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DATE:March 31, 1995

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
NATURAL RESOURCES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 0855

RELATING TO: The Environmental Regulation Commission

SPONSOR(S): Committee on Natural Resources and Representative Eggelletion

STATUTE(S) AFFECTED: ss. 20.255, 403.804, and 403.805, Florida Statutes

COMPANION BILL(S): SB 1028 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1)NATURAL RESOURCES YEAS 20 NAYS 0

(2)APPROPRIATIONS

(3)

(4)

(5)

1) SUMMARY:

CS/HB 855 accomplishes two main objectives. First, it would require that some of the members of the Environmental Regulation Commission represent the scientific and technical community. In exercising its authority, the ERC would be required to consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and environment. It would specifically prohibit the ERC from setting department policies, priorities, plans, or directives.

Second, the CS/HB 855 would clarify in law that the Secretary has rulemaking responsibility. The Secretary would be required to submit to the ERC for approval, modification or disapproval, rules relating to standards.

2) SUBSTANTIVE ANALYSIS:

a) PRESENT SITUATION:

In 1975, the Legislature significantly revised the state's environmental laws and reorganized the Department of Natural Resources, the Department of Pollution Control and the Board of Trustees of the Internal Improvement Trust Fund into two departments. They were the Department of Environmental Regulation (DER) and the Department of Natural Resources (DNR). The former Department of Pollution Control was headed by a board of directors. When DER was created, it was headed for the first time, by a secretary. Due to this new organization, there was substantial industry concern that the secretary of the newly created DER could wield too much exclusive authority . As a result, the Legislature also created the ERC to set standards and to act as an adjudicatory body on almost all DER Regulation actions. In 1980, the Legislature removed the ERC's adjudicatory role, but more clearly specified its exclusive standard-setting powers, as well as its authority to adopt procedural rules governing the conduct of its meetings and hearings.

The ERC remains the exclusive standard setting authority of the department, with two small exceptions. For purposes of chapter 403, F.S., the word standard is defined to mean rules that relate to air and water quality, noise, solid-waste management, and electric and magnetic fields. The word does not include "rules of the department which relate exclusively to the internal management of the department, the procedural processing applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters." There has been some confusion about what actions and rules fall within the purview of the ERC and which ones are within the Secretary's authority.

Section 20.255, F.S. establishes the ERC as a part of the DEP, with seven members appointed by the Governor, subject to confirmation by the Senate. The membership is required to be "representative of, but not limited to, interested groups including agriculture, real estate, environmentalists, the construction industry, and lay citizens."

b) EFFECT OF PROPOSED CHANGES:

This bill, if passed, would substantially change the procedures for appointing members to the ERC as well as change their professional qualifications, to be more scientifically based. CS/HB 855 would also clarify the role of the ERC vis-a-vis the Secretary, by specifying that the Secretary has the rulewriting authority. However the Secretary is required to submit rules containing standards to the ERC for approval, modification, or rejection. It would specifically prohibit the ERC from setting department policies, priorities, plans, or directives.

c) SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 20.255(7), F.S., to clarify the qualifications necessary to be eligible to be a member of the ERC.

Section 2: Amends s. 403.804(1), F.S., to clarify the scope of authority of the ERC and to provide items to be considered in exercising its authority. Removes the ERC's authority as the exclusive standard setting body. Specifies that the ERC is the standard setting authority, except as provided in chapter 373.

Section 3: Amends s. 403.805(1), F.S., to grant to the secretary of the DEP the rulemaking responsibility, but requires the secretary to submit proposed rules related to standards to the ERC for approval, modification, or disapproval. Deletes existing law stating the ERC is the exclusive standard setting authority for the department.

Section 4: Provides an October 1, 1995 effective date.

3) FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

a) FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

i) Non-recurring Effects:

None.

ii) Recurring Effects:

Indeterminate.

iii) Long Run Effects Other Than Normal Growth:

None.

iv) Total Revenues and Expenditures:

None.

b) FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

i) Non-recurring Effects:

None.

ii) Recurring Effects:

None.

iii) Long Run Effects Other Than Normal Growth:

None.

c) DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

i) Direct Private Sector Costs:

None.

ii) Direct Private Sector Benefits:

None.

iii) Effects on Competition, Private Enterprise and Employment Markets:

None.

d) **FISCAL COMMENTS:**

None.

4) **CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

a) **APPLICABILITY OF THE MANDATES PROVISION:**

This bill is exempt from the mandates provision because it does not require counties or municipalities to expend funds to implement the provisions of the act.

b) **REDUCTION OF REVENUE RAISING AUTHORITY:**

None.

c) **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

None.

5) **COMMENTS:**

6) **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

A strike-everything amendment was adopted by the Natural Resources Committee. Provided below is a summary of the differences between the bill as filed and the amendment. First, the amendment provides a list of interest groups the ERC must represent, so that five members represent specific groups and two are lay citizens. It removed the creation of the ERC Nominating Council. The amendment requires the ERC to consider scientific and technical validity, economic impacts, and relative risks in their analyses. Last, it clarifies that the secretary of the DEP has rulemaking responsibility. The secretary is required to submit to the ERC proposed rules dealing with standards.

7) **SIGNATURES:**

COMMITTEE ON NATURAL RESOURCES:

Prepared by:

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