

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Environmental Preservation and Conservation Committee

BILL: CS/SB 594

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Saunders

SUBJECT: Surface Water Protection Programs

DATE: April 19, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	Fav/CS
2.			GA	
3.			RC	
4.				
5.				
6.				

I. Summary:

The committee substitute (CS) provides legislative recognition that peat harvesting represents a unique industry which occurs in specific wetlands in the state. It provides the Department of Environmental Protection (DEP) with rule making authority to oversee peat mining used exclusively in the horticultural industry. It also updates current statutory language to reflect department name changes and repeals s. 403.265, F.S., pertaining to peat mining, which was transferred to Chapter 373, F.S.

The CS corrects language to ensure that existing variance provisions will also be applicable to the Northwest Florida Water Management District Environmental Resource Permitting (ERP) program, which was created in 2006. It provides conforming language, for consistency, ensuring that state surface water quality standards do not apply within a stormwater management system designated, constructed, or operated in accordance with a valid permit issued under the Northwest Florida Water Management District ERP program.

The CS permanently removes the requirement for the Northwest Florida and Suwannee River water management districts, or financially disadvantaged small local governments, to provide a 50% funding match towards the implementation of the Surface Water Improvement and Management (SWIM) program. Significant funding increases to the SWIM program, through the Water Protection and Sustainability Program, caused small districts and local governments an inability to provide matching funds.

The CS provides clarity on the South Florida Water Management Districts authority to adopt basin specific criteria to prevent harm to water resources, under Part IV, Chapter 373, of Lake Okeechobee and its watershed.

Finally, the CS authorizes the DEP to approve water quality credit trading as part of Basin Management Action Plans (BMAPs) created to implement total maximum daily loads (TMDLs).

The CS amends sections 373.414, 373.4142, 373.459, 373.4595, 378.403, 378.503, 378.804, 403.067, and 403.088, Florida Statutes.

The CS repeals section 403.265, Florida Statutes.

II. Present Situation:

Peat Mining

Current peat mining requirements, as defined in s. 403.265, F.S., requires the permittee to complete a reclamation program for the areas mined that includes:

- Control of water quality draining from the mined areas;
- Soil stabilization;
- Elimination of health and safety hazards;
- Conservation and preservation of natural resources; and
- A time schedule for completion of the program.

The DEP can adopt rules for peat mining that provide stricter standards for peat mining or consumption within areas designated at Outstanding Florida Waterways. Peat mining of less than 5 acres or for agricultural purposes is exempt from current rules under s. 403.265, F.S.

Environmental Resource Permitting

With the passage of SB 2062, in 2006, the Northwest Florida Water Management District (NFWFMD) was authorized to establish, by rule, an Environmental Resource Permitting (ERP) program. Until the completion of the rulemaking process, the NFWFMD is not able to permit new stormwater management systems under ERP guidelines because current state water quality standards may have inadvertently applied to the system. Current water quality standards for stormwater management systems do not apply to those systems designed, constructed, operated or maintained in accordance with a valid ERP permit within the other four water management districts.

Currently, counties, municipalities, water management districts, and special districts that are eligible recipients of Surface Water Improvement and Management (SWIM) grants, are required to provide funds equal to at least 50 percent of the total cost of the project.

The Northwest Florida and Suwannee River water management districts, and small disadvantaged local governments have been given annual waivers from meeting the 50 percent matching requirement. The current waiver is set to expire July 1, 2007.

Pollutant Credit Trading

During the development of Basin Management Action Plans (BMAPs) under currently established total maximum daily loads (TMDLS), point and nonpoint source discharges are required to demonstrate that a change in land use will not increase pollutant loading above existing land uses. This precludes the South Florida Water Management District from

establishing basin specific criteria for Lake Okeechobee and its watershed that achieve greater than current land use load reductions. It also does not allow the trading of pollutant credits from dischargers who exceed established TMDLs to enable other sources to achieve allocations.

As directed in SB 444, in 2005, the DEP submitted a report concerning the development of a pollutant trading process to the Governor, the President of the Senate, and Speaker of the House of Representatives on November 30, 2006. The report contained recommendations on such rules, including the proposed basis for equitable economically based agreements and the tracking and accounting of pollution credits or other similar mechanisms. These recommendations were developed in cooperation with a technical advisory committee that includes experts in pollutant trading and representative of potentially affected parties.

III. Effect of Proposed Changes:

Section 1. Creates paragraph (e) of subsection (6) of s. 373.414, F.S., providing legislative recognition that peat harvesting represents a unique industry which occurs in specific wetlands in the state. It also provides definitions to be used within this paragraph as well as providing the DEP with rule making authority to oversee peat mining used exclusively in the horticultural industry.

Subsection (17) of section 373.414, F.S., is amended to provide necessary conforming changes.

Section 2. Amends s. 373.4142, F.S., ensuring that state surface water quality standards do not apply within a stormwater management system designated, constructed, or operated in accordance with a valid permit issued under the Northwest Florida Water Management District ERP program.

Section 3. Amends s. 373.459, F.S., permanently removing the requirement for the Northwest Florida and Suwannee River water management districts, or financially disadvantaged small local governments, to provide a 50% funding match towards the implementation of the SWIM program.

Section 4. Amends s. 373.4595, F.S., providing clarity on the South Florida Water Management Districts authority to adopt basin specific criteria to prevent harm to water resources, under Part IV, Chapter 373, F.S., of Lake Okeechobee and its watershed. It also deletes a provision authorizing discharges into a works of the district project provided the responsible parties can demonstrate the proposed land changes will not result in increased phosphorus loading over that of existing land uses. This was a glitch that would not allow for SFWMD to adopt criteria for greater than current land use pollutant load reductions.

Section 5. Amends s. 378.403, F.S., adding a definition for “Peat” as well as clarifying a definition for “Wetlands” to conform to changes in the CS concerning peat mining.

Section 6. Amends s. 378.503, F.S., providing clarification as to the specific statutory provisions that govern slope requirements associated with limestone reclamation standards.

Section 7. Amends s. 378.804, F.S., increasing the area for which an operator is exempt from provisions in s. 378.801, F.S., from 5 acres to 20 acres, over the life of the mine, at any one site.

Section 8. Amends s. 403.067, F.S., authorizing DEP to approve water quality credit trades for point and nonpoint sources that achieve greater pollutant load reductions than required by TMDLs to enable other sources to achieve their allocation. The generation of water quality credits does not remove the obligation of a source to meet applicable technology requirements or adopted best management practices. The plan must also allow trading between National Pollutant Discharge Elimination System (NPDES) permittees and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to become subject to the requirements of s. 403.067, F.S.

The CS also provides that the department's rule relating to the equitable abatement of pollutants into surface waters may not be applied to water bodies or water body segments for which a basin management plan, which takes into account future new or expanded activities or discharges, has been adopted.

The CS requires the DEP to initiate rulemaking by July 1, 2007 to provide:

- A process of how water quality credits will be generated, quantified and validated;
- A publicly accessible water quality credit trading registry;
- Limitations on the availability and use of such credits;
- The timing and duration of such credits; and
- Mechanisms for determining compliance.

Section 9. Creates subparagraph 6. in subsection (2) (e) of s. 403.088, F.S., providing that if a discharge does not meet permit conditions or applicable rules, the DEP may issue, renew, revise or reissue the operation permit; provided, however, that a water quality trade that meets the requirements of a TMDL allocation is approved in a final order pursuant to s. 403.067 (7) (a) 4., F.S.

Section 10. Repeals s. 403.265, F.S., to conform to new peat harvesting provisions listed in the CS.

Section 11. Provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s.18, Art. VII of the State Constitution.

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:

The CS requires the DEP to adopt rules pertaining to peat mining that may impact the horticultural industry.

The CS would prevent the unintended consequence of having stormwater facilities in Northwest Florida subject to water quality standards and therefore unable to be permitted as stormwater facilities. The fiscal impact to public and private construction without the amendment in this bill could be significant.

The CS provides for water quality credit trading for point and nonpoint sources that achieve greater than required pollutant load reductions to adopted TMDLs to enable other sources to achieve their allocation.

C. Government Sector Impact:

Economic impact to DEP:

In the short term, the DEP estimates minimal financial impact. Standard rulemaking, assuming no challenges and resulting litigation, generally costs no more than \$10,000 - \$20,000. Creation of the water quality credit trading registry, including database development, would likely cost less than \$200,000 and would have to be paid for out of existing DEP resources.

In the long term, growth in pollutant load trading is uncertain. As trading increases, the level of review, administrative process and documentation associated with assessing, verifying, tracking, and enforcing trades, all required in the legislation, will grow as well. These costs are indeterminate at present but will have to be considered as trading moves forward to assure that it can promote improved and more cost-effective water quality restoration and preservation in Florida. The more popular trading becomes, the more it will cost DEP to manage the program.

Economic Impact to Water Management Districts:

Annually, the Legislature appropriates \$10,000,000 for the Surface Water Improvement and Management Program. A 50-percent match is required from the water management districts for these funds. The two smaller water management districts are currently exempt from the match provision. The CS provides that these water management districts will still be able to waive their match requirements in order to receive surface water improvement and management funds for restoration of water bodies in their districts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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