

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2200

SPONSOR: Natural Resources and Senator Lawson

SUBJECT: Environmental permit/roads and bridges

DATE: March 10, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS provides the permit exemption for the repair, stabilization, or paving of existing county-maintained roads and bridges currently available in the Northwest Florida Water Management District would also apply in the Suwannee River Water Management District. In addition, prior to performing any road or bridge work covered by this exemption, notice of intent to use the exemption must be provided to the Department of Environmental Protection (DEP) if the work to be performed is in the Northwest Florida Water Management District; or to the Suwannee River Water Management District if the work to be performed is in the Suwannee River Water Management District.

The CS further provides within 30 days after this CS becomes a law, the DEP shall initiate rulemaking to adopt by rule a no fee general permit for the repair, stabilization, or paving of existing county-maintained roads and the repair or replacement of bridges part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide. For qualified projects in the four water management districts that administer the environmental resource permits (ERP) program, no additional rulemaking will be required. This general permit will be administered in the Northwest Florida Water Management District by the Northwest District Office of the DEP since there is no ERP program in the Northwest Florida Water Management District. Once the general permit has been adopted by rule, it will supercede the exemption provision in s. 403.813(2), F.S., for the Northwest Florida Water Management District and the Suwannee River Water Management District.

In addition, the CS deletes the requirement for DEP to submit a report to the Governor and the Legislature by March 1, 2004, to evaluate the effects of the permit exemption.

This CS substantially amends s. 403.813 of the Florida Statutes.

II. Present Situation:

Many wetland and surface water dredging and filling activities require ERPs issued by either the DEP or the water management districts. These permits describe the conditions under which the activities will be allowed. In addition to state permits, many of these activities also require a federal Clean Water Act Section 404 permit issued by the United States Army Corps of Engineers.

Currently, multiple activities are statutorily exempt from ERP requirements. These exempted activities are listed in s. 403.813, F.S., and include, but are not limited to:

- The installation of overhead transmission lines, and the installation, replacement, or repair of subaqueous transmission and distribution lines;
- The installation and repair of certain mooring pilings, and the replacement and repair of certain existing docks, piers, and boat ramps;
- The restoration and construction of particular seawalls, and the construction of some private docks;
- Maintenance dredging of existing manmade canals, channels, intake, and discharge structures;
- The maintenance and restoration of existing insect control structures;
- The construction, operation, or maintenance of stormwater management facilities, and the repair or replacement of existing stormwater conveyance structures;
- The construction of private docks and seawalls in artificially created waterways where such construction will not violate existing water quality standards;
- The construction and maintenance of swales;
- The installation of aids to navigation;
- The repair or replacement of certain existing bridges;
- The installation of certain subaqueous transmission and distribution lines laid on, or embedded in the bottoms of waters in the state;
- The construction of certain private seawalls in wetlands or other surface waters where there are existing seawalls;

- The removal of aquatic plants, tussocks, and associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20, F.S., or s. 369.25, F.S., provided that certain conditions are met;
- The construction, installation, operation or maintenance of floating vessel platforms or floating boat lifts, provided certain conditions are met; and
- The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District if certain conditions are met.

The conditions for the permit exemption for roads and bridges in the Northwest Florida Water Management District are:

- The road and associated bridge had to be in existence and in use as a public road or bridge, and maintained by the county as a public road or bridge on or before January 1, 2002.
- The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road. However, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave or repave the road, provided the work is constructed by generally accepted engineering standards.
- The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands.
- Best management practices for erosion control must be used to prevent water quality violations.
- Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project.
- No more dredging or filling of wetlands or waters of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards.

The DEP was required to submit a report to the Governor and the Legislature by March 1, 2004, to evaluate the effects of this exemption and make recommendations for the exemption to apply statewide. The department issued its report on February 26, 2004. In examining the effects of the exemption, the department focused exclusively on the effects of paving dirt roads, not repaving

or repairing existing paved roads. The department generally concluded the paving of dirt roads reduces erosion, sedimentation, and turbid runoff, which in turn leads to improved aquatic habitat and water quality in the receiving waters. However, the department is investigating several road projects where best management practices may not have been used during construction, including one road paved without implementing effective means of stormwater treatment.¹

The department's ability to fully evaluate the effects of the exemption have been limited by the fact notification is not required to be provided to the department prior to the use of the exemption.²

The department further concluded that while there are many advantages to paving existing public dirt roads, expanding the exemption statewide has four primary shortcomings:

- Problems arising from the lack of notice;
- A potential for the exemption, as currently adopted, to result in adverse water quantity impacts such as flooding, particularly in areas of certain soil types and hilly terrain;
- A limited ability to address discharges of stormwater pollutants other than sedimentation and erosion, particularly where water is discharged to sensitive receiving waters and in watersheds with high numbers or long lengths of roads to be paved; and
- An inability to address potential secondary and cumulative impacts to wildlife and public safety on public and private lands.³

III. Effect of Proposed Changes:

This CS amends s. 403.813(2), F.S., to provide the permit exemption for the repair, stabilization, or paving of existing county-maintained roads and bridges that is currently available in the Northwest Florida Water Management District would also apply in the Suwannee River Water Management District. In addition, prior to performing any road or bridge work covered by this exemption, notice of intent to use the exemption must be provided to the DEP if the work to be performed is in the Northwest Florida Water Management District; or to the Suwannee River Water Management District if the work to be performed is in the Suwannee River Water Management District.

The CS further provides within 30 days after this CS becomes a law, the DEP shall initiate rulemaking to adopt by rule a no fee general permit for the repair, stabilization, or paving of existing county-maintained roads and the repair or replacement of bridges part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide. For qualified projects in the four water management districts that administer the ERP program, no additional rulemaking will be required. This general permit will be administered in the Northwest Florida Water Management District by the Northwest District Office of the DEP since there is no ERP program in the Northwest Florida Water Management District. Once the general permit has been adopted by

¹ Report to the Governor and Legislature, *An Evaluation of the Exemption in Paragraph 403.813(2)(t), F.S.*, Florida Department of Environmental Protection, February 26, 2004, page i.

² Id.

³ Id.

rule, it will supercede the exemption provision in s. 403.813(2), F.S., for the Northwest Florida Water Management District and the Suwannee River Water Management District. In addition, the CS deletes the requirement for DEP to submit a report to the Governor and the Legislature by March 1, 2004, to evaluate the effects of this exemption and make recommendations for the exemption statewide. The department reports this deletion will be beneficial due to the report requirements being obsolete.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Currently, certain road and bridge repair work conducted on county-maintained roads and bridges in the Northwest Florida Water Management District is exempt from permitting and, therefore, is not subject to any permit fees. Under this CS, once a general permit is in place, it will apply statewide and the road and bridge work conducted by the counties that was previously exempted in the Northwest Florida Water Management District will be subject to the general permit. The CS provides, however, there will be no fee for this general permit.

For an unspecified period of time (until the general permit rule is adopted), the permit exemption will apply in the Suwannee River Water Management District. After that, such work will require a general permit. For the other three water management districts (St. Johns River Water Management District, South Florida Water Management District, and the Southwest Florida Water Management District) there would be a savings to the permittee since such work is currently subject to an ERP permit for which there is a fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
