

**STORAGE NAME:**h0855.nr

**DATE:**March 7, 1995

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

**BILL #:** HB 0855

**RELATING TO:** The Environmental Regulation Commission

**SPONSOR(S):** Representative Eggelletion

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

**COMPANION BILL(S):** SB 1028

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

(1)NATURAL RESOURCES

(2)APPROPRIATIONS

(3)

(4)

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I. SUMMARY:

HB 855 would substantially change the procedures for appointing members to the Environmental Regulation Commission (ERC) as well as change their professional qualifications, to be more scientifically based. It would change the procedures for appointing the members, by creating an Environmental Regulation Commission Nominating Council (Nominating Council), composed of seven people from a variety of professional disciplines, and would include two lay citizens. The Nominating Council would serve 4-year terms

The bill would also specify the role and duties of the Nominating Council and would require them to nominate to the Governor not fewer than three persons for each vacancy occurring on the ERC. It provides specific procedures to be followed in the event the Governor selects none of the nominees from the list provided by the Nominating Council. The Senate is required to confirm the appointments to the ERC.

HB 855 would also require the Secretary to determine which standards are to be submitted to the ERC for approval and would specifically prohibit the ERC from setting department priorities, plans, or directives.

II. 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 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. It would change the procedures for appointing the members, by creating an ERC Nominating Council, comprised of seven people from a variety of professional disciplines, and would include two lay citizens. The Governor would be required to select a nominee from the list provided by the Nominating Council. This selection would then be subject to confirmation by the Senate.

HB 855 would also clarify the role of the ERC vis-a-vis the Secretary, by allowing the Secretary to determine which standards are to be submitted to the ERC for approval. It would specifically prohibit the ERC from setting department 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. Requires the Governor to use the procedures outlined in s. 403.8045, F.S., in appointing such members.

Section 2: Amends s. 403.804, F.S., to clarify the scope of authority of the ERC. 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, F.S., to require the secretary of the DEP to determine which standards are to be submitted to the ERC for approval. Removes language stating the ERC is the exclusive standard setting authority for the department.

Section 4: Creates s. 403.8045, F.S., to create an ERC Nominating Council. Provides the Governor shall appoint seven members to the Nominating Council, of whom at least three must be members of racial or ethnic minority groups or women. Specifies the interests groups which are to be represented on the Nominating Council. Provides Nominating Council members shall serve 4-year terms. Requires vacancies to the Nominating Council to be filled in the same way original appointments to the Nominating Council are made.

Authorizes the Governor to remove Council members for good cause.

Requires the DEP to staff all proceedings of the Council and subjects such proceedings to chapter 119 and s. 286.011, F.S. Grants members of the Council per diem and travel expenses, funded by the DEP Administrative Trust Fund. Authorizes the Council to establish procedures to govern the process for nominating applicants and requires such nominations to be nonpartisan.

Provides the procedures to be followed by the Council in nominating applicants to the Governor. Specifies that if the Governor fails to select a nominee from the list provided, that the Council shall provide, within 2 months, another list of three names. Provides that appointments made by the Governor are subject to Senate confirmation. Provides procedures to be used if the Senate refuses to confirm or rejects the Governor's appointment.

Section 5: Provides an October 1, 1995 effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. 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.

V. COMMENTS:

Although this bill attempts to clarify that the Secretary "shall determine which standards are submitted to the Environmental Regulation Commission for approval . . .", it does not provide direction on what "approval" means. The question arises, whether the ERC is limited to approving rules, or if it can engage in amending, modifying, revising, or abolishing rules.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES:

Prepared by:

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