
360 Act of 1899, so long as the assumption encompasses all dredge  
361 and fill activities in, on, or over jurisdictional wetlands or  
362 waters, including navigable waters, within the state.

363 Section 11. Present subsections (3), (4), and (5) of  
364 section 373.441, Florida Statutes, are renumbered as subsections  
365 (6), (7), and (8), respectively, and new subsections (3), (4),  
366 and (5) are added to that section, to read:

367 373.441 Role of counties, municipalities, and local  
368 pollution control programs in permit processing; delegation.-

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

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



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

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

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

392 376.30715 Innocent victim petroleum storage system  
393 restoration.—A contaminated site acquired by the current owner  
394 prior to July 1, 1990, which has ceased operating as a petroleum  
395 storage or retail business prior to January 1, 1985, is eligible  
396 for financial assistance pursuant to s. 376.305(6),  
397 notwithstanding s. 376.305(6)(a). For purposes of this section,  
398 the term "acquired" means the acquisition of title to the  
399 property; however, a subsequent transfer of the property to a  
400 spouse or child, a surviving spouse or child in trust or free of  
401 trust, ~~or~~ a revocable trust created for the benefit of the  
402 settlor, or a corporate entity created by the owner to hold  
403 title to the site does not disqualify the site from financial  
404 assistance pursuant to s. 376.305(6) and applicants previously  
405 denied coverage may reapply. Eligible sites shall be ranked in  
406 accordance with s. 376.3071(5).

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

409 403.0874 Incentive-based permitting program.—

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

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

424       (3) APPLICABILITY.—

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

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

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

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

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

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

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

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

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

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

470 (5) COMPLIANCE INCENTIVES.—

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

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

484 2. Priority review of permit application;

485 3. Reduced number of routine compliance inspections;

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

488 5. Longer permit period durations.

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

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- 493       1. Reductions in actual or permitted discharges or  
494 emissions;
- 495       2. Reductions in the impacts of regulated activities on  
496 public lands or natural resources;
- 497       3. Implementation of voluntary environmental performance  
498 programs, such as environmental management systems; and
- 499       4. In the 10 years before the date the renewal application  
500 is received by the department, the applicant having not been  
501 subject to a formal administrative or civil judgment or criminal  
502 conviction whereby an administrative law judge or civil or  
503 criminal court found the applicant knowingly violated the  
504 applicable law or rule and the violation was the proximate cause  
505 that resulted in significant harm to human health or the  
506 environment. Administrative settlement or consent orders,  
507 whether formal or informal, are not judgments for purposes of  
508 this section unless entered into as a result of significant harm  
509 to the human health or the environment.
- 510       (c) Any person meeting one of the criteria in subparagraph  
511 (b)1.-3., and the criteria in subparagraph (b)4., is entitled to  
512 the following incentives:
- 513       1. Automatic permit renewals if there are no substantial  
514 deviations or modifications in permitted activities or changed  
515 circumstances; and
- 516       2. Reduced or waived application fees.
- 517       (6) RULEMAKING.—The department shall implement rulemaking  
518 within 6 months after the effective date of this act. Such  
519 rulemaking may identify additional incentives and programs not  
520 expressly enumerated under this section, so long as each

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

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

532 161.041 Permits required.—

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

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

538 373.413 Permits for construction or alteration.—

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

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

544 403.061 Department; powers and duties.—The department  
545 shall have the power and the duty to control and prohibit  
546 pollution of air and water in accordance with the law and rules  
547 adopted and promulgated by it and, for this purpose, to:

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

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

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

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

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

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

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

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

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

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

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

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

594

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

600

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



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

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

607 403.087 Permits; general issuance; denial; revocation;  
608 prohibition; penalty.—

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

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

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

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

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

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

627 403.703 Definitions.—As used in this part, the term:

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

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

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

640 403.707 Permits.—

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

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

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

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

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

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

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

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

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

682  
683 The disposal of solid waste pursuant to this paragraph does not  
684 create liability under this chapter or chapter 376 for site  
685 cleanup and the exceedance of soil cleanup target levels is not  
686 a basis for enforcement or site cleanup.

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

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

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

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

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

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

717 403.814 General permits; delegation.—

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

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

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

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

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

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

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

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

737 380.06 Developments of regional impact.—

738 (24) STATUTORY EXEMPTIONS.—

739 (u) Any proposed solid mineral mine and any proposed  
740 addition to, expansion of, or change to an existing solid  
741 mineral mine is exempt from the provisions of this section.

742 Proposed changes to any previously approved solid mineral mine

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

753

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

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

766 380.0657 Expedited permitting process for economic  
767 development projects.—

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

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

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

781 403.973 Expedited permitting; amendments to comprehensive  
782 plans.—

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

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

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

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

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

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



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

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

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

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

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

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

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

869 (e) Establishment of a process for the adoption and review  
870 of any comprehensive plan amendment needed by any certified  
871 project within 90 days after the submission of an application  
872 for a comprehensive plan amendment. However, the memorandum of  
873 agreement may not prevent affected persons as defined in s.  
874 163.3184 from appealing or participating in this expedited plan  
875 amendment process and any review or appeals of decisions made  
876 under this paragraph; and

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

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

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

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

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

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

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

914 163.3180 Concurrency.—

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

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

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

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

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

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

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

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

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

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

973       373.4137 Mitigation requirements for specified  
974 transportation projects.—

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

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

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993 (a) By July 1 of each year, the Department of  
994 Transportation or a transportation authority established  
995 pursuant to chapter 348 or chapter 349 which chooses to  
996 participate in this program shall submit to the water management  
997 districts a list ~~copy~~ of its projects in the adopted work  
998 program and an environmental impact inventory of habitats  
999 addressed in the rules adopted pursuant to this part and s. 404  
1000 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted  
1001 by its plan of construction for transportation projects in the  
1002 next 3 years of the tentative work program. The Department of  
1003 Transportation or a transportation authority established  
1004 pursuant to chapter 348 or chapter 349 may also include in its  
1005 environmental impact inventory the habitat impacts of any future  
1006 transportation project. The Department of Transportation and  
1007 each transportation authority established pursuant to chapter  
1008 348 or chapter 349 may fund any mitigation activities for future  
1009 projects using current year funds.

1010 (b) The environmental impact inventory shall include a  
1011 description of these habitat impacts, including their location,  
1012 acreage, and type; state water quality classification of  
1013 impacted wetlands and other surface waters; any other state or  
1014 regional designations for these habitats; and a list ~~survey~~ of  
1015 threatened species, endangered species, and species of special  
1016 concern affected by the proposed project.

1017 (3)

1018 (c) Except for current mitigation projects in the  
1019 monitoring and maintenance phase and except as allowed by  
1020 paragraph (d), the water management districts may request a

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1021 transfer of funds from an escrow account no sooner than 30 days  
1022 prior to the date the funds are needed to pay for activities  
1023 associated with development or implementation of the approved  
1024 mitigation plan described in subsection (4) for the current  
1025 fiscal year, including, but not limited to, design, engineering,  
1026 production, and staff support. Actual conceptual plan  
1027 preparation costs incurred before plan approval may be submitted  
1028 to the Department of Transportation or the appropriate  
1029 transportation authority each year with the plan. The conceptual  
1030 plan preparation costs of each water management district will be  
1031 paid from mitigation funds associated with the environmental  
1032 impact inventory for the current year. The amount transferred to  
1033 the escrow accounts each year by the Department of  
1034 Transportation and participating transportation authorities  
1035 established pursuant to chapter 348 or chapter 349 shall  
1036 correspond to a cost per acre of \$75,000 multiplied by the  
1037 projected acres of impact identified in the environmental impact  
1038 inventory described in subsection (2). However, the \$75,000 cost  
1039 per acre does not constitute an admission against interest by  
1040 the state or its subdivisions nor is the cost admissible as  
1041 evidence of full compensation for any property acquired by  
1042 eminent domain or through inverse condemnation. Each July 1, the  
1043 cost per acre shall be adjusted by the percentage change in the  
1044 average of the Consumer Price Index issued by the United States  
1045 Department of Labor for the most recent 12-month period ending  
1046 September 30, compared to the base year average, which is the  
1047 average for the 12-month period ending September 30, 1996. Each  
1048 quarter, the projected acreage of impact shall be reconciled



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1049 with the acreage of impact of projects as permitted, including  
1050 permit modifications, pursuant to this part and s. 404 of the  
1051 Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer  
1052 of funds shall be adjusted accordingly to reflect the acreage of  
1053 impacts as permitted. The Department of Transportation and  
1054 participating transportation authorities established pursuant to  
1055 chapter 348 or chapter 349 are authorized to transfer such funds  
1056 from the escrow accounts to the water management districts to  
1057 carry out the mitigation programs. Environmental mitigation  
1058 funds that are identified or maintained in an escrow account for  
1059 the benefit of a water management district may be released if  
1060 the associated transportation project is excluded in whole or  
1061 part from the mitigation plan. For a mitigation project that is  
1062 in the maintenance and monitoring phase, the water management  
1063 district may request and receive a one-time payment based on the  
1064 project's expected future maintenance and monitoring costs. Upon  
1065 disbursement of the final maintenance and monitoring payment,  
1066 the department or the participating transportation authorities'  
1067 obligation will be satisfied, the water management district will  
1068 have continuing responsibility for the mitigation project, and  
1069 the escrow account for the project established by the Department  
1070 of Transportation or the participating transportation authority  
1071 may be closed. Any interest earned on these disbursed funds  
1072 shall remain with the water management district and must be used  
1073 as authorized under this section.

1074 (4) Prior to March 1 of each year, each water management  
1075 district, in consultation with the Department of Environmental  
1076 Protection, the United States Army Corps of Engineers, the

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1077 Department of Transportation, participating transportation  
1078 authorities established pursuant to chapter 348 or chapter 349,  
1079 and other appropriate federal, state, and local governments, and  
1080 other interested parties, including entities operating  
1081 mitigation banks, shall develop a plan for the primary purpose  
1082 of complying with the mitigation requirements adopted pursuant  
1083 to this part and 33 U.S.C. s. 1344. In developing such plans,  
1084 the districts shall utilize sound ecosystem management practices  
1085 to address significant water resource needs and shall focus on  
1086 activities of the Department of Environmental Protection and the  
1087 water management districts, such as surface water improvement  
1088 and management (SWIM) projects and lands identified for  
1089 potential acquisition for preservation, restoration or  
1090 enhancement, and the control of invasive and exotic plants in  
1091 wetlands and other surface waters, to the extent that such  
1092 activities comply with the mitigation requirements adopted under  
1093 this part and 33 U.S.C. s. 1344. In determining the activities  
1094 to be included in such plans, the districts shall ~~also consider~~  
1095 ~~the purchase of~~ credits from public or private mitigation banks  
1096 permitted under s. 373.4136 and associated federal authorization  
1097 and shall include such purchase as a part of the mitigation plan  
1098 when such purchase would offset the impact of the transportation  
1099 project, ~~provide equal benefits to the water resources than~~  
1100 ~~other mitigation options being considered, and provide the most~~  
1101 ~~cost-effective mitigation option.~~ The mitigation plan shall be  
1102 submitted to the water management district governing board, or  
1103 its designee, for review and approval. At least 14 days prior to  
1104 approval, the water management district shall provide a copy of

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1105 the draft mitigation plan to any person who has requested a  
1106 copy.

1107 (a) For each transportation project with a funding request  
1108 for the next fiscal year, the mitigation plan must include a  
1109 brief explanation of why a mitigation bank was or was not chosen  
1110 as a mitigation option, including an estimation of identifiable  
1111 costs of the mitigation bank and nonbank options to the extent  
1112 practicable.

1113 (b) Specific projects may be excluded from the mitigation  
1114 plan, in whole or in part, and shall not be subject to this  
1115 section upon the election agreement of the Department of  
1116 Transportation, ~~or~~ a transportation authority if applicable, or  
1117 ~~and~~ the appropriate water management district ~~that the inclusion~~  
1118 ~~of such projects would hamper the efficiency or timeliness of~~  
1119 ~~the mitigation planning and permitting process. The water~~  
1120 ~~management district may choose to exclude a project in whole or~~  
1121 ~~in part if the district is unable to identify mitigation that~~  
1122 ~~would offset impacts of the project.~~

1123 Section 26. Subsection (5) is added to section 526.203,  
1124 Florida Statutes, to read:

1125 526.203 Renewable fuel standard.—

1126 (5) This section does not prohibit the sale of unblended  
1127 fuels for the uses exempted under subsection (3).

1128 Section 27. The uniform mitigation assessment rules  
1129 adopted by the Department of Environmental Protection in chapter  
1130 62-345, Florida Administrative Code, as of January 1, 2011, to  
1131 fulfill the mandate of s. 373.414(18), Florida Statutes, are  
1132 changed as follows:

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1133       (1) Rule 62-345.100(11), Florida Administrative Code, is  
1134 added to read: "(11) The Department of Environmental Protection  
1135 shall be responsible for ensuring statewide coordination and  
1136 consistency in the application of this rule by providing  
1137 training and guidance to other relevant state agencies, water  
1138 management districts, and local governments. Not less than every  
1139 two years, the Department of Environmental Protection shall  
1140 coordinate with the water management districts to verify  
1141 consistent application of the methodology. To ensure that this  
1142 rule is interpreted and applied uniformly, any interpretation or  
1143 application of this rule by any agency or local government that  
1144 differs from the Department of Environmental Protection's  
1145 interpretation or application of this rule is incorrect and  
1146 invalid. The Department of Environmental Protection's  
1147 interpretation, application, and implementation of this rule  
1148 shall be the only acceptable method."

1149       (2) Rule 62-345.200(12), Florida Administrative Code, is  
1150 changed to read: "(12) "Without preservation assessment" means  
1151 a reasonably anticipated use of the assessment area, and the  
1152 temporary or permanent effects of those uses on the assessment  
1153 area, considering the protection provided by existing easements,  
1154 regulations, and land use restrictions. Reasonably anticipated  
1155 uses include those activities that have been previously  
1156 implemented within the assessment area or adjacent to the  
1157 assessment area, or are considered to be common uses in the  
1158 region without the need for additional authorizations or zoning,  
1159 land use code, or comprehensive plan changes."

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1160       (3) Rule 62-345.300(1), Florida Administrative Code, is  
1161 changed to read: "(1) When an applicant proposes mitigation for  
1162 impacts to wetlands and surface waters as part of an  
1163 environmental resource permit or wetland resource permit  
1164 application, the applicant will be responsible for preparing and  
1165 submitting the necessary supporting information for the  
1166 application of Rules 62-345.400-62-345.600, F.A.C., of this  
1167 chapter and the reviewing agency will be responsible for  
1168 verifying this information , contacting the applicant to address  
1169 any insufficiencies or need for clarification, and approving the  
1170 amount of mitigation necessary to offset the proposed impacts.  
1171 When an applicant submits a mitigation bank or regional  
1172 mitigation permit application, the applicant will be responsible  
1173 for preparing and submitting the necessary supporting  
1174 information for the application of Rules 62-345.400-.600,  
1175 F.A.C., of this chapter and the reviewing agency will be  
1176 responsible for verifying this information, contacting the  
1177 applicant to address any insufficiencies or need for  
1178 clarification, and approving the potential amount of mitigation  
1179 to be provided by the bank or regional mitigation area. If an  
1180 applicant submits either Part I or Part II or both, the  
1181 reviewing agency shall notify the applicant of any inadequacy in  
1182 the submittal or disagreement with the information provided.

1183       (4) Rule 62-345.300(3)(a), Florida Administrative Code, is  
1184 changed to read: "(a) Conduct qualitative characterization of  
1185 both the impact and mitigation assessment areas (Part I) that  
1186 identifies the assessment area's native community type and the  
1187 functions to fish and wildlife and their habitat, describes the

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1188 current condition and functions provided by the assessment area,  
1189 and summarizes the project condition of the assessment area. The  
1190 purpose of Part I is to provide a framework for comparison of  
1191 the assessment area to the optimal condition and  
1192 location/landscape setting of that native community type.  
1193 Another purpose of this part is to note any relevant factors of  
1194 the assessment area that are discovered by site inspectors,  
1195 including use by listed species."

1196 (5) Rule 62-345.300(3)(c), Florida Administrative Code, is  
1197 changed to read: "(c) Adjust the gain in ecological value from  
1198 either upland or wetland preservation in accordance with  
1199 subsection 62-345.500(3), F.A.C. when preservation is the only  
1200 mitigation activity proposed (absent creation, restoration, or  
1201 enhancement activities) at a specified assessment area."

1202 (6) The introductory paragraph of rule 62-345.400, Florida  
1203 Administrative Code, is changed to read: "An impact or  
1204 mitigation assessment area must be described with sufficient  
1205 detail to provide a frame of reference for the type of community  
1206 being evaluated and to identify the functions that will be  
1207 evaluated. When an assessment area is an upland proposed as  
1208 mitigation, functions must be related to the benefits provided  
1209 by that upland to fish and wildlife of associated wetlands or  
1210 other surface waters. Information for each assessment area must  
1211 be sufficient to identify the functions beneficial to fish and  
1212 wildlife and their habitat that are characteristic of the  
1213 assessment area's native community type, based on currently  
1214 available information, such as current and historic aerial  
1215 photographs, topographic maps, geographic information system

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1216 data and maps, site visits, scientific articles, journals, other  
1217 professional reports, field verification when needed, and  
1218 reasonable scientific judgment. For wetlands and other surface  
1219 waters, other than those created for mitigation, that have been  
1220 created on sites where such did not exist before the creation,  
1221 such as borrow pits, ditches, and canals, refer to the native  
1222 community type or surface water body to which it is most  
1223 analogous in function for the given landscape position. For  
1224 altered natural communities or surface waterbodies, refer to the  
1225 native community type or surface water body present in the  
1226 earliest available aerial photography except that if the  
1227 alteration has been of such a degree and extent that a clearly  
1228 defined different native community type is now present and self-  
1229 sustaining, in which case the native community type shall be  
1230 identified as the one the present community most closely  
1231 resembles. In determining the historic native community type,  
1232 all currently available information shall be used to ensure the  
1233 highest degree of accuracy. The information provided by the  
1234 applicant for each assessment area must address the following,  
1235 as applicable:"

1236 (7) Rule 62-345.500(1)(a), Florida Administrative Code, is  
1237 changed to read: "(a) Current condition or, in the case of  
1238 preservation only mitigation, without preservation - The current  
1239 condition of an assessment area is scored using the information  
1240 in this part to determine the degree to which the assessment  
1241 area currently provides the relative value of functions  
1242 identified in Part I for the native community type. In the case  
1243 of preservation-only mitigation, the "without preservation"

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1244 assessment utilizes the information in this part to determine  
1245 the degree to which the assessment area could provide the  
1246 relative value of functions identified in Part I for the native  
1247 community type assuming the area is not preserved. For  
1248 assessment areas where previous impacts that affect the current  
1249 condition are temporary in nature, consideration will be given  
1250 to the inherent functions of these areas relative to seasonal  
1251 hydrologic changes, and expected vegetation regeneration and  
1252 projected habitat functions if the use of the area were to  
1253 remain unchanged. When evaluating impacts to a previously  
1254 permitted mitigation site that has not achieved its intended  
1255 function, the reviewing agency shall consider the functions the  
1256 mitigation site was intended to offset and any delay or  
1257 reduction in offsetting those functions that may be caused by  
1258 the project. Previous construction or alteration undertaken in  
1259 violation of Part IV, Chapter 373, F.S., or Sections 403.91-  
1260 .929, F.S. (1984 Supp.), as amended, or rule, order or permit  
1261 adopted or issued thereunder, will not be considered as having  
1262 diminished the condition and relative value of a wetland or  
1263 surface water, when assigning a score under this part. When  
1264 evaluating wetlands or other surface waters that are within an  
1265 area that is subject to a recovery strategy pursuant to Chapter  
1266 40D-80, F.A.C., impacts from water withdrawals will not be  
1267 considered when assigning a score under this part."

1268 (8) Rule 62-345.500(1)(b), Florida Administrative Code, is  
1269 changed to read: "(b) "With mitigation" or "with impact" - The  
1270 "with mitigation" and "with impact" assessments are based on the  
1271 reasonably expected outcome, which may represent an increase,



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1272 decrease, or no change in value relative to current conditions.

1273 For the "with impact" and "with mitigation" assessments, the

1274 evaluator will assume that all other necessary regulatory

1275 authorizations required for the proposed project have been

1276 obtained and that construction will be consistent with such

1277 authorizations. The "with mitigation" assessment will be scored

1278 only when reasonable assurance has been provided that the

1279 proposed plan can be conducted. When scoring the "with

1280 mitigation" assessment for assessment areas involving

1281 enhancement, restoration, or creation activities and that are

1282 proposed to be placed under a conservation easement or other

1283 similar land protection mechanism, the with mitigation score

1284 shall reflect the combined preservation and

1285 enhancement/restoration/creation value of the specified

1286 assessment area, and the Preservation Adjustment Factor shall

1287 not apply to these mitigation assessments."

1288 (9) Rule 62-345.500(2), Florida Administrative Code, is

1289 changed to read: "(2) Uplands function as the contributing

1290 watershed to wetlands and are necessary to maintain the

1291 ecological value of associated wetlands or other surface waters.

1292 Upland mitigation assessment areas shall be scored using the

1293 landscape support/location and community structure indicators

1294 listed in subsection 62-345.500(6), F.A.C. Scoring of these

1295 indicators for the upland assessment areas shall be based on the

1296 degree to which the relative value of functions of the upland

1297 assessment area provide benefits to the fish and wildlife of the

1298 associated wetlands or other surface waters, considering the

1299 native community type, current condition, and anticipated

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1300 ecological value of the uplands and associated wetlands and  
1301 other surface waters.

1302 (a) For upland preservation, the without preservation  
1303 assessment utilizes the information in this part to determine  
1304 the degree to which the assessment area could provide the  
1305 relative value of functions identified in Part I for the native  
1306 community type (to include benefits to fish and wildlife of the  
1307 associated wetlands or other surface waters) assuming the upland  
1308 area is not preserved. The gain in ecological value is  
1309 determined by the mathematical difference between the score of  
1310 the upland assessment area with the proposed preservation  
1311 measure and the upland assessment area without the proposed  
1312 preservation measure. When the community structure is scored as  
1313 "zero", then the location and landscape support shall also be  
1314 "zero". However, an increase in the location and landscape  
1315 support score can also occur when the community structure is  
1316 scored other than "zero". The resulting delta is then multiplied  
1317 by the preservation adjustment factor contained in subsection  
1318 62-345.500(3), F.A.C.

1319 (b) For upland enhancement or restoration, the current  
1320 condition of an assessment area is scored using the information  
1321 in this part to determine the degree to which the assessment  
1322 area currently provides the relative value of functions  
1323 identified in Part I for the native community type (to include  
1324 benefits to fish and wildlife of the associated wetlands or  
1325 other surface waters). The value provided shall be determined by  
1326 the mathematical difference between the score of the upland

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1327 assessment area with the proposed restoration or enhancement  
1328 measure and the current condition of the upland assessment area.

1329 (c) For uplands proposed to be converted to wetlands or  
1330 other surface waters through creation or restoration measures,  
1331 the upland areas shall be scored as "zero" in their current  
1332 condition. Only the "with mitigation" assessment shall be scored  
1333 in accordance with the indicators listed in subsection 62-  
1334 345.500(6), F.A.C."

1335 (10) Rule 62-345.500(3), Florida Administrative Code, is  
1336 changed to read: "(3)(a) When an assessment area's mitigation  
1337 plan consists of preservation only (absent creation,  
1338 restoration, or enhancement activities), the "with mitigation"  
1339 assessment shall consider the potential of the assessment area  
1340 to perform current functions in the long term, considering the  
1341 protection mechanism proposed, and the "without preservation"  
1342 assessment shall evaluate the assessment area's functions  
1343 considering the reasonably anticipated use of the assessment  
1344 area and the temporary or permanent effects of those uses in the  
1345 assessment area considering the protection provided by existing  
1346 easements, regulations, and land use restrictions. The gain in  
1347 ecological value is determined by the mathematical difference  
1348 between the Part II scores for the "with mitigation" and  
1349 "without preservation" (the delta) multiplied by a preservation  
1350 adjustment factor. The preservation adjustment factor shall be  
1351 scored on a scale from 0.2 (minimum preservation value) to 1  
1352 (optimal preservation value), on one-tenth increments. The score  
1353 shall be calculated using the scoring method set forth in the

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1354 "Preservation Adjustment Factor Worksheet" for each of the  
1355 following considerations:

1356 1. The extent to which proposed management activities  
1357 within the preserve area promote natural ecological conditions  
1358 such as fire patterns or the exclusion of invasive exotic  
1359 species.

1360 2. The ecological and hydrological relationship between  
1361 wetlands, other surface waters, and uplands to be preserved.

1362 3. The scarcity of the habitat provided by the proposed  
1363 preservation area and the degree to which listed species use the  
1364 area.

1365 4. The proximity of the area to be preserved to areas of  
1366 national, state, or regional ecological significance, such as  
1367 national or state parks, Outstanding Florida Waters, and other  
1368 regionally significant ecological resources or habitats, such as  
1369 lands acquired or to be acquired through governmental or non-  
1370 profit land acquisition programs for environmental conservation,  
1371 and whether the areas to be preserved include corridors between  
1372 these habitats.

1373 5. The extent and likelihood of potential adverse impacts  
1374 if the assessment area were not preserved.

1375 (b) Each of these considerations shall be scored on a  
1376 relative scale of zero (0) to two-tenths (0.2) based on the  
1377 value provided [optimal (0.2), low to moderate (0.1), and no  
1378 value (0)] and summed together to calculate the preservation  
1379 adjustment factor. The minimum value to be assigned to a  
1380 specified assessment area will be 0.2. The preservation  
1381 adjustment factor is multiplied by the mitigation delta assigned

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1382 to the preservation proposal to yield an adjusted mitigation  
1383 delta for preservation."

1384 (11) Rule 62-345.500(6)(a), Florida Administrative Code,  
1385 is changed to read: "(6) Three categories of indicators of  
1386 wetland function (landscape support, water environment and  
1387 community structure) listed below are to be scored to the extent  
1388 that they affect the ecological value of the assessment area.  
1389 Upland mitigation assessment areas shall be scored for landscape  
1390 support/location and community structure only.

1391 (a) Landscape Support/Location - The value of functions  
1392 provided by an assessment area to fish and wildlife are  
1393 influenced by the landscape attributes of the assessment area  
1394 and its relationship with surrounding areas. While the  
1395 geographic location of the assessment area does not change, the  
1396 ecological relationship between the assessment area and  
1397 surrounding landscape may vary from the current condition to the  
1398 "with impact" and "with mitigation" conditions. Additionally,  
1399 the assessment area may be located within a regional corridor or  
1400 in proximity to areas of national, state, or regional  
1401 significance, and the "with mitigation" condition may serve to  
1402 complement the regional ecological value identified for these  
1403 areas. Many species that nest, feed, or find cover in a specific  
1404 habitat or habitat type are also dependent in varying degrees  
1405 upon other habitats, including upland, wetland, and other  
1406 surface waters, that are present in the regional landscape. For  
1407 example, many amphibian species require small isolated wetlands  
1408 for breeding pools and for juvenile life stages, but may spend  
1409 the remainder of their adult lives in uplands or other wetland

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1410 habitats. If these habitats are unavailable or poorly connected  
1411 in the landscape or are degraded, then the value of functions  
1412 provided by the assessment area to the fish and wildlife  
1413 identified in Part I is reduced. The assessment area shall also  
1414 be considered to the extent that fish and wildlife utilizing the  
1415 area have the opportunity to access other habitats necessary to  
1416 fulfill their life history requirements. The availability,  
1417 connectivity, and quality of offsite habitats, and offsite land  
1418 uses which might adversely impact fish and wildlife utilizing  
1419 these habitats, are factors to be considered in assessing the  
1420 landscape support of the assessment area. The location of the  
1421 assessment area shall be considered relative to offsite and  
1422 upstream hydrologic contributing areas and to downstream and  
1423 other connected waters to the extent that the diversity and  
1424 abundance of fish and wildlife and their habitats is affected in  
1425 these areas. The opportunity for the assessment area to provide  
1426 offsite water quantity and quality benefits to fish and wildlife  
1427 and their habitats downstream and in connected waters is  
1428 assessed based on the degree of hydrologic connectivity between  
1429 these habitats and the extent to which offsite habitats are  
1430 affected by discharges from the assessment area. It is  
1431 recognized that isolated wetlands lack surface water connections  
1432 to downstream waters and as a result, do not perform certain  
1433 functions (e.g., detrital transport) to benefit downstream fish  
1434 and wildlife; for such wetlands, this consideration does not  
1435 apply.

1436 1. A score of (10) means the assessment area, in  
1437 combination with the surrounding landscape, provides full

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1438 opportunity for the assessment area to perform beneficial  
1439 functions at an optimal level. The score is based on reasonable  
1440 scientific judgment and characterized by a predominance of the  
1441 following, as applicable:

1442 a. Habitats outside the assessment area represent the full  
1443 range of habitats needed to fulfill the life history  
1444 requirements of all wildlife listed in Part I and are available  
1445 in sufficient quantity to provide optimal support for these  
1446 wildlife.

1447 b. Invasive exotic or other invasive plant species are not  
1448 present in the proximity of the assessment area.

1449 c. Wildlife access to and from habitats outside the  
1450 assessment area is not limited by distance to these habitats and  
1451 is unobstructed by landscape barriers.

1452 d. Functions of the assessment area that benefit  
1453 downstream fish and wildlife are not limited by distance or  
1454 barriers that reduce the opportunity for the assessment area to  
1455 provide these benefits.

1456 e. Land uses outside the assessment area have no adverse  
1457 impacts on wildlife in the assessment area as listed in Part I.

1458 f. The opportunity for the assessment area to provide  
1459 benefits to downstream or other hydrologically connected areas  
1460 is not limited by hydrologic impediments or flow restrictions.

1461 g. Downstream or other hydrologically connected habitats  
1462 are critically or solely dependent on discharges from the  
1463 assessment area and could suffer severe adverse impacts if the  
1464 quality or quantity of these discharges were altered.

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1465 h. For upland mitigation assessment areas, the uplands  
1466 provide a full suite of ecological values so as to provide  
1467 optimal protection and support of wetland functions.

1468 2. A score of (7) means that, compared to the optimal  
1469 condition of the native community type, the opportunity for the  
1470 assessment area to perform beneficial functions in combination  
1471 with the surrounding landscape is limited to 70% of the optimal  
1472 ecological value. The score is based on reasonable scientific  
1473 judgment and characterized by a predominance of the following,  
1474 as applicable:

1475 a. Habitats outside the assessment area are available in  
1476 sufficient quantity and variety to provide optimal support for  
1477 most, but not all, of the wildlife listed in Part I, or certain  
1478 wildlife populations may be limited due to the reduced  
1479 availability of habitats needed to fulfill their life history  
1480 requirements.

1481 b. Some of the plant community composition in the  
1482 proximity of the assessment area consists of invasive exotic or  
1483 other invasive plant species, but cover is minimal and has  
1484 minimal adverse effect on the functions provided by the  
1485 assessment area.

1486 c. Wildlife access to and from habitats outside the  
1487 assessment area is partially limited, either by distance or by  
1488 the presence of barriers that impede wildlife movement.

1489 d. Functions of the assessment area that benefit fish and  
1490 wildlife downstream are somewhat limited by distance or barriers  
1491 that reduce the opportunity for the assessment area to provide  
1492 these benefits.



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1493 e. Land uses outside the assessment area have minimal  
1494 adverse impacts on fish and wildlife identified in Part I.

1495 f. The opportunity for the assessment area to provide  
1496 benefits to downstream or other hydrologically connected areas  
1497 is limited by hydrologic impediments or flow restrictions such  
1498 that these benefits are provided with lesser frequency or lesser  
1499 magnitude than would occur under optimal conditions.

1500 g. Downstream or other hydrologically connected habitats  
1501 derive significant benefits from discharges from the assessment  
1502 area and could suffer substantial adverse impacts if the quality  
1503 or quantity of these discharges were altered.

1504 h. For upland mitigation assessment areas, the uplands  
1505 provide significant, but suboptimal ecological values and  
1506 protection of wetland functions.

1507 3. A score of (4) means that, compared to the optimal  
1508 condition of the native community type, the opportunity for the  
1509 assessment area to perform beneficial functions in combination  
1510 with the surrounding landscape is limited to 40% of the optimal  
1511 ecological value. The score is based on reasonable scientific  
1512 judgment and characterized by a predominance of the following,  
1513 as applicable:

1514 a. Availability of habitats outside the assessment area is  
1515 fair, but fails to provide support for some species of wildlife  
1516 listed in Part I, or provides minimal support for many of the  
1517 species listed in Part I.

1518 b. The majority of the plant community composition in the  
1519 proximity of the assessment area consists of invasive exotic or

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1520 other invasive plant species that adversely affect the functions  
1521 provided by the assessment area.

1522 c. Wildlife access to and from habitats outside the  
1523 assessment area is substantially limited, either by distance or  
1524 by the presence of barriers which impede wildlife movement.

1525 d. Functions of the assessment area that benefit fish and  
1526 wildlife downstream are limited by distance or barriers that  
1527 substantially reduce the opportunity for the assessment area to  
1528 provide these benefits.

1529 e. Land uses outside the assessment area have significant  
1530 adverse impacts on fish and wildlife identified in Part I.

1531 f. The opportunity for the assessment area to provide  
1532 benefits to downstream or other hydrologically connected areas  
1533 is limited by hydrologic impediments or flow restrictions, such  
1534 that these benefits are rarely provided or are provided at  
1535 greatly reduced levels compared to optimal conditions.

1536 g. Downstream or other hydrologically connected habitats  
1537 derive minimal benefits from discharges from the assessment area  
1538 but could be adversely impacted if the quality or quantity of  
1539 these discharges were altered.

1540 h. For upland mitigation assessment areas, the uplands  
1541 provide minimal ecological values and protection of wetland  
1542 functions.

1543 4. A score of (0) means that the assessment area, in  
1544 combination with the surrounding landscape, provides no habitat  
1545 support for wildlife utilizing the assessment area and no  
1546 opportunity for the assessment area to provide benefits to fish  
1547 and wildlife outside the assessment area. The score is based on

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1548 reasonable scientific judgment and characterized by a  
1549 predominance of the following, as applicable:

1550 a. No habitats are available outside the assessment area  
1551 to provide any support for the species of wildlife listed in  
1552 Part I.

1553 b. The plant community composition in the proximity of the  
1554 assessment area consists predominantly of invasive exotic or  
1555 other invasive plant species such that little or no function is  
1556 provided by the assessment area.

1557 c. Wildlife access to and from habitats outside the  
1558 assessment area is precluded by barriers or distance.

1559 d. Functions of the assessment area that would be expected  
1560 to benefit fish and wildlife downstream are not present.

1561 e. Land uses outside the assessment area have a severe  
1562 adverse impact on wildlife in the assessment area as listed in  
1563 Part I.

1564 f. There is negligible or no opportunity for the  
1565 assessment area to provide benefits to downstream or other  
1566 hydrologically connected areas due to hydrologic impediments or  
1567 flow restrictions that preclude provision of these benefits.

1568 g. Discharges from the assessment area provide negligible  
1569 or no benefits to downstream or hydrologically connected areas  
1570 and these areas would likely be unaffected if the quantity or  
1571 quality of these discharges were altered.

1572 h. For upland mitigation assessment areas, the uplands  
1573 provide no ecological value or protection of wetland functions."

1574 (12) The Department of Environmental Protection is  
1575 directed to make additional changes to the worksheet portions of

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1576 chapter 62-345, Florida Administrative Code, as needed to  
1577 conform to the changes set forth in this section.

1578 (13) Any entity holding a mitigation bank permit may apply  
1579 to the relevant agency to have such mitigation bank reassessed  
1580 pursuant to the changes to chapter 62-345, Florida  
1581 Administrative Code, set forth in this section, if such  
1582 application is filed with that agency no later than September  
1583 30, 2011.

1584 Section 28. This act shall take effect upon becoming a  
1585 law.

1586

1587

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

1588 Remove the entire title and insert:

1590 A bill to be entitled

1591 An act relating to environmental permitting; amending s.  
1592 120.569, F.S.; authorizing the provision of certain  
1593 notices under the Administrative Procedure Act via a link  
1594 to a publicly available Internet website; providing that a  
1595 nonapplicant who petitions to challenge an agency's  
1596 issuance of a license or conceptual approval in certain  
1597 circumstances has the burden of ultimate persuasion and  
1598 the burden of going forward with evidence; amending s.  
1599 120.60, F.S.; revising the period for an agency to approve  
1600 or deny an application for a license; creating s.  
1601 125.0112, F.S.; providing that the construction and  
1602 operation of a biofuel processing facility or renewable  
1603 energy generating facility and the cultivation of

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1604 bioenergy by a local government is a valid and permitted  
1605 land use; requiring expedited review of such facilities;  
1606 providing that such facilities are eligible for the  
1607 alternative state review process; amending s. 125.022,  
1608 F.S.; prohibiting a county from requiring an applicant to  
1609 obtain a permit or approval from another state or federal  
1610 agency as a condition of approving a development permit;  
1611 authorizing a county to attach certain disclaimers to the  
1612 issuance of a development permit; creating s. 161.032,  
1613 F.S.; requiring that the Department of Environmental  
1614 Protection review an application for certain permits under  
1615 the Beach and Shore Preservation Act and request  
1616 additional information within a specified time; requiring  
1617 that the department proceed to process the application if  
1618 the applicant believes that a request for additional  
1619 information is not authorized by law or rule; extending  
1620 the period for an applicant to timely submit additional  
1621 information, notwithstanding certain provisions of the  
1622 Administrative Procedure Act; amending s. 166.033, F.S.;  
1623 prohibiting a municipality from requiring an applicant to  
1624 obtain a permit or approval from another state or federal  
1625 agency as a condition of approving a development permit;  
1626 authorizing a county to attach certain disclaimers to the  
1627 issuance of a development permit; creating s. 166.0447,  
1628 F.S.; providing that the construction and operation of a  
1629 biofuel processing facility or renewable energy generating  
1630 facility and the cultivation of bioenergy is a valid and  
1631 permitted land use within the unincorporated area of a

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1632 municipality; prohibiting any requirement that the owner  
1633 or operator of such a facility obtain comprehensive plan  
1634 amendments, use permits, waivers, or variances, or pay any  
1635 fee in excess of a specified amount; amending s. 373.026,  
1636 F.S.; requiring the Department of Environmental Protection  
1637 to expand its use of Internet-based self-certification  
1638 services for exemptions and permits issued by the  
1639 department and water management districts; amending s.  
1640 373.4141, F.S.; requiring that a request by the department  
1641 or a water management district that an applicant provide  
1642 additional information be accompanied by the signature of  
1643 specified officials of the department or district;  
1644 reducing the time within which the department or district  
1645 must approve or deny a permit application; amending s.  
1646 373.4144, F.S.; providing legislative intent with respect  
1647 to the coordination of regulatory duties among specified  
1648 state and federal agencies; requiring that the department  
1649 report annually to the Legislature on efforts to expand  
1650 the state programmatic general permit or regional general  
1651 permits; providing for a voluntary state programmatic  
1652 general permit for certain dredge and fill activities;  
1653 amending s. 373.441, F.S.; requiring that certain counties  
1654 or municipalities apply by a specified date to the  
1655 department or water management district for authority to  
1656 require certain permits; providing that following such  
1657 delegation, the department or district may not regulate  
1658 activities that are subject to the delegation; clarifying  
1659 the authority of local governments to adopt pollution

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1660 control programs under certain conditions; amending s.  
1661 376.30715, F.S.; providing that the transfer of a  
1662 contaminated site from an owner to a child or corporate  
1663 entity does not disqualify the site from the innocent  
1664 victim petroleum storage system restoration financial  
1665 assistance program; authorizing certain applicants to  
1666 reapply for financial assistance; amending s. 403.061,  
1667 F.S.; requiring the Department of Environmental Protection  
1668 to establish reasonable zones of mixing for discharges  
1669 into specified waters; providing that certain discharges  
1670 do not create liability for site cleanup; providing that  
1671 exceedance of soil cleanup target levels is not a basis  
1672 for enforcement or cleanup; creating s. 403.0874, F.S.;  
1673 providing a short title; providing legislative findings  
1674 and intent with respect to the consideration of the  
1675 compliance history of a permit applicant; providing for  
1676 applicability; specifying the period of compliance history  
1677 to be considered is issuing or renewing a permit;  
1678 providing criteria to be considered by the Department of  
1679 Environmental Protection; authorizing expedited review of  
1680 permit issuance, renewal, modification, and transfer;  
1681 providing for a reduced number of inspections; providing  
1682 for extended permit duration; authorizing the department  
1683 to make additional incentives available under certain  
1684 circumstances; providing for automatic permit renewal and  
1685 reduced or waived fees under certain circumstances;  
1686 requiring the department to adopt rules that are binding  
1687 on a water management district or local government that

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1688 has been delegated certain regulatory duties; amending ss.  
1689 161.041 and 373.413, F.S.; specifying that s. 403.0874,  
1690 F.S., authorizing expedited permitting, applies to  
1691 provisions governing beaches and shores and surface water  
1692 management and storage; amending s. 403.087, F.S.;  
1693 revising conditions under which the department is  
1694 authorized to revoke a permit; amending s. 403.703, F.S.;  
1695 revising the term "solid waste" to exclude sludge from a  
1696 waste treatment works that is not discarded; amending s.  
1697 403.707, F.S.; revising provisions relating to disposal by  
1698 persons of solid waste resulting from their own activities  
1699 on their property; clarifying what constitutes "addressed  
1700 by a groundwater monitoring plan" with regard to certain  
1701 effects on groundwater and surface waters; authorizing the  
1702 disposal of solid waste over a zone of discharge;  
1703 providing that exceedance of soil cleanup target levels is  
1704 not a basis for enforcement or cleanup; extending the  
1705 duration of all permits issued to solid waste management  
1706 facilities; providing applicability; providing that  
1707 certain disposal of solid waste does not create liability  
1708 for site cleanup; amending s. 403.814, F.S.; providing for  
1709 issuance of general permits for the construction,  
1710 alteration, and maintenance of certain surface water  
1711 management systems without the action of the department or  
1712 a water management district; specifying conditions for the  
1713 general permits; amending s. 380.06, F.S.; exempting a  
1714 proposed solid mineral mine or a proposed addition or  
1715 expansion of an existing solid mineral mine from



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1716 provisions governing developments of regional impact;  
1717 providing certain exceptions; amending ss. 380.0657 and  
1718 403.973, F.S.; authorizing expedited permitting for  
1719 certain inland multimodal facilities and for commercial or  
1720 industrial development projects that individually or  
1721 collectively will create a minimum number of jobs;  
1722 providing for a project-specific memorandum of agreement  
1723 to apply to a project subject to expedited permitting;  
1724 providing for review and certification of a business as  
1725 eligible for expedited permitting by the Secretary of  
1726 Environmental Protection rather than by the Office of  
1727 Tourism, Trade, and Economic Development; amending s.  
1728 163.3180, F.S.; providing an exemption to the level-of-  
1729 service standards adopted under the Strategic Intermodal  
1730 System for certain inland multimodal facilities;  
1731 specifying project criteria; amending s. 373.4137, F.S.,  
1732 relating to transportation projects; revising legislative  
1733 findings with respect to the options for mitigation;  
1734 revising certain requirements for determining the habitat  
1735 impacts of transportation projects; requiring water  
1736 management districts to purchase credits from public or  
1737 private mitigation banks under certain conditions;  
1738 providing for the release of certain mitigation funds held  
1739 for the benefit of a water management district if a  
1740 project is excluded from a mitigation plan; revising the  
1741 procedure for excluding a project from a mitigation plan;  
1742 amending s. 526.203, F.S.; authorizing the sale of  
1743 unblended fuels for certain uses; revising rules of the

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1744 Department of Environmental Protection relating to the  
1745 uniform mitigation assessment method for activities in  
1746 surface waters and wetlands; directing the Department of  
1747 Environmental Protection to make additional changes to  
1748 conform; providing for reassessment of mitigation banks  
1749 under certain conditions; providing an effective date.

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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 \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Agriculture & Natural  
2 Resources Subcommittee  
3 Representative(s) Burgin offered the following:  
4

5 **Amendment to Amendment (1) by Representative Patronis (with**  
6 **title amendment)**

7 Remove line 92 and insert:  
8 to s. 163.3177, except where biomass material derived from  
9 municipal solid waste or landfill gases provides the renewable  
10 energy for such facilities, shall be considered by a local  
11 government to be

12 Remove line 123 and insert:  
13 agency unless the agency has issued a notice of intent to deny  
14 the federal or state permit prior to the county action on the  
15 local development permit. Issuance of a development permit by a  
16 county does not in

17 Remove line 180 and insert:  
18 federal agency unless the agency has issued a notice of intent  
19 to deny the federal or state permit prior to the municipal

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20 action on the local development permit. Issuance of a  
21 development permit by a

22 Remove line 200 and insert:  
23 to s. 163.3177, except where biomass material derived from  
24 municipal solid waste or landfill gases provides the renewable  
25 energy for such facilities, are each a valid industrial,  
26 agricultural, and

27 -----  
28  
29 **T I T L E A M E N D M E N T**

30 Remove line 1604 and insert:  
31 bioenergy, by a local government, except where biomass material  
32 derived from municipal solid waste or landfill gases provides  
33 the renewable energy for such facilities, is a valid and  
34 permitted

35 Remove line 1610 and insert:  
36 agency, unless the agency has issued a notice of intent to deny  
37 the federal or state permit prior to the county action on the  
38 local development permit, as a condition of approving a  
39 development permit;

40 Remove line 1625 and insert:  
41 agency, unless the agency has issued a notice of intent to deny  
42 the federal or state permit prior to the municipal action on the  
43 local development permit, as a condition of approving a  
44 development permit;

45 Remove line 1630 and insert:

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46 facility and the cultivation of bioenergy, except where biomass  
47 material derived from municipal solid waste or landfill gases  
48 provides the renewable energy for such facilities,





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 239 Numeric Nutrient Water Quality Criteria

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee		Kline 	Blalock 

### SUMMARY ANALYSIS

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs. A portion of the final rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011, 60 days after publication in the Federal Register, Volume 75, No. 233. The remainder of the final rule becomes effective 15 months after publication, on March 6, 2012.

The bill prohibits state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated criteria in any program administered by a state, regional, or local governmental entity. The bill does not limit the ability of any state, regional, or local governmental entity to:

- Apply for any pollution discharge permit
- Comply with the conditions of such permits, including NPDES permits
- Implement best management practices, source control or pollution abatement measures for water quality improvement programs "as provided by law"

Notwithstanding the prohibition to give any effect to the EPA criteria, the bill authorizes the Department of Environmental Protection (DEP) to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life expected to inhabit those waters, and if the criteria are based on:

Objective and credible data, studies and reports establishing the nutrient levels which the water body may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.

The criteria may be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.

The bill designates DEP-adopted nutrient Total Maximum Daily Loads (TMDLs) that were approved by the EPA as of December 6, 2010, as site-specific numeric nutrient water quality criteria. The site-specific criteria are not effective if the EPA disapproves, approves in part, or conditions its approval of the criteria, unless ratified by the Legislature. The site-specific criteria are subject to s. 403.067, F.S. (Florida Watershed Restoration Act), administrative rules and orders issued thereto, and are subject to s. 120.56(3), F.S., authorizing a substantially affected person to seek an administrative determination of the invalidity of an existing rule. Once approved and effective, the site-specific criteria may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804, F.S., after approval by the Environmental Regulations Commission.

The effective date of the bill is July 1, 2011. The bill's fiscal impact is indeterminate. See Fiscal Comments for details.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Introduction

#### Water Quality Standards for Surface Waters in Florida

Water quality standards (WQS) are the foundation of the water quality-based pollution control program mandated by the Clean Water Act (CWA). The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.<sup>1</sup>

The CWA requires states or the Federal Environmental Protection Agency (EPA) to establish WQS for pollutants flowing into surface waters, and prohibits the discharge of any pollutant from a point source, such as a pipe, man-made ditch, or large animal feeding operation, into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. In Florida, the water quality of surface waters is primarily regulated through Florida's implementation of the CWA. The CWA provides incentives to Florida to: (a) adopt CWA-compliant WQS; and (b) administer the federal NPDES program on behalf of the EPA.<sup>2</sup>

Under the CWA, states adopt water quality standards for their navigable waters, and review and update those standards at least every three years. Under the CWA, states determine WQS for surface waters in three steps:

- Part one is establishing the designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes;
- Part two is establishing water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use; and
- Part three is establishing an anti-degradation policy to maintain and protect existing uses and high quality waters.

The CWA requires states to submit WQS to the EPA for review and approval.<sup>3</sup>

The EPA Administrator must "promptly prepare and publish" proposed regulations setting forth a revised or new WQS for the navigable waters involved:

- If a revised or new WQS submitted by the state is determined by the Administrator not to be consistent with the applicable requirements , or

---

<sup>1</sup>Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act. 40 CFR 131.21

<sup>2</sup> Under the federal structure established in the U.S. Constitution, states may not be compelled by the Federal Government to enact legislation or take executive action to implement federal regulatory programs. However, Congress can encourage a state to regulate in a particular way by offering incentives -- often in the form of federal funds. Congress may also create a "potential preemption" structure in which states must regulate the activity under state law according to federally approved standards, or have state regulation pre-empted by federal regulation. The Clean Water Act, Clean Air Act, and Safe Drinking Water Act, for example, utilize these techniques. In addition, it is important to note that a state agency in Florida must have legislative authorization to implement a federal law. The Florida Department of Environmental Protection receives federal funds to administer the NPDES permitting program in the state.

<sup>3</sup> This section of the CWA represents the "potential preemption" structure previously mentioned. Apart from receiving federal funds to assist the state in meeting water quality standards approved by the EPA, the state retains local control over its water quality programs, and provides to its NPDES applicants something the federal structure lacks --administrative deadlines for the agency to approve or deny a permit application.



- In any case where the Administrator determines that a revised or new standard is necessary to meet requirements of the CWA.<sup>4</sup>

The Administrator must promulgate any new or revised standards not later than ninety days after publication of the proposed standards, unless prior to such promulgation, the state adopts a revised or new WQS which the Administrator determines to be in accordance with the CWA. After promulgation by the EPA, however, the promulgated rules become the state's WQS until such time as the EPA withdraws the promulgation, again by rule.<sup>5</sup> This may occur if the state proposes and the EPA approves the state's submission.

The CWA also requires that states identify impaired waters not meeting established WQS. In such instances, a state establishes a total maximum daily load, or TMDL, for those impaired waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet WQS.<sup>6</sup> To enforce TMDLs, water quality-based effluent limitations (WQBELs) must be developed and incorporated into NPDES permits for point sources. Each TMDL represents a goal that is implemented by adjusting pollutant discharge requirements in the individual NPDES permits, along with the implementation of nonpoint source controls, such as Best Management Practices.<sup>7</sup> State-established TMDLs and NPDES WQBELs are submitted to the EPA for approval. The EPA may adjust the criteria on either if the federal agency determines the standard does not comply with the CWA.

The threshold limit on pollutants in surface waters (Florida's surface WQS on which TMDLs are based) are set in administrative rule. The state's impaired waters rule contains a table that catalogues over 100 substances, including subparts, with numerical thresholds for surface water classifications, including fresh and marine waters.<sup>8</sup> Generally, a pollutant is expressed in a numerical threshold (e.g., 11mg/L, or 11 milligrams per liter) because certain chemicals (e.g., Benzene, Lead, Mercury), have threshold concentrations above which adverse biological damage is a scientific certainty.

The EPA and the Florida Department of Environmental Protection (DEP) executed a Memorandum of Understanding (MOU) in 2007 delineating the state and federal agencies' mutual responsibilities in the DEP's administration of the federal NPDES program (the approved program). Pursuant to the MOU, the EPA acknowledges that the DEP has no veto authority over an act of the Florida Legislature, and reserves the right to initiate procedures for withdrawal of the state NPDES program approval in the event the state legislature enacts legislation or issues any directive which substantially impairs the DEP's ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements. If the approved program were withdrawn, entities requiring a NPDES permit for activities relating to wastewater, stormwater, construction, industry, pesticide application, power generation, and some agricultural activities would need to acquire both federal and state permits.

The MOU anticipates situations when the EPA resumes authority over an individual permit and instances when DEP-submitted NPDES permits are disapproved by the EPA until the DEP adjusts the permit conditions to include EPA conditions on the permit. If the permit is issued by the DEP, the permit holder may seek an administrative challenge in the Florida Division of Administrative Hearings. If the

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<sup>4</sup> CWA, s. 303(a)(3)(C).

<sup>5</sup> Pursuant to 40 CFR 131.21(c), if EPA finalizes a proposed rule, the EPA promulgated WQS would be applicable WQS for purposes of the CWA until EPA withdraws the federally-promulgated standard. Withdrawing a federal standard would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 551 et seq.).

<sup>6</sup> Generally, the pollutant of concern and a numeric water quality target are, respectively, the chemical causing the impairment and the numeric criteria for that chemical (e.g., chromium) contained in the water quality standard. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target. Guidelines for Reviewing TMDLs Under Existing Regulations Issued in 1992, are found at:

<http://water.epa.gov/lawsregs/lawguidance/cwa/tmdl/final52002.cfm>

<sup>7</sup> When a water body is classified as impaired, Florida law also authorizes the DEP to adopt a Basin Management Action Plan, or BMAP, for that particular water body. A BMAP is designed to reduce the pollutant concentrations to meet the TMDL. Strategies may include: educational programs, permit limits on wastewater facilities, best management practices, conservation programs, and financial assistance.

<sup>8</sup> Chapter 62-302.530, Florida Administrative Code.

permit is issued by the EPA, the permit holder may seek a federal appeal; however, in the meantime, the permit holder would be required to comply with the federal permit.

### Nutrients and Water Quality

Nutrients, such as nitrogen and phosphorus, are substances that are needed by organisms to live and grow. In aquatic systems, these nutrients feed the growth of bacteria, algae, and other organisms. Nitrogen and phosphorus are essential to the production of plant and animal tissue. Phosphorus is essential to cellular growth and respiration. The DEP has relied on a narrative criterion (described in its impaired waters rule as “an imbalance in natural populations of flora or fauna”) for many years because nutrients are unlike any other pollutant regulated by the CWA.

Natural sources of nitrogen and phosphorus are the atmosphere, soils, and the decay of plants and animals. Unnatural sources include sewage disposal systems (treatment works or septic tanks), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and runoff from urban areas, neighborhoods, and pastures.

Excessive amounts of nutrients may result in harmful algal blooms, nuisance aquatic weeds, and alteration of the natural community of plants and animals. Dense, harmful blooms of algae can also cause human health problems, fish kills, problems for water treatment plants, and generally impair the aesthetics of waters. Populations of nuisance aquatic weeds can increase in nutrient-enriched waters, which can impact recreational activities like swimming and boating. Increased algal production as a result of increased nutrients can alter plant communities, which in turn can inhibit natural food chain dynamics.

As such, the derivation of specific numeric nutrient criteria to complement the narrative is very complex.<sup>9</sup> Since nutrients are essential to life, a balance must be understood to provide adequate nutrients to sustain aquatic life while not providing excessive nutrients which alter the aquatic ecosystem through species shifts. Each water body can have very different and unique nutrient requirements. In order to best develop thresholds at which a healthy aquatic environment can be sustained, it is best to develop a reliable measure of the biological condition of the water body.<sup>10</sup>

### **Effect of Proposed Changes**

On December 6, 2010, the United States Environmental Protection Agency (EPA) published final rules establishing numeric nutrient criteria for Florida lakes, streams, rivers, and springs (EPA Rule). A portion of the EPA Rule, relating to establishing site-specific alternative criteria, became effective on February 4, 2011, 60 days after publication in the Federal Register, Volume 75, No. 233. The remainder of the EPA Rule becomes effective 15 months after publication, on March 6, 2012.

**Section one** of the bill bars any and all state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated EPA criteria (EPA criteria), in any program administered by a state, regional, or local governmental entity. The bill does not, however, “limit the ability” of any state, regional, or local governmental entity to:

- Apply for any pollution discharge permit

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<sup>9</sup> The development of protective nutrient criteria is immensely more complicated than that for toxic substances. It must be recognized that nutrients should not be regulated at levels that are artificially lower than those concentrations required for normal ecosystem functioning. If humans were to reduce nutrients below the levels that natural aquatic systems are accustomed to, adverse biological effects (disruption of trophic dynamics, loss of representative taxa) would occur. This would be counter to the CWA charge in Section 101 to “protect the physical, chemical, and biological integrity” of the state’s waters and, coincidentally, against Florida law, which prohibits DEP from conducting remediation for natural conditions. Ideally, nutrients should be managed in a range of concentrations with some consideration of a margin of safety on both the upper and lower bounds of the range. Source: *Draft Technical Support Document -- Development of Numeric Nutrient Criteria for Florida Lakes and Streams*

[http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd\\_nutrient\\_crit.docx](http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd_nutrient_crit.docx)

<sup>10</sup> [http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd\\_nutrient\\_crit.docx](http://www.dep.state.fl.us/water/wqssp/nutrients/docs/tsd_nutrient_crit.docx), page 11.

- Comply with the conditions of such permits, including NPDES permits
- Implement best management practices, source control or pollution abatement measures for water quality improvement programs “as provided by law”

### *Analysis*

The EPA Rule is promulgated pursuant to applicable sections of the federal Clean Water Act (CWA), and EPA’s implementing regulations at 40 CFR part 131. The CWA requires adoption of water quality standards (WQS) for “navigable waters.”<sup>11</sup> The CWA defines “navigable waters” to mean “the waters of the United States, including the territorial seas.”<sup>12</sup> Whether a particular water body is a water of the United States is a water body-specific determination. Every water body that is a water of the United States requires a WQS under the CWA. The Florida Department of Environmental Protection (DEP) is the primary agency responsible for implementing CWA programs in the state of Florida, including the National Pollution Discharge Elimination System (NPDES) program and the Total Maximum Daily Load (TMDL) program.<sup>13</sup> For the purpose of NPDES permitting, “waters of the state” are synonymous with “waters of the United States.” This means that every water body in the state that is receiving treated wastewater, reclaimed water, stormwater runoff, etc., is affected by the EPA Rule, as is every Type III water body (fishable, swimmable) that fails to meet the WQS for its intended use.

The bill uses the verb “implement” followed by the phrase “give any effect” in the sentence prohibiting state, regional, or local government action regarding the EPA criteria. The common dictionary meaning for the verb “implement” is to carry out, or accomplish, and is often used in statutory and administrative rule construction. The phrase “give any effect” suggests a different standard than “implement” that may be open to subjective interpretation.

*Illustration 1.* Assume subsequent to the bill’s enactment into law, on or after March 6, 2012, the DEP reviews a NPDES permit renewal for an entity discharging into Lake Thirtyweight. Based on the EPA criteria for Lake Thirtyweight, the permit’s water quality-based effluent limits (WQBELs) need to be more protective to allow the entity to continue discharging.

In this situation, the DEP would submit the permit with the state nutrient criteria (narrative criteria) to the EPA for its review. The EPA may disapprove the permit and return the permit to the DEP after replacing the state standard with one acceptable to the EPA. The DEP issues the permit (with the EPA criteria) to the permit holder. The permit holder has two options; comply with the permit conditions, or challenge the permit conditions in the state Division of Administrative Hearings. Under state law, the entity would continue its operations under the conditions of the earlier permit until the challenge is resolved.<sup>14</sup> However, this would not prohibit the EPA from enforcing the permit conditions. Rather than return the permit to the DEP with adjusted criteria, the EPA may simply assume regulatory control over the permit. If, under the bill, the DEP is restricted from implementing federally-promulgated criteria, it is possible that, subsequent to the bill’s effective date, the EPA may withdraw its approval for the state to implement the NPDES program. If this occurs, both point source, and some non-point dischargers will need to acquire both state and federal water quality permits.<sup>15</sup>

<sup>11</sup> CWA section 303(c)(2)(A).

<sup>12</sup> CWA section 502(7).

<sup>13</sup> 33 U.S.C. s. 1342 provides for the TMDL program. 33 U.S.C. s. 1313 addresses surface waters that are not “fishable, swimmable” by requiring states to identify the waters and to develop total maximum daily loads for them, with oversight from the EPA. As such, TMDLs can play a key role in watershed management. Each state must identify waters at risk and establish TMDLs to protect those waters. This includes identification of needed load reductions within a watershed from agricultural producers and other nonpoint sources. These load reductions are to be achieved through nonpoint source programs established under CWA s. 319 and the Coastal Zone Act Reauthorization Amendment s. 6217.

<sup>14</sup> This scenario, according to the DEP, is continuing to play out from a case in the 1990s, when the EPA imposed a dioxin standard for the Fenholloway River near Perry, Florida, involving the Buckeye pulp and paper mill. The administrative action is still ongoing and the mill still operates under old permit conditions.

<sup>15</sup> Typically, the EPA does not regulate non-point sources of pollution. However, polluted stormwater runoff is commonly transported through Municipal Separate Storm Sewer Systems (MS4s), from which it is often discharged untreated into local water bodies. To prevent harmful pollutants from being washed or dumped into an MS4, operators must obtain a NPDES permit and develop a stormwater management program. Source: [http://cfpub1.epa.gov/npdes/stormwater/munic.cfm?program\\_id=6](http://cfpub1.epa.gov/npdes/stormwater/munic.cfm?program_id=6)

Under the bill, state, regional, and local government entities may not implement, or give any effect, to the EPA criteria in any regulatory program administered by the governmental entities. This prohibition, however, does not limit the ability of any water management district or any other state, regional, or local governmental entity from applying for any pollution discharge permit or complying with the conditions of such permits, including those issued under the National Pollution Discharge Elimination System, or from implementing best management practices, source control or pollution abatement measures for water quality improvement programs as provided by law; provided, however, that nothing in this section shall be construed to derogate or limit county and municipal home rule authority.<sup>16</sup>

A situation involving a publicly-owned treatment works operating under an NPDES permit, for instance, would resemble the situation provided in Illustration 1. Assume this same local government proposes an amendment to its comprehensive plan requiring vegetation buffers of 50 meters between new construction and certain water bodies, to prevent or reduce nutrient loading from fertilizer use and stormwater runoff not captured by existing detention ponds. It is unclear under the bill's language whether the regulatory action by the local government gives any effect to the EPA criteria.

**Section two** of the bill authorizes the DEP to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life reasonably expected to inhabit those waters, and if the criteria are based on:

Objective and credible data, studies and reports establishing the nutrient levels which the water body may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses.

In addition, section two provides the criteria may be expressed in terms of concentration, mass loading, waste load allocation, load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.

### *Analysis*

It is unclear how the bill's limited authorization for DEP to adopt water quality criteria necessary "to protect aquatic life reasonably expected to inhabit those waters" will interact with the pre-existing classification of designated use process.

EPA's final rule proposes an alternative regulatory approach the state may consider if meeting numeric criteria for certain water bodies is unattainable; re-designation of water use. Pursuant to the CWA, states establish water quality standards (WQS) in three steps:

- Establish designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes
- Establish water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use
- Establish an anti-degradation policy to maintain and protect existing uses and high quality waters

In 2009, the DEP began to refine the current system of designated uses, primarily because certain engineered water systems that were designed for flood control or as conveyances to treatment areas are currently designated as Type III waters, for aquatic life and recreation purposes. The DEP amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters. Pursuant to 62-302.400(5), F.A.C.:

Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-

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<sup>16</sup> The bill also restates the governmental entities' ability to impose WQS on themselves through applying for and complying with any pollution discharge permit, including a NPDES permit.

302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. "Limited recreation" means opportunities for recreation in the water are reduced due to physical conditions. "Limited population of fish and wildlife" means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:

(a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or

(b) Altered waterbodies that were dredged or filled prior to November 28, 1975. For purposes of this section, "altered waterbodies" are those portions of natural surface waters that were dredged or filled prior to November 28, 1975, to such an extent that they exhibit separate and distinct hydrologic and environmental conditions from any waters to which they are connected.

Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

The bill requires the numeric nutrient criteria adopted by the DEP to be based upon "objective and credible data, studies and reports establishing the nutrient levels which the water bodies may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses." According to the DEP, it is exceptionally difficult to establish objective data establishing a quantitative amount of nutrient which flowing water bodies may accept without exhibiting an imbalance of flora or fauna based on a cause and effect relationship between nutrient levels and biological responses. The EPA and the DEP acknowledge a dose-response methodology for flowing rivers and streams result in scientific results that are not robust.<sup>17 18</sup> It was this realization that led the DEP to adopt a site reference approach with a subsequent biological assessment to determine if the river or stream was impaired or healthy. The DEP determined through extensive laboratory and field test methodologies that such a protective criterion may be determined in lakes, however. It is a very time consuming and expensive endeavor. With an estimated 1,918 miles of rivers and streams, and 378,435 acres of lakes identified as impaired by nutrients, the process takes a very long time.

**Section three** of the bill addresses DEP-adopted nutrient TMDLs that were approved by the EPA as of December 6, 2010. The bill declares these TMDLs (and "associated numeric interpretations of the narrative nutrient criterion, whether total nitrogen, total phosphorus, nitrate/nitrite, or a surrogate nutrient standards, such as chlorophyll a, biological demand, or specific biological metric") to be site-specific numeric nutrient water quality criteria (SSNNWQC), unless the EPA disapproves, approves in part, or conditions its approval of the criteria. If the EPA takes such action, the criteria take effect only upon legislative ratification. In addition, the bill provides that the statutorily-created SSNNWQC are subject to s. 403.067, F.S. (Florida Watershed Restoration Act), administrative rules and orders issued thereto, and are subject to s. 120.56(3), F.S., authorizing a substantially affected person to seek an administrative determination of the invalidity of an existing rule.<sup>19</sup> Once approved and effective, the SSNNWQC may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804, F.S.

### *Analysis*

When the EPA finalized their rule, the agency did not include DEP-established nutrient TMDLs as site-specific alternative criteria (SSAC), even though the EPA had previously approved the nutrient TMDLs

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<sup>17</sup> See, DEP's 2009 Draft Nutrient Criteria Technical Support Document, p. 111: "...DEP has invested significant resources ... attempting to derive criteria based on dose-response relationships. However, DEP has concluded that specific thresholds could not be established due to inherent variability within and between streams and the compounding complexity from other factors."

<sup>18</sup> EPA final rule, Federal Register, Vol. 75, No. 233, p. 75777.

<sup>19</sup> The Florida Watershed Protection Act provides authority for several regulatory programs, including the state TMDL program, DEP responsibilities pursuant to s. 303(d) of the CWA (assessing, listing, and reporting to the EPA all surface waters in the state that do not comply with CWA standards), BMAPs, agricultural BMPs, and water quality credit trading.

pursuant to federal regulation.<sup>20</sup> Instead, the EPA Rule provides a procedure for the state (or any entity) to submit these, and any other nutrient TMDL, to the EPA for consideration as a SSAC for a water body or segment. As stated in the final rule, one reason for not accepting the previously-approved TMDLs is the chance that, in the space of time between EPA approval of the TMDL and the promulgation of the EPA Rule, advances in technology or science may allow for a TMDL that is even more protective of the designated use than the original. See Federal Register, Volume 75, No. 233, pp. 75786, 75787.

Pursuant to state law regarding adoption of a TMDL for a water body, the DEP coordinates with applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources. The parties determine the information required, accepted methods of data collection and analysis, and quality control/quality assurance requirements. The TMDL is adopted pursuant to the DEP Secretary's rulemaking authority and is subject to administrative challenge under the Florida Administrative Procedures Act (APA). Afterward, the TMDL is submitted to the EPA for review and approval. According to the DEP, Florida has adopted 135 nutrient TMDLs.

Under the bill, DEP-developed nutrient TMDLs that were approved by the EPA before December 6, 2010, are designated as site-specific nutrient water quality criteria (SSNNWQC). According to the DEP, all 135 nutrient TMDLs were EPA-approved on or before December 6, 2010, which, if the bill is enacted, will result in 135 SSNNWQCs. The bill provides the SSNNWQC are not effective if the EPA disapproves, approves in part, or conditions approval of the SSNNWQC. The DEP must adopt the SSNNWQC in administrative rule because the bill subjects the statutorily-created criteria to s. 120.56(3), F.S., the APA provision for an invalid rule challenge. In addition, the bill subjects the SSNNWQC to the Florida Watershed Protection Act and any constituent rules promulgated or orders issued thereto. If challenged, the proposed SSNNWQC is ineffective pending resolution of the administrative action.<sup>21</sup> Therefore, the TMDL criteria, previously subject to administrative rule challenge, may now be subject to an additional administrative challenge, this time as a SSNNWQC.

After the SSNNWQC are adopted by rule, the DEP may submit the criteria to the EPA for consideration as a SSAC. If the EPA responds with anything less than an unqualified approval, the criteria are no longer effective as a SSNNWQC, unless the Florida Legislature ratifies the rule criteria.<sup>22</sup> If the EPA approves the criteria, any subsequent modification of the SSNNWQC shall not be pursuant to the DEP Secretary's rulemaking authority, but shall instead require the review and approval of the Environmental Regulation Commission (ERC). The ERC, in exercising its authority pursuant to s. 403.804, F.S., shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. This layer of review is in addition to any administrative challenge that may follow promulgation.

The bill does not provide the DEP with specific rulemaking authority. Providing the DEP's existing rulemaking authority is sufficient, the SSNNWQC will be subject to s. 120.541, F.S., requiring a statement of estimated regulatory costs. Section 120.541(2)(a), F.S., reads as follows:

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<sup>20</sup> 40 CFR s. 130.7

<sup>21</sup> Subsection (14) of s. 403.067, F.S., provides: In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act shall be ineffective pending resolution of a s. 120.54(3), s. 120.56, s. 120.569, or s. 120.57 administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by subsections (2)-(6), provided that the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

<sup>22</sup> Legislative ratification of rules has not proven to be an automatic process. On February 23, 2006, Florida's Environmental Regulation Commission approved an amendment to the DEP's wetland delineation rule. According to DEP, this rule change was in response to legislative direction in HB 759 in the 2005 Session, to streamline State and Federal permitting programs and was included in the department's October 3, 2005 report to the Legislature required by HB 759. The rule amendment changes the status of gallberry and slash pine from being indicators of upland areas to being neutral. Under chapter 373, F.S., the rule amendment does not become effective until formally ratified by the Florida Legislature. Despite successive bill filings in 2006, 2007, and 2009, the Legislature has not ratified the rule amendment.

- (2) A statement of estimated regulatory costs shall include:
  - (a) An economic analysis showing whether the rule directly or indirectly:
    1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;
    2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or
    3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

Pursuant to s. 120.541(3), F.S., proposed rules which will have an adverse impact of more than \$1 million over 5 years must be submitted to the Florida Legislature for ratification before rule may go into effect. Considering the historic costs for surface water restoration, the DEP rules are likely to meet or exceed this threshold. An exception to paragraph (2)(a) applies for the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6). Neither exception appears to apply in this case.

## **Additional Background Information**

### History of Florida's Development of Numeric Nutrient Criteria

In recognition of the need to more proactively address impairment of state waters due to nutrients, the DEP implemented a detailed, EPA-approved plan for the development of numeric nutrient criteria and recently proposed revisions to Chapter 62-302, FAC (Water Quality Standards) and Chapter 62-303, FAC (Impaired Waters Rule) to establish numeric nutrient criteria for lakes and streams. DEP selected the "dose-response" approach (investigating the effects of nutrients on biological communities) as the primary method for the development of scientifically defensible numeric nutrient criteria, and has invested significant resources in:

- the development of biological assessment tools
- the documentation of minimally disturbed reference conditions
- the collection of large amounts of water quality and nutrient data
- conducting a variety of studies to link nutrients to adverse effects on valued ecological attributes

This process has required extensive methods development, staff training, and Quality Assurance oversight to ensure the defensibility of the resulting products. The elements of this development and assessment process to date include such components as habitat assessment for streams and lakes, benthic invertebrate indices for streams and lakes, a vegetation index for lakes, and a periphyton index for streams. These activities represent significant investments in staff time and contractual services, with recent and planned funding associated with nutrient criteria development in Florida totaling nearly \$20 million dollars.<sup>23</sup>

While the approved plan called for adoption of the criteria by the end of 2010, DEP accelerated its efforts to adopt numeric nutrient criteria in response to the EPA's January 14, 2009, determination that numeric nutrient water quality criteria are necessary in Florida to implement the Clean Water Act. As part of a settlement agreement with EarthJustice, discussed later in this analysis, EPA was obligated to promulgate numeric nutrient criteria for Florida streams and lakes by a date certain, unless EPA approved criteria proposed by the DEP prior to that date.<sup>24</sup> The DEP did not formally propose

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<sup>23</sup>The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. This document, and other documentation of nutrient criteria study results, including statistical analyses and interpretation, are found at: <http://www.dep.state.fl.us/water/wqssp/nutrients/>

<sup>24</sup> The determination letter established a schedule for criteria development, with criteria for lakes and streams due by January 14, 2010, and criteria for estuaries due by January 14, 2011. Due to approved extensions of time, the due dates were extended. The EPA numeric nutrient criteria for Florida's inland waters (except for south Florida) will be effective March 6, 2012. The EPA will propose numeric

alternative criteria to the EPA prior to the final promulgation by the EPA, and the EPA established numeric nutrient criteria for lakes, streams, rivers, and springs, effective March 6, 2012.

### Development of the DEP Plan

The DEP started developing numeric nutrient criteria nearly ten years earlier. In 1999, the DEP's Division of Water Resource Management initiated the implementation of a watershed approach for surface water protection patterned after EPA guidance (EPA, 1991, 1995), including the prioritization of water bodies for TMDL development.<sup>25</sup> The DEP drew guidance from the EPA's *Nutrient Criteria Technical Guidance Manual: Rivers and Streams* (Buck et al., 2000), which describes three general approaches for the development of numeric nutrient criteria for streams: the observed dose-response relationship, the "reference site" methodology, and the "all streams" approach.

- Observed dose-response -- Establishes a cause/effect relationship between nutrients and valued ecological attributes, and is linked to maintaining designated uses.
- Reference site -- In the absence of data quantitatively describing biological dose-response relationships, the EPA recommends this as the next best alternative, setting criteria based on an inclusive distribution of values obtained from minimally disturbed reference sites in a designated ecoregion (based on climate and geology) and recommends projection of an upper percentile value to represent a level of nutrient concentration that will inherently protect aquatic life.
- All-streams -- For use in situations where sufficient known reference sites are unavailable, either absent or not identifiable. This approach is often referred to as the "all streams" approach, and involves establishing criteria using a lower distribution (e.g., 5th to 25th percentile) of a pool of sites of undetermined ecological quality, as long as the pool is sufficiently large enough to represent all waters and can be presumed to reasonably reflect the full range of ambient conditions with a disturbance gradient from least to most impacted.

The DEP Plan distinguished the first option, the observed dose-response, as the preferred methodology.<sup>26</sup> These thresholds helped to expedite the assessment of Florida's waters, but they were set for variables that measure the response to nutrient over enrichment, rather than concentrations of nutrients. The DEP Plan expressed support for the reference site approach, although that option does not definitively demonstrate that exceeding the threshold established by the distribution of reference sites results in harm (impairment) to the aquatic life in a particular water body. Multiple factors can strongly influence the expression of biological responses to nutrients across water bodies, such as water velocity, residence time, availability of the other nutrient, presence of grazers, availability of light (due to tree cover and/or water transparency), and availability of suitable habitat. The DEP found that additional stressors (e.g., degraded habitat, unfavorable hydrology) often influence biological impairments more than the actual concentration of nutrients at a given point. The DEP discounted option three, the all-streams approach, as having limited defensibility in the state.

Pursuant to the CWA, there are three paths to develop protective numeric criteria (40 CFR 131.11). Numeric criteria may be established based upon (1) EPA-published Section 304(a) guidance, or (2) 304(a) guidance modified to reflect site-specific conditions, or (3) by use of other scientifically defensible methods. The DEP drew from EPA guidance documents and, from its own experience and knowledge gained from field and laboratory testing, fashioned a methodology which incorporated site-

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nutrient criteria for Florida's estuaries, flowing waters in south Florida (including canals), and the downstream protection values for flowing waters into estuaries on or before November 14, 2011. The deadline for promulgating a final rule is August 15, 2012.

<sup>25</sup> Pursuant to the CWA, s. 304(a), the EPA publishes and periodically revises guidance documents to accurately reflect the latest scientific knowledge on the effects of pollution on life and the environment.

<sup>26</sup>The DEP Plan implemented this approach as a quantified translation of its narrative criteria in two ways. For point sources (e.g., wastewater facilities discharging to surface waters), the DEP interpreted the narrative criterion on a site-specific basis and established numeric permit limits for nutrients. To better address nutrient impairment from nonpoint (non-regulated) sources, the DEP revised the Impaired Waters Rule to include numeric nutrient impairment thresholds. Criteria utilize trophic state indices. For streams, Chapter 62-303.351(2), F.A.C., denotes an imbalance if annual mean chlorophyll a concentrations are greater than 20 ug/l or if data indicate annual mean chlorophyll a values have increased by more than 50% over historical values for at least two consecutive years. For lakes, the criteria were dependent upon lake color and variations of the TSI over time.



specific verifications. In 2002, the DEP submitted to the EPA its initial *DRAFT Numeric Nutrient Criteria Development Plan*. The DEP and the EPA reached mutual agreement on the Plan on July 7, 2004.<sup>27</sup> The DEP revised its Plan in September, 2007, to reflect an evolved strategy and technical approach, and again received agreement from the EPA on September 28, 2007.<sup>28</sup> From 2002 through 2009, the DEP conducted 22 meetings with a group of scientists and experts that formed the Nutrient Technical Advisory Committee (TAC). TAC experts came from a variety of backgrounds, including environmental groups, the EPA, environmental and economic consultants, and representatives from state and local governments.

### Comparing the DEP's Plan with the EPA Final Rule

The DEP's 2007 Plan (which was approved by the EPA) and the 2009 Plan do not differ in conceptual approach. The 2009 Plan, however, demonstrated refinement in several areas. For instance, the 2007 Plan also classified lakes by color (or lack thereof), but the 2009 Plan reflected refinements in biological response by incorporating alkalinity levels in specific water bodies. Not reflected in the 2007 Plan, the 2009 Plan incorporated refinements in its stream assessment to develop a final nutrient standard for spring runs. The DEP kept the 2007-established schedule for completing the nutrient rule by the end of 2010.

### *Florida's Rivers and Streams*

For rivers and streams, the DEP determined there was insufficient robust data to develop a scientifically-defensible method establishing a cause-effect relationship between nutrients and biological health endpoints. EPA guidance states that the next best plan involves a reference site distributional approach. The EPA recommends setting criteria based on an inclusive distribution of values obtained from reference sites in a designated ecoregion (based on climate and geology, etc.).<sup>29</sup> The DEP expanded this approach by identifying streams that were minimally affected by human disturbance and nutrients, and also by documenting the existence of "full aquatic life full use support" (using Stream Condition Index methods).<sup>30</sup> According to published EPA guidance, reference reaches may be identified for each class of streams within a state based on best professional judgment. DEP expanded beyond EPA's best professional judgment approach regarding selection of reference streams, and developed an extremely rigorous, multi-step process to ensure that the sites eventually selected truly represented minimal human disturbance and full designated use support.

The DEP's Nutrient Benchmark Site Distributional Approach for nutrient criteria development includes the following:

- Use of the 90th percentile of nutrient concentrations (75th percentile for Bone Valley streams) derived from a distribution of minimally disturbed streams is inherently protective of aquatic life, including biota inhabiting downstream waters

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<sup>27</sup> The DEP's *Florida Numeric Nutrient Criteria History and Status Summary*. The DEP's approach conceptualized establishing ecological sub-regions as a starting point for regionalization efforts it saw as necessary to establish nutrient criteria.

<sup>28</sup> The DEP's 2007 Plan utilized EPA guidance and proposed the development of regional nutrient criteria for streams based upon the "reference site" approach to determine nutrient characteristics at minimally-disturbed, biologically healthy sites. The Florida-derived bioassessment methods, the Stream Condition, Lake Condition, and Lake Vegetation Indices, were also considered. Additionally, DEP began using a rapid periphyton survey methodology for streams in early 2007 and initiated the development of phytoplankton and periphyton indices for lakes and streams, respectively. The EPA's 2007 letter memorializing the mutual agreement with the DEP may be accessed here: <http://www.dep.state.fl.us/water/wqssp/nutrients/docs/epa-092807.pdf>

<sup>29</sup> A memorandum from the Director of the EPA's Office of Science and Technology, Geoff Grubbs (2001), indicated that states are allowed the flexibility to develop and adopt nutrient criteria other than those currently proposed by EPA for water body types in specific Nutrient Ecoregions which were aggregated from Level III (EPA, 1998). As proposed, the EPA criteria recommendations that would include Florida do not fully reflect localized conditions or specific water body designated uses within the state. The DEP Plan proposes to undertake activities to develop criteria for lakes, streams, estuaries, coastal waters (and wetlands) within the state, based on state-specific, subregional data. Upon issuance of §304(a) Ecoregional Nutrient Criteria Recommendations, and since that time, EPA has encouraged states to refine their approach where possible in order to reflect more state-specific data and conditions. DEP Plan, pages 1, 2.

<sup>30</sup> DEP Draft Nutrient Criteria Technical Support Document, p. 98.

- Documentation of healthy biological communities directly demonstrates that aquatic life uses are fully met within the associated range of nutrients

The DEP noted one disadvantage of using the benchmark approach: it does not identify the specific nutrient levels at which biological impairment occurs. For this reason, it cannot be concluded on its face that adverse effects on aquatic life actually occur at concentrations above these values. Therefore, the DEP's methodology included a multi-step verification process which culminated with an extensive field examination process.

The criteria listed in the tables below express annual geometric means that cannot be exceeded more than once every three years.

<b>Numeric Criteria for Florida Streams Total Phosphorus (mg/L)</b>			
Nutrient Watershed Region	EPA	DEP	
		75 <sup>th</sup> %	90 <sup>th</sup> %
Panhandle West	0.06	0.043	<b>0.069</b>
Panhandle East	0.18	0.066	<b>0.101</b>
North Central	0.30	0.216	<b>0.322</b>
Peninsula	0.12	0.088	<b>0.116</b>
West Central	0.49	<b>0.415</b>	0.559

<b>Numeric Criteria for Florida Streams – Total Nitrogen (mg/L)</b>			
Nutrient Watershed Region	EPA	DEP	
		75 <sup>th</sup> %	90 <sup>th</sup> %
Panhandle West	0.67	0.63	<b>0.82</b>
Panhandle East	1.03	1.13	<b>1.73</b>
North Central	1.87	1.13	<b>1.73</b>
West Central	1.65	1.13	<b>1.73</b>
Peninsula	1.54	1.13	<b>1.73</b>

### Florida's Lakes

As previously stated, according to the DEP the most comprehensive and scientifically defensible approach to developing numeric nutrient criteria for surface waters is to establish cause and effect relationships between nutrients (stressors) and valued ecological attributes. Chapters 9 and 10 of DEP's *Nutrient Criteria Technical Support Document* provides justification for use of chlorophyll a as an indicator of designated use support, primarily as a measure of excessive algal growth, which can result in imbalances of natural populations of flora or fauna. Additionally, the Lake Vegetation Index (LVI) is a direct assessment of the floral community and can therefore be used to demonstrate use support.

The DEP evaluated responses in both chlorophyll a and the LVI to total phosphorus and total nitrogen concentrations. Lakes were initially categorized based on color categories previously adopted in Florida's Impaired Waters Rule. Lakes with color less than or equal to 40 platinum cobalt units (PCU) were categorized as clear, and lakes with color greater than 40 PCU were categorized as colored. Based upon recommendations from the Nutrient TAC, the DEP evaluated whether there were any differences in the relationships between nutrients and chlorophyll a in clear lakes with specific conductance values above and below 100  $\mu\text{mhos/cm}$ .<sup>31</sup> The specific conductance threshold was

<sup>31</sup> Conductivity is a measure of the ability of water to pass an electrical current. Conductivity in water is affected by the presence of inorganic dissolved solids such as chloride, nitrate, sulfate, and phosphate anions (ions that carry a negative charge) or sodium, magnesium, calcium, iron, and aluminum cations (ions that carry a positive charge). Organic compounds like oil, phenol, alcohol, and sugar do not conduct electrical current very well and therefore have a low conductivity when in water. Conductivity in streams and rivers is affected primarily by the geology of the area through which the water flows. Streams that run through areas with clay soils tend to have higher conductivity because of the presence of materials that ionize when washed into the water. Ground water inflows can have the same effects depending on the bedrock they flow through. Discharges to streams can change the conductivity depending on their make-up. A failing sewage system would raise the conductivity because of the presence of chloride, phosphate, and nitrate; an

designed to capture lakes that receive input from calcareous aquifer sources, which naturally contain higher levels of phosphorus than do lakes that receive most of their water from (low conductivity) rainfall.

Color primarily affects lake response to nutrients by limiting light at very high color levels, but color is also an indirect indication of the source of the water reaching the lake. High water color (> 40 PCU), which is imparted from breakdown of natural leaf litter, indicates that a lake is influenced by surface water runoff from forests and wetlands, and would contain higher natural nutrient levels than a rainfall driven system. Low color lakes (< 40 PCU) derive their water primarily from rainfall, unless high alkalinity is also present, meaning higher phosphorus Floridan aquifer groundwater has influenced the system.

After dividing lakes into categories of color and alkalinity, the DEP determined statistically strong, dose-response relationships between nutrients and chlorophyll a (an indicator of algal biomass or primary productivity). The DEP then used multiple lines of evidence, including paleolimnology, fisheries success, expert opinion, lack of harmful algal blooms, and user perception, to determine chlorophyll a levels that would be protective of designated uses. The DEP concluded that a chlorophyll a level of 20 ug/L would protect human and aquatic life uses in both colored lakes and in clear, high alkalinity lakes. For clear, low alkalinity lakes, the protective chlorophyll a threshold was set at 9 ug/L.

Because algal response is influenced by factors other than nutrients (grazing, macrophyte nutrient uptake, water retention time), the DEP contends the most scientifically defensible strategy for managing nutrients within the range of uncertainty is to verify a biological response prior to taking management action. If data demonstrate that a given lake is biologically healthy and does not experience excess algal growth (e.g., < 20 µg chlorophyll a/L in a colored lake or high conductivity clear lake) despite having nutrient concentrations within the range of uncertainty, then no nutrient reductions are needed.

Lakes Criteria					
Lake Type	DEP Response (Chl-a ug/L)	EPA Response (Chl-a ug/L)	Stressor	DEP	EPA
Clear/Low Alkalinity	9	6	TP (mg/L)	0.015 - 0.043	0.01 (0.01 – 0.03)
			TN (mg/L)	0.85 - 1.14	0.51 (0.51 – 0.93)
Clear/High Alkalinity	20	20	TP (mg/L)	0.030 - 0.087	0.03 (0.03 – 0.09)
			TN (mg/L)	1.0 - 1.81	1.05 (1.05 – 1.91)
Colored	20	20	TP (mg/L)	0.05 - 0.157	0.05 (0.05 – 0.16)
			TN (mg/L)	1.23 - 2.25	1.27 (1.27 – 2.23)

### Florida's Spring Runs

Similar to the methods being used to establish numeric nutrient criteria for lakes and streams, the DEP utilized multiple lines of evidence taken from the results of different types of research as well as

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oil spill would lower the conductivity. The basic unit of measurement of conductivity is the mho or siemens. Conductivity is measured in micromhos per centimeter (µmhos/cm) or microsiemens per centimeter (µs/cm). Distilled water has a conductivity in the range of 0.5 to 3 µmhos/cm. The conductivity of rivers in the United States generally ranges from 50 to 1500 µmhos/cm. Studies of inland fresh waters indicate that streams supporting good mixed fisheries have a range between 150 and 500 µhos/cm. Conductivity outside this range could indicate that the water is not suitable for certain species of fish or macroinvertebrates. Industrial waters can range as high as 10,000 µmhos/cm. Source: <http://water.epa.gov/type/rsl/monitoring/vms59.cfm>

empirical data available from various monitoring programs to develop nitrate criteria for clear streams, including springs. The DEP focused on developing nitrate-nitrite criteria for springs and clear streams (< 40 PCU), rather than phosphorus, for four distinct reasons:

- Increases in nitrate-nitrite concentrations are nearly omnipresent in areas where anthropogenic loading to the land's surface has occurred
- Once in the ground water, de-nitrification is negligible and nitrate-nitrite appears to be transported as a conservative solute
- Although Florida's geology is naturally rich in phosphorus, there does not appear to be a trend of increasing phosphorus concentrations in spring discharges. While nitrate-nitrite concentrations have increased significantly in most spring discharges, phosphorus concentrations have remained relatively constant over the past 50 years
- Since springs are naturally rich in phosphorus, the majority of Florida springs are likely to have been historically nitrogen limited

Through extensive laboratory experiments, in situ field surveys, TMDL development activities for the Wekiva River and Rock Springs Run, studies, and using data derived from nutrient gradient studies of Rapid Periphyton Survey (algal responses to nutrients and other variables), the DEP derived a 0.35 mg/L nitrate-nitrite criterion for spring runs.<sup>32</sup> At monthly concentrations below 0.35 mg/L, the DEP obtained high confidence (95% Confidence Interval) that adverse responses will not be observed.

The EPA's Final Rule criteria threshold established for spring runs is identical to the DEP's threshold.

#### *Site Specific Alternative Criteria for Florida Waters*

Nutrient dynamics are complex and the impacts are site-specific, and there will always be cases where statewide criteria are over-protective for specific water bodies. To address this possibility, the DEP developed rule language for a new process for developing Site Specific Alternative Criteria (SSAC) for nutrients. This new "Type III" SSAC process would require a demonstration that the SSAC is fully protective of designated uses based on the SCI and LVI, for streams and lakes, respectively. Under the draft rule, a Type III SSAC would be adopted if two spatially and temporally independent biological health assessments indicated that the existing nutrient regime supported healthy biota. To ensure that the SSAC is also protective of downstream waters, DEP also added a requirement that all downstream waters attain water quality standards related to nutrients.

The DEP Plan included previously adopted nutrient TMDLs (adopted in Chapter 62-304, FAC) as SSACs, because the TMDLs:

- Establish site specific and sensitive responses to nutrient enrichment for a particular area
- Use data appropriate for a site specific assessment
- Establish a protective endpoint equivalent to numeric criteria
- Reflect geographically explicit protective conditions, and are more appropriate than a statewide criterion because it would be counter-productive for statewide nutrient criteria to supersede the TMDL.

The DEP designed the recommended revisions to Chapter 62-303 (Impaired Waters Rule) to implement the proposed revisions to Chapter 62-302. The revisions would have allowed the DEP to assess waters for nutrient impairment using the numeric nutrient criteria in addition to the current narrative nutrient impairment thresholds in the IWR, and to assess waters for biological impairment using the new SCI and LVI thresholds. Both rules are still in draft stages.<sup>33</sup>

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<sup>32</sup> During the development of the TMDL for these water bodies, protective nutrient concentration targets were derived using periphyton and water quality data collected from the Suwannee River and two tributaries, the Withlacoochee River and Santa Fe River (Hornsby et al. 2000). These data were considered applicable to the Wekiva River and Rock Springs Run since the Suwannee River is heavily influenced by spring inflow, and in the absence of anthropogenic inputs, the algal communities would be expected to be generally similar in composition to those in the Wekiva River and Rock Springs Run. DEP's *Nutrient Criteria Technical Support Document*, Chapter 4.

<sup>33</sup> See Surface Water Draft Rules at [http://www.dep.state.fl.us/water/rules\\_dr.htm](http://www.dep.state.fl.us/water/rules_dr.htm)

The EPA did not include Florida's water bodies with previously-approved nutrient TMDLs as SSAC under the Final Rule. As such, the DEP will be required to submit the TMDLs again to the EPA for consideration as SSAC under the Final Rule.

### *Downstream Protection of Florida Waters*

The DEP could discern no defensible method to quantitatively describe the maximum nutrient concentrations allowed for the protection of downstream waters. According to the DEP, there exists no adequate, statewide calibrated model that could be used to numerically determine, without great uncertainty, protective nutrient loads for downstream lakes or estuaries. With no scientifically defensible solution to rely upon, the DEP proposed a narrative statement to ensure downstream waters protection.

The EPA did not include Florida's downstream protection methodology in the final rule. Instead, the EPA promulgated an equation to adjust in-stream total phosphorus criteria to protect downstream lakes.

EPA's final rule proposes an alternative regulatory approach the state may consider if meeting numeric criteria for certain water bodies is unattainable; re-designation of water use. Pursuant to the CWA, states establish water quality standards (WQS) in three steps:

- Establish designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes
- Establish water quality criteria, which can be either a numeric or narrative standard that defines the amount of pollutant a water body can contain without impairing the designated use
- Establish an anti-degradation policy to maintain and protect existing uses and high quality waters

In 2009, the DEP began to refine the current system of designated uses, primarily because certain engineered water systems that were designed for flood control or as conveyances to treatment areas are currently designated as Type III waters, for aquatic life and recreation purposes. The DEP amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters. Pursuant to 62-302.400(5), F.A.C.:

Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. "Limited recreation" means opportunities for recreation in the water are reduced due to physical conditions. "Limited population of fish and wildlife" means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:

- (a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or
- (b) Altered waterbodies that were dredged or filled prior to November 28, 1975. For purposes of this section, "altered waterbodies" are those portions of natural surface waters that were dredged or filled prior to November 28, 1975, to such an extent that they exhibit separate and distinct hydrologic and environmental conditions from any waters to which they are connected.

Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

### Snapshot Comparison of the EPA's Final Rule and the DEP Plan

In general, the quantitative values promulgated by the EPA for lakes and streams were similar to those in the DEP's NNC Plan, and the value reached for springs was identical. In key areas related to implementation, however, there are significant differences in the two approaches.

- The DEP's multi-tiered approach (numerical criteria with follow-up biological assessment) was not adopted by the EPA. The DEP demonstrated that some water bodies with nutrient thresholds that exceed the value of undisturbed reference waters have healthy biota and do not need restoration. The DEP's intent was to have "biological confirmation" that nutrient concentrations above the numeric standard actually resulted in biological impairment of the water body.
- The EPA rejected the DEP's approach to protect downstream lake values by using the narrative criteria, and instead promulgated an equation to adjust in-stream total phosphorus criteria to protect downstream lakes. This will likely result in more stringent instream values.
- The EPA did not accept Florida's existing nutrient TMDLs as meeting CWA WQS under the rule, even though the TMDLs have already been approved by the EPA. As a result, the DEP must re-establish to the EPA that water bodies with approved TMDLs comply with provisions of the CWA.

### Cost of Compliance with the Final Rule

The fiscal impact of the EPA's rule on industrial dischargers, municipal wastewater and urban stormwater facilities, agriculture, and the regulatory agencies is unclear. EPA-generated annualized cost estimates to achieve the numeric criteria (\$130-\$150 million) differ dramatically from estimates provided by the DEP (\$5.7 - \$8.4 billion). The difference in cost estimates is largely due to the different baselines utilized by the two entities: the EPA based its cost estimates on the difference between the EPA criteria and the criteria in the draft DEP Plan. A study commissioned by the Florida Water Environment Association Utility Council in November, 2010, estimates that wastewater utilities alone will spend between \$24 billion and \$51 billion in capital costs for additional wastewater treatment facilities and incur increases in annual operating costs between \$4 million and \$1 billion to comply with the federal numeric nutrient criteria. According to the commissioned study, the EPA's cost estimate inadequately accounted for existing baseline conditions, failed to address all direct costs, and did not consider all indirect costs to businesses and the public, including the costs of uncertainty. If the EPA enforces "end-of-pipe" criteria (requiring all discharger effluent levels to be at or below the federally-promulgated standards), the total annual costs could range from \$3.1 to \$8.4 billion (based on the estimated fifth and ninety-fifth percentile of costs). Even if EPA enforces criteria to less strict BMPs and Limit of Technology standards in which effluent is not at or below the federal standard, then the annual costs could range from \$1.0 to \$3.2 billion (based on the estimated fifth and ninety-fifth percentile of costs in this scenario).

Because the numeric nutrient criteria is water body-specific, the expected costs for compliance will be largely site-specific and contingent upon the level of impairment. The EPA only just published guidance documents detailing how the rule is to be implemented and cost estimates have not yet been updated.

### The EPA is Sued over Florida's Narrative Criteria

On July 17, 2008, five environmental groups (the Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper) sued the EPA, alleging failure on the part of the federal agency to comply with the CWA. These groups initially alleged that the EPA's 1998 National Strategy for the Development of Regional Nutrient Criteria was a necessity determination, pursuant to s. 303(c)(4)(B) of the CWA, requiring the EPA to promulgate numeric nutrient rules for Florida. Their amended complaint asserted the 1998 Clean Water Action Plan, coauthored with the U.S. Department of Agriculture, was the necessity determination. The EPA initially defended the suit and contested the plaintiffs' arguments. However, in an EPA internal memorandum from December, 2008, the writer warned that a judicial finding in favor of the plaintiffs could result in the EPA being required to promulgate numeric nutrient rules for the other 49 states. The internal memorandum proposes a strategy to avoid this possibility: if the EPA issues a s. 303(c)(4)(B)

necessity determination, that may be used as a basis to settle the lawsuit and request a dismissal from the court.<sup>34</sup>

On January 14, 2009, the EPA placed the DEP on formal notice that numerical criteria for nutrients were necessary for compliance with the CWA. This notice triggered a deadline of one year for the EPA to develop numeric nutrient criteria for Florida's surface waters and 24 months to develop numeric criteria for coastal waters, unless the state proposed criteria acceptable to the EPA before final promulgation. On August 19, 2009, the EPA entered into a consent decree to settle the lawsuit filed by the five environmental groups. The EPA committed to propose numeric nutrient standards for inland waters (lakes and flowing waters), as well as for estuarine and coastal waters, by certain dates.<sup>35</sup> The DEP did not formally submit numeric nutrient criteria to the EPA before the deadline.

In drafting the proposed rule, the EPA had the benefit of more than seven years of DEP data and analysis, DEP's nutrient plans, as well as technical support documentation. The DEP maintained contact with the EPA while the EPA formulated the proposed rule.

On January 14, 2010, EPA Administrator Lisa Jackson signed EPA's rule proposing numeric nutrient criteria for Florida's fresh waters. Ten months later, on November 14, 2010, Administrator Jackson signed the final rule adopting numeric nutrient criteria for Florida's fresh waters. On December 6, 2010, the EPA published its final administrative rule. Fifteen months from the publication date, the established numeric water quality standards for nutrients in Florida's inland lakes and flowing waters take effect.

### Legal Challenges to the EPA's Final Rule

Several parties, representing the environment, state and local governments, water utilities, wastewater, stormwater, agriculture, and fertilizer industries, have challenged the EPA-promulgated numeric nutrient rules in federal court.<sup>36</sup> With the exception of the challenge filed by environmental groups, the complaints share a common theme; that the EPA's actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory authority; or without observance of procedures required by law.<sup>37</sup> EarthJustice, representing the environmental groups, is challenging the portion of the Final Rule providing a watershed approach to Site Specific Alternative Criteria.

The legal challenges were filed in federal courts located in Tallahassee and in Pensacola, Florida. To date, the Pensacola cases were transferred to Tallahassee and may be consolidated. The EPA has not yet established which documents will comprise the administrative record for the case.

## B. SECTION DIRECTORY:

**Section 1** creates s. 403.0675, F.S., prohibiting state and local governments from implementing or giving any effect to the EPA-promulgated numeric nutrient criteria in any state or local government

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<sup>34</sup> Only 15 months earlier, the EPA agreed with Florida's methodology and plan to finalize numeric nutrient rules by the end of 2010. The DEP was not a party to the lawsuit, however, several groups representing utilities, local governments, and agriculture in the state intervened.

<sup>35</sup> The EPA numeric nutrient criteria for Florida's inland waters (except for south Florida) will be effective March 6, 2012. The EPA will propose numeric nutrient criteria for Florida's estuaries, flowing waters in south Florida (including canals), and the downstream protection values for flowing waters into estuaries on or before November 14, 2011. The deadline for promulgating a final rule is August 15, 2012.

<sup>36</sup> The State of Florida v. Jackson, Case No. 03:10-cv-503-RV-MD; The Mosaic Company, Inc., v. Jackson, Case No. 03:10-cv-506-RV-EMT; The Fertilizer Institute v. U.S. EPA, Case No. 03:10-cv-507-RS-MD; CF Industries, Inc., v. Jackson, Case No. 03:10-cv-513-MCR-MD; Destin Water Users, Inc., South Walton Utility Co., Inc., Emerald Coast Utilities Authority, City of Panama City, Okaloosa County Board of County Commissioners v. Jackson, Case No. 03:10-cv-532-MCR-EMT; Florida League of Cities, Inc., and Florida Stormwater Association, Inc., v. Lisa P. Jackson, Case No. 3:11-cv-11; Florida Pulp and Paper Association Environmental Affairs, Inc., Southeast Milk, Inc., and Florida Fruit and Vegetable Association v. Lisa Jackson, Case No. 3:11-cv-47-MCR/EMT; Florida Wildlife Federation v. EPA, Case No. 04:10-cv-511-SPM-WCS (filed prior to promulgation); Florida Wildlife Federation v. Jackson, Case No. 04:08-cv-324-RH-WCS (filed before the issuance of the Determination Letter).

<sup>37</sup> Citing 5 U.S.C. s. 706(2)(A)(C) and (D).

regulatory program; authorizing the DEP to promulgate numeric nutrient criteria; designating certain existing TMDLs as site-specific numeric nutrient water quality criteria under certain situations; providing authority to modify such criteria.

**Section 2** provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See, Section D, FISCAL COMMENTS

#### 2. Expenditures:

See, Section D, FISCAL COMMENTS

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See, Section D, FISCAL COMMENTS

#### 2. Expenditures:

See, Section D, FISCAL COMMENTS

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See, Section D, FISCAL COMMENTS

### D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate overall, and contingent on actions by the EPA and other affected parties after the bill goes into effect. Public and private entities requiring new or renewal NPDES permits on or after March 6, 2012, when the federal criteria is effective, will need to comply with the federally-promulgated criteria associated with the affected water body. If the DEP issues the permits or renewals, some delay in the permitting process may occur due to the fact that (a) the bill prohibits the DEP from implementing the federal criteria, and (b) the EPA is not likely to approve an NPDES permit with a water-quality based effluent limit that does not comply with the EPA criteria. There is a possibility the DEP may face an administrative challenge to each NPDES permit the DEP issues after March, 2012.

If the EPA assumes authority of the NPDES permitting program, state and local jobs associated with that program may be lost as federal funding for the program is withdrawn along with the program. Private and public entities requiring NPDES permits will need to seek those permits from the EPA, and will be required to seek any and all state water-quality permits as well.

DEP rulemaking authority is provided for implementation of certain portions of the bill. According to DEP estimates in the recent past, costs associated with rulemaking start around \$10,000, not including costs associated with legal challenges. It is not known yet if state regulators will need to revise existing rules regarding Basin Management Action Plans or Best Management Practices.



### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None noted.

#### **B. RULE-MAKING AUTHORITY:**

The bill authorizes the DEP to promulgate rules establishing numeric nutrient criteria for surface waters and provides specific conditions thereto. The bill also provides DEP rulemaking authority designating certain water bodies' TMDLs as sight-specific numeric nutrient water quality criteria.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

BILL

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to numeric nutrient water quality  
 3 criteria; creating s. 403.0675, F.S.; prohibiting the  
 4 implementation of certain federal numeric nutrient water  
 5 quality criteria rules by the Department of Environmental  
 6 Protection, water management districts, and local  
 7 governmental entities; authorizing the department to adopt  
 8 numeric nutrient water quality criteria for surface waters  
 9 under certain conditions; providing that certain total  
 10 maximum daily loads and associated numeric interpretations  
 11 constitute site specific numeric nutrient water quality  
 12 criteria; providing for effect, governance, and challenge  
 13 of such criteria;; providing an effective date.

14  
 15 WHEREAS, the United States Environmental Protection  
 16 Agency's numeric nutrient water quality criteria rules for  
 17 Florida's lakes and flowing waters, finalized on December 6,  
 18 2010, and published in Volume 75, No. 233 of the Federal  
 19 Register, lack adequate scientific support and fail to take into  
 20 account the unique characteristics of the state's many thousands  
 21 of rivers, streams, and lakes, and

22 WHEREAS, the final numeric nutrient water quality criteria  
 23 rules fail to incorporate and actually undermine the state's  
 24 science-based nutrient water quality programs, including the  
 25 total maximum daily loads program and numeric endpoints  
 26 promulgated thereunder that EPA has approved as protective of  
 27 designated uses, and

BILL

ORIGINAL

YEAR

28 WHEREAS, the federal agency declined to subject its  
 29 unprecedented, Florida-only numeric nutrient water quality  
 30 criteria rules to an independent scientific peer review or  
 31 economic analysis, and

32 WHEREAS, implementation of the numeric nutrient water  
 33 quality criteria rules would have severe economic consequences  
 34 on the state's agriculture, local governments, wastewater and  
 35 water utilities, economically vital industries, small  
 36 businesses, and residents living below the poverty level or on  
 37 fixed incomes, and

38 WHEREAS, implementation of the federal agency's numeric  
 39 nutrient water quality criteria rules would require Floridians  
 40 to needlessly expend resources pursuing numerous exemptions,  
 41 variances, and other relief mechanisms made necessary by the  
 42 scientific flaws underlying the federal agency's criteria,  
 43 consequently resulting in the delay of restoration projects that  
 44 are already underway in the total maximum daily loads program  
 45 and other water quality programs, and

46 WHEREAS, the Clean Water Act grants the State of Florida  
 47 primacy in protecting state waters from pollution, and the  
 48 federal agency's numeric nutrient water quality criteria  
 49 rulemaking undermines this cooperative federalism structure,

50

51 NOW, THEREFORE,

52

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

54

BILL

ORIGINAL

YEAR

55 Section 1. Section 403.0675, Florida Statutes, is  
 56 created to read:

57 403.0675 Numeric nutrient water quality criteria.-

58 (1)(a) The department, water management districts, and all  
 59 other state, regional, and local governmental entities may not  
 60 implement or give any effect to the United States Environmental  
 61 Protection Agency's nutrient water quality criteria for the  
 62 state's lakes and flowing waters, finalized on December 6, 2010,  
 63 and published in Volume 75, No. 233 of the Federal Register, in  
 64 any regulatory program administered by the department, water  
 65 management district, or governmental entity.

66 (b) The prohibition in paragraph (a) does not limit the  
 67 ability of any water management district or any other state,  
 68 regional, or local governmental entity from applying for any  
 69 pollution discharge permit or complying with the conditions of  
 70 such permits, including those issued under the National  
 71 Pollution Discharge Elimination System, or from implementing  
 72 best management practices, source control or pollution abatement  
 73 measures for water quality improvement programs as provided by  
 74 law; provided, however, that nothing in this section shall be  
 75 construed to derogate or limit county and municipal home rule  
 76 authority.

77 (2) Notwithstanding subsection (1), the department may  
 78 adopt numeric nutrient water quality criteria for a particular  
 79 surface water or group of surface waters if the department  
 80 determines that such criteria are necessary to protect aquatic  
 81 life reasonably expected to inhabit those waters. The numeric

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82 nutrient water quality criteria adopted pursuant to this  
 83 subsection:

84 (a) Shall be based on objective and credible data, studies  
 85 and reports establishing the nutrient levels which the water  
 86 bodies may accept or assimilate without exhibiting imbalances of  
 87 naturally occurring populations of flora and fauna based on a  
 88 cause and effect relationship between nutrient levels and  
 89 biological responses.

90 (b) May be expressed in terms of concentration, mass  
 91 loading, waste load allocation, load allocation, and surrogate  
 92 standards, such as chlorophyll-a, and may be supplemented by  
 93 narrative statements.

94 (3) (a) Numeric nutrient total maximum daily loads and  
 95 associated numeric interpretations of the narrative nutrient  
 96 criterion, whether total nitrogen, total phosphorus,  
 97 nitrate/nitrite, or a surrogate nutrient standard, such as  
 98 chlorophyll-a, biological demand, or specific biological metric,  
 99 developed by the department and approved by the United States  
 100 Environmental Protection Agency as of December 6, 2010,  
 101 constitute site specific numeric nutrient water quality  
 102 criteria.

103 (b) The site specific numeric nutrient water quality  
 104 criteria established pursuant to this subsection are:

105 1. Not effective if the United States Environmental  
 106 Protection Agency disapproves, approves in part, or conditions  
 107 its approval of the criteria, unless ratified by the  
 108 Legislature.

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109 | 2. Subject to s. 403.067, including any rules or orders  
 110 | issued thereunder, and to challenge under s. 120.56(3).

111 | (c) Once approved and effective, the site specific numeric  
 112 | nutrient water quality criteria established pursuant to this  
 113 | subsection may be modified, based on objective and credible  
 114 | data, studies and reports, by department rulemaking in  
 115 | accordance with s. 403.804.

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