

STORAGE NAME: h1887s1a.hwp
DATE: March 21, 1996

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER POLICY, SELECT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1887

RELATING TO: Water resources

SPONSOR(S): Select Committee on Water Policy and Representatives Pruitt and Ritchie

STATUTE(S) AFFECTED: Sections 373.019, 373.406, 373.414, 373.4145, 403.031, F.S.

COMPANION BILL(S): SB 638

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

- (1) Water Policy, Select YEAS 15 NAYS 0
- (2) Appropriations
- (3)
- (4)
- (5)

I. SUMMARY:

The bill provides procedures to be followed by the state Department of Environmental Protection (DEP) and the water management districts (districts) when processing applications for permits under part IV, chapter 373, F.S. (related to management and storage of surface waters (MSSW)). Specifically, the bill provides a new point of entry for administrative challenges to requests for additional information by the DEP or districts, as applicable, that is not currently available in chapter 373, F.S., or under section 120.60, F.S. It provides provisions for reviewing applications for MSSW permits for consistency with the federally approved Florida Coastal Management Program. The bill deletes references to the Land Use and Water Planning Task Force from sections 373.019 and 403.031, F.S. It amends section 373.406, F.S., to add an exemption from the need for MSSW permits for applicants who propose projects that would cause little or no impact on water resources. The bill amends section 373.414, F.S., to exempt certain applicants from wetlands delineation standards set forth in section 373.4211, F.S.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

An applicant for a permit under part IV, chapter 373, F.S., must follow procedures set out in section 120.60, F.S., the provision of the Florida Administrative Procedure Act which governs licensing. Section 120.60, F.S., provides deadlines for processing permit applications and procedures for administrative challenges subsequent to final action on permit applications. Section 120.60, F.S., requires an agency to have taken final action on a permit application prior to administrative challenge.

Prior to enactment of chapter 93-213, Laws of Florida, the former Department of Environmental Regulation (DER), pursuant to the Henderson Wetlands Protection Act of 1984, permitted certain regulated activities in wetlands. The DER's wetlands jurisdiction applied to waters of the state and associated wetlands. Applications for wetlands permits were reviewed by DER pursuant to the provisions of chapter 403, F.S., which contained language identical to the language of HB 1887.

Under part IV of chapter 373, F.S., the water management districts had jurisdiction to regulate the management and storage of surface waters, including stormwater control. The districts also had specific authority to regulate isolated wetlands. Under chapter 373, F.S., there are no specific procedural exceptions to the requirements set out in section 120.60, F.S.

In 1993, the Legislature consolidated the relevant sections of the Henderson Wetlands Protection Act into part IV of chapter 373, F.S., in order to streamline the permitting functions related to stormwater control, the management and storage of surface waters, and wetlands resource management. In doing so, all wetlands permitting is conducted pursuant to chapter 373, F.S., which does not allow challenges to requests for additional information. Permits filed under chapter 373, F.S., are reviewed according to the procedures set forth in section 120.60, F.S.

Several other sections of chapter 373, F.S., have been amended to conform with the permit streamlining changes but retain a few requirements that have proven to be administratively problematic. Among those are sections 373.414, F.S., which provides additional criteria for activities proposed in surface waters and wetlands, and section 373.4145, F.S., which provides an interim MSSW permitting program for the Northwest Florida Water Management District.

The Legislature enacted section 380.23, F.S., to ensure that state land and water programs are consistent with federally approved laws and programs. Under that provision, an application for a permit or license for a project to be developed and conducted in or near a state water body must be reviewed by the appropriate state agency to determine if the proposal is consistent with a series of federal laws dealing with environmental issues.

In 1993, the Legislature created the Land Use and Water Planning Task Force to recommend ways the state could better coordinate land and water use planning and policy. The task force issued its final report in late 1994 and has since disbanded. Provisions creating the task force were included in sections 373.019 and 403.031, F.S. Section 373.406, F.S., exempts specific activities from MSSW permitting requirements. Those exemptions include allowing the district governing boards to issue general

permits, instead of more extensive MSSW permits, for projects that will have minimal environmental impacts.

B. EFFECT OF PROPOSED CHANGES:

This bill grants the districts or the DEP, as applicable, 30 days after receipt of a permit application to request submittal of additional information, if necessary. It also grants an applicant a mechanism to administratively challenge such a request under certain circumstances, prior to a final action on the permit by the district or DEP. The bill requires the districts or DEP to approve or deny all permit applications within 90 days of the receipt of the original application, the last item of additional material or the applicant's written request to begin processing the permit application.

HB 1887 requires the districts or DEP, as applicable, to review all applications for MSSW permits for consistency with the federally approved Florida Coastal Management Program, pursuant to section 380.23, F.S. Under this provision, a final agency action on a permit application constitutes the state's determination that the proposed project is consistent with the federal program. An agency that determines an application is not consistent with the federal program is required to be an indispensable party to any administrative or judicial challenge and will be liable for damages and other costs incurred by the applicant, should he or she prevail.

The bill amends section 373.406, F.S., to include an exemption from MSSW permitting requirements for proposed projects that will have inconsequential or de minimis impacts on water resources. It amends section 373.414, F.S., to exempt from wetlands delineation criteria enacted by the Legislature in 1994 any MSSW project submitted to the appropriate water management district prior to June 1, 1994. The bill also amends section 373.4145, F.S., which provides an interim MSSW permitting program for the Northwest Florida Water Management District, to change a provision regarding MSSW permit applications pending on June 15, 1994.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 373.019, F.S., to delete language creating the Land Use and Water Planning Task Force.

Section 2. Amends section 373.406, F.S., to add an exemption from MSSW permit requirements for proposed activities that are inconsequential or de minimis.

Section 3. Amends section 373.414, F.S., to limit time available to construct MSSW projects submitted to the districts prior to 1994 and to establish time limitations and exemptions for certain projects applied for prior to June 1, 1994.

Section 4. Creates section 373.4141, F.S., to grant the districts or the DEP, as applicable, 30 days after receipt of a permit application to request submittal of additional information, if necessary. Grants an applicant a mechanism to administratively challenge such request if the applicant believes the request is not authorized by law or rule. Provides a 30-day time frame in which the DEP or districts, as applicable, may request specific information, if the applicant has supplied additional information. Provides an applicant need not answer this last set of questions and provides that the applicant can require the districts or DEP, as applicable, to proceed in processing the permit application. Provides a 90-day time frame for a permit to be issued or denied and specifies when the clock begins.

Section 5. Amends section 373.4145, F.S., to allow certain applications for MSSW permits in the Northwest Florida Water Management District submitted prior to June 15, 1994, to be reviewed under wetlands delineation provisions existing at that time, instead of the provisions currently in section 373.4211, F.S.

Section 6. Creates section 373.428, F.S., to require the districts or DEP to review MSSW permit applications for consistency with the federally approved Florida Coastal Management Program.

Section 7. Amends section 403.031, F.S., to delete language creating the Land Use and Water Planning Task Force.

Section 8. Provides for an effective date upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The language contained in section 4 of HB 1887 has been adopted by the DEP as rule 62-4.055, Florida Administrative Code (F.A.C.), which governs the agency's permitting processes. Because the DEP adheres to its rule provisions, the language of this bill should not affect agency practices and should have no fiscal impact.

Because the language contained in section 4 of HB 1887 pertaining to administrative challenges prior to final action by the districts on a permit application is not contained in the districts' permit processing rules (found in sections 40A-E, F.A.C.), the districts may incur additional legal costs in defending greater numbers of administrative challenges.

The districts' review of MSSW permits for consistency with the federally approved Florida Coastal Management Program should not create additional costs.

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:

Private sector intervenors or parties to an administrative action other than permit applicants may face additional administrative costs if the numbers of additional administrative proceedings increases as a result of the additional point of entry provided by section 4 of the bill. Applicants may face additional legal costs in challenging district or DEP decisions that their proposed projects are not consistent with the federal Florida Coastal Management Act of 1972.

2. Direct Private Sector Benefits:

Permit applicants may achieve a faster process to decision on permit applications through the ability to challenge agency information requests. This could act to reduce permitting costs. Applicants whose proposed MSSW projects will have little or no impact on water resources may save scientific and legal costs by gaining an exemption from the MSSW permit requirement.

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

None.

D. **FISCAL COMMENTS:**

The districts' permitting processes are set out in sections 40A-E, F.A.C. While the districts' rules include many of the provisions of section 4 of HB 1887, they do not include provisions for administrative challenges to requests for additional information. The rules currently include provisions for administrative challenges only after final agency decisions on permit applications. The fiscal impact of any newly allowed administrative challenges on the districts' budgets will depend on the number of challenges filed.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

Not applicable.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

Not applicable.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

Not applicable.

V. COMMENTS:

Section 120.60, F.S., currently includes several of the provisions of HB 1887: (1) the 30-day timetable for reviewing permit applications and requesting additional information; (2) the 90-day timetable for notifying applicants of the approval or denial of their permit applications; and (3) the opportunity for applicants to administratively challenge the final determination of the department or districts, as applicable. That section does not include provisions for administrative challenges to requests for additional information, prior to final action on permit applications. For the sake of consistency and symmetry in statute, it may be advisable to amend section 120.60, F.S., with this language from HB 1887, rather than amending part IV of chapter 373. By amending chapter 120, the Florida Administrative Procedure Act, all permit applicants would be granted the right to administratively challenge agency requests for additional information, not just those who apply for management and storage of surface water permits pursuant to chapter 373.

Currently, a permit applicant is not entitled to an administrative hearing under section 120.57, F.S., when he or she disagrees with the district's or department's request for additional information. However, he or she can request that the district or department, as applicable, proceed in its final determination on the application, thereby rendering a final decision upon which the applicant can file an administrative challenge. This bill is a way to deal with such a contention up front in the permitting process, rather than waiting for a final action on the permit application. However, if such a step is taken, section 120.57, F.S., should be amended to allow administrative hearings when requests for additional information are challenged administratively, as the only exception to the final agency action requirement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/HB 1887 includes two technical amendments that do not change the meaning, effect or intent of the original bill. Both amendments change language in the bill to make the wording consistent with language already in statute.

VII. SIGNATURES:

COMMITTEE ON water policy, select:

Prepared by:

Staff Director:

Ellen M. Avery

John T. Mitchell