

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: General Government Appropriations Committee

BILL: CS/CS/CS/SB 2054

INTRODUCER: General Government Appropriations Committee, Communications & Public Utilities Committee, Environmental Preservation & Conservation Committee, and Environmental Preservation & Conservation Committee

SUBJECT: Department of Environmental Protection

DATE: April 17, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Stuart</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	<u>Kynoch</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill would implement several of the legislative changes proposed by the Department of Environmental Protection (department or DEP).

- Amends several sections of the Power Plant Siting Act and the Transmission Line Siting Act to clarify certain notice and hearing requirements.
- Amends the definition of “regulated air pollutant” to conform to federal requirements.
- Allows the state to receive approval of its state implementation plan from the Environmental Protection Agency (EPA).
- Provides that certain minor sources of air pollutants are not required to receive the Title V, Clean Air Act permits that are required for major sources of air pollutants.
- Deletes the separate permitting process for air operation and construction permits for citrus juice processing facilities in lieu of the permits required for other Title V, Clean Air Act permittees.
- Deletes certain provisions relating to persons who service and maintain motor vehicle air conditioners that use Freon. Freon is only available as a recycled product for older vehicles.
- Provides that the violation of certain state park rules will be a civil infraction instead of a criminal infraction and allows for the imposition of a fine.
- Allows golf carts to be operated on roads within the state park system under certain conditions.
- Ratifies the changes adopted by the Environmental Regulation Commission (ERC) on February 23, 2006, to the wetland delineation rule to reclassify slash pine and gallberry from

an “upland” status to a “facultative” status. Provides that such ratification does not take effect until certain conditions are met.

- Provides that the state water quality standards would not inadvertently apply to stormwater treatment systems permitted in Northwest Florida Water Management District (NFWMD).
- Provides that certain variances that apply statewide in the other water management districts also apply in the NFWMD.
- Repeals a repeal of certain water management district match requirements for surface water improvement and management funds.
- Provides for the trading of water quality credits in the Total Maximum Daily Load (TMDL) program in areas that have adopted a basin management action plan.
- Clarifies a provision in the underground storage tank program that allows certain innocent victims to be eligible for cleanup assistance. Provides that if the qualifying property passes to a surviving spouse or is transferred into a revocable trust, the property remains eligible for the cleanup program.
- Implements certain recommendations of the Legislative Committee on Intergovernmental Relations interim project report on dock and marina permitting.

The bill substantially amends the following sections of the Florida Statutes: 258.007, 316.212, 373.414, 373.4142, 373.4211, 403.031, 403.067, 403.0872, 403.088, 403.50663, 403.50665, 403.508, 403.509, 403.5113, 403.5115, 403.5252, 403.527, 403.5271, 403.5317, 403.5363, 403.861, 376.30715, and 403.061.

The bill repeals the following sections of the Florida Statutes: 325.2055, 325.221, 325.222, 325.223, 403.0875, and 373.459(6)(b-e).

The bill creates section 258.008, Florida Statutes.

II. Present Situation:

Every year, each state agency proposes legislation to address areas of concern that affect the agency or to correct glitches that may exist as a result of legislation passed in a previous year. The department has proposed several items that need to be addressed legislatively that affect various programs within the department.

The affected programs proposed to be amended are diverse. They include the siting acts, state parks, air pollution, motor vehicle refrigerants, clean air standards for citrus juice processing facilities, trading of water quality credits, certain programs in the NFWMD and the Suwannee River Water Management District, and ratification of a wetland delineation rule.

III. Effect of Proposed Changes:

This bill would implement several of the legislative changes proposed by the department.

Siting Acts

Several sections of the Power Plant Siting Act and the Transmission Line Siting Act are amended to clarify certain notice and hearing requirements and various provisions relating to the

completeness of an application, the responsibilities of reviewing agencies, and timeframes for notice of cancellation of a certification hearing.

The following clarifications deserve additional attention:

- Section 403.50663, F.S., is amended to require a local government or regional planning council that intends to hold a public meeting to put the general public on notice of the hearing 15 days before the scheduled date of the hearing.
- A portion of s. 403.058 (1)(e), F.S., is deleted because it conflicts with s. 403.508 (1)(d), F.S., which pertains to timing requirements for administrative law judges and review periods by the board.
- Section 403.059 (5), F.S., is amended as follows. Under current law the siting board has authority to direct agencies whose property will be affected by a new transmission line to execute an easement to allow use, connection, or crossing of that property. The secretary of the department does not have authority to issue such an order to an affected agency. The bill requires that the stipulation that relinquishes siting authority to the department contain stipulations by the parties relating to these property use issues and an agreement by the agency to execute the necessary easements.

Air Pollution

Each state has certain responsibilities under the federal Clean Air Act. The EPA requires each state to submit a state implementation plan. This plan is a collection of the regulations used by the state to reduce air pollution. The EPA must approve these state implementation plans.

The department has indicated that the definition of “regulated air pollutant” in s. 403.031(19), F.S., needs to be amended in order for the state to receive approval of its state implementation plan from the EPA. Currently, the Florida definition does not include ozone-depleting substances. This bill would amend s. 403.031(19), F.S., to conform to the federal requirements.

On December 19, 2005, the EPA amended 40 C.F.R., Part 70, which implements the Title V air permitting program of the Clean Air Act. The EPA amendments removed certain categories of minor hazardous air pollutant-emitting sources from the requirements of having to obtain a Title V major source air operation permit. In Florida, this primarily affects drycleaners. This bill would amend s. 403.0871, F.S., to remove the major source air operation permitting requirements for these minor sources.

Section 403.08725, F.S., provides for a separate permitting process for air operation and construction permits for citrus juice processing facilities in lieu of the permits required under s. 403.0872, F.S., for major sources of air pollution under Title V of the Clean Air Act. Before s. 403.08725, F.S., could apply to the citrus juice processing facilities, the EPA had to approve the use of these provisions. The EPA never approved these provisions as an alternative to the Title V permits and, as a result, the provision effectively became obsolete as of July 15, 2005. This bill repeals s. 403.08725, F.S., relating to the air permits for citrus juice processing facilities.

Chapter 325, F.S., relates to motor vehicle refrigerants and emissions. In 1990, the Legislature passed ch. 90-290, L.O.F., to require that any person who installs or services motor vehicle air conditioners must use approved refrigerant recycling equipment to prevent the release of chlorofluorocarbons into the atmosphere. The 1990 legislation put Florida's law in compliance with federal regulations in 40 C.F.R., part 82. Chlorofluorocarbons or CFCs are manmade compounds that have the effect of destroying ozone molecules and depleting the ozone layer. The federal government mandated that production and importation of Class I CFC refrigerants, including CFC-12 (Freon), cease in the U.S. after December 31, 1995. This class of refrigerants has been replaced with newer Class III refrigerants that are less harmful to the environment. The newer Class III refrigerants are now exclusively used in new motor vehicles. The older CFC-12 (Freon) is still available for use in older vehicles as a recycled product, but will become unavailable sometime in the future.

The department has repealed all of its CFC requirements in rule 62-281, F.A.C., and has transferred all the CFC dates to the EPA for their federal program. The remaining language in rule 62-281, F.A.C., adopts the federal regulations in 40 C.F.R., part 82, by reference. This bill repeals ss. 325.221, 325.222, and 325.223, F.S. This effectively allows the federal regulations under 40 C.F.R., part 82 to become the overriding regulation for motor vehicle refrigerants in Florida.

State Parks

Section 258.007, F.S., authorizes the Division of Recreation and Parks to adopt rules to provide for punishment of violations of state park rules as a misdemeanor. Currently, if a ticket is written for a violation of minor park infractions, such as tying a tent rope to a tree instead of a stake, this becomes a criminal infraction with a corresponding criminal record. This bill creates s. 258.008, F.S., to provide that, with specified exceptions, any person who violates or otherwise fails to comply with rules adopted for state parks commits a non-criminal infraction of which ejection from all property managed by the division and a fine of up to \$1,000 may be imposed by the division.

Unless the activity has been specifically permitted by the division, any person who is in violation of any of the following commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., and shall be ejected from all property managed by the division:

- Cutting, carving, injuring, mutilating, moving, displacing, or breaking off any water bottom formation or coral within the boundaries of a state park.
- Capturing, trapping, injuring, or harassing wild animals within the boundaries of a state park.
- Collecting plant or animal specimens within the boundaries of a state park.
- Leaving the designated public roads with a vehicle within the boundaries of a state park.
- Hunting within the boundaries of a state park.
- Failing to sign a citation given for a non-criminal infraction, failing to appear in court in response to a citation, or failing to comply with the court's order.

The bill also allows golf carts to be operated on roads within the state park road system under certain conditions.

Ratification of Wetland Delineation Rule

Section 373.4211, F.S., provides that the wetland delineation rule approved by the ERC and any future amendments to the rule must be ratified by the Legislature. On February 23, 2006, the ERC approved amendments to the wetland plant list that is used in the delineation of wetlands. The amendment changes *Pinus elliottii* (slash pine) and *Ilex glabra* (gallberry) from an “upland” status to a “facultative” (neutral indicator) status. There is scientific consensus that slash pine and gallberry grow and thrive in a wide range of hydrologic conditions in both natural and manmade habitats. The rule change will allow the treatment of slash pine and gallberry within the landscape as a neutral factor when determining the boundaries of wetlands. This change reduces the current differences that exist between the state and federal wetland methodologies, which is a step toward streamlining the state and federal programs. In order for this change to take effect, the Legislature must ratify the change. The bill provides such ratification. However, the ratification and rule revision will not take effect until state and federal wetland jurisdiction delineation methodologies are aligned.

Trading of Water Quality Credits

Section 403.067, F.S., provides for the establishment and implementation of TMDLs. A TMDL is the amount of a “pollutant of concern” that a water body can receive without violating water quality standards and provides for waste load allocations, load allocations, and a margin of safety to account for uncertainties. “Pollutants of concern” include nutrients (such as phosphorous and nitrogen), sediments, coliforms, and dissolved oxygen.

In developing the TMDL for an impaired water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. The plan must integrate the appropriate management strategies available to the state and may provide for phased implementation of these management strategies.¹ This bill provides that the strategies may include the voluntary trading of water quality credits in areas that have adopted a basin management action plan.

The bill also provides that the basin management action plan must allow point or non-point sources that will achieve greater pollutant reductions than required by an adopted total maximum load or waste load allocation, to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation, if the generation of water quality credits does not remove the obligation of a source or activity 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.

¹ s. 403.067(7), F.S.

The bill 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 that takes into account future new or expanded activities or discharges has been adopted.

By July 1, 2007, rulemaking shall be initiated which provides for:

- The process to be used to determine how credits are generated, quantified, and validated.
- A publicly accessible water quality credit trading registry that tracks water quality credits and trades and lists the prices paid for such credits and that does not allow the department to participate in the establishment of such prices.
- Limitations on the availability and use of water quality credits, including a list of eligible pollutants or parameters and minimum water quality requirements and, where appropriate, adjustments to reflect best management practice performance uncertainties and water-segment-specific location factors.
- The timing and duration of credits and allowance for credit transferability.
- Mechanisms for determining and ensuring compliance with trading procedures, including recordkeeping, monitoring, reporting, and inspections. Generators of traded credits are responsible for achieving the load reductions upon which the credits are based.

Northwest Florida and Suwannee River Water Management Districts

Section 373.4142, F.S., is amended to assure that state water quality standards would not inadvertently apply to stormwater systems permitted in the NFWMD after the adoption of the stormwater environmental resource permit rules pursuant to s. 373.4145, F.S. Without this change, water quality standards would apply to stormwater systems in the NFWMD, thereby prohibiting the issuance of permits for these systems. This provision would provide consistency statewide and put the NFWMD on a par with the rest of the districts with regard to the permitting of stormwater systems.

Section 373.414, F.S., is amended to provide that certain variances that apply in the South Florida Water Management District, the Southwest Florida Water Management District, the St. Johns River Water Management District, and the Suwannee River Water Management District will apply also to the NFWMD.

Section 373.459, F.S., provides that certain match requirements for surface water improvement and management funds do not apply to the Suwannee River Water Management District and the NFWMD. This provision expires July 1, 2007. The bill provides that this provision will not expire.

Underground Petroleum Storage Tank Cleanup Programs

In 2005, the Legislature created the Innocent Victim Petroleum Storage System Restoration Program for property owners with contaminated sites that were acquired prior to July 1, 1990. To be eligible for cleanup, the site must have ceased operating as a petroleum storage or retail business prior to January 1, 1985. This committee substitute provides a definition of "acquired" to address confusion that has arisen when the property subsequently has been transferred into a

revocable trust or inherited by a surviving spouse. The property would remain eligible for cleanup assistance from the state.

Legislative Committee on Intergovernmental Relations Interim Project Recommendations for Dock and Marina Permitting

The Florida Legislative Committee on Intergovernmental Relations (LCIR) in March 2007, issued its interim project report on Dock and Marina Permitting. This was a 2-year project to review current permitting practices and identify opportunities to improve the consistency and predictability in the permitting of water related facilities in Florida. In response to that report, this committee substitute:

- Requires the DEP to conduct a salary study for environmental permitting staff and submit a plan to the President of the Senate, the Speaker of the House of Representatives, and LCIR which implements a parity compensation plan comparable to the water management districts, local governments, and the private sector marine construction industry.
- Requires the DEP to develop a project management plan to implement the remaining phases of an e-permitting program.
- Prohibits a local government from specifying the method or format of a determination by the DEP or a water management district that a project meets the provisions of authorization under ch. 253, 373, or 403, F.S.
- Amends s. 403.061, F.S., to allow DEP to maintain a list of projects or activities that applicants may consider when developing proposals to meet the applicable public interest and mitigation requirements of ch. 253, 373, or 403, F.S. Counties shall develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholder groups.

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:**Air Pollution**

The repeal of the alternate process for air operation permits for citrus juice processing facilities would not have an impact on this industry. This program was required to have EPA approval before it could be used. It was never approved by the EPA and therefore became obsolete as of July 15, 2005. These facilities would continue to be regulated under the provisions relating to Title V air operation permits.

The change to delete certain minor sources of air pollution from having to receive Title V permits would benefit primarily the following: dry-cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. In Florida, dry-cleaning facilities would benefit most from the change.

State Parks

Violators of minor state park rules would no longer be subject to criminal penalties. Instead, they would be subject to a fine of up to \$1,000. Unless specifically permitted by the Division of Parks and Recreation, certain violations will be considered second degree misdemeanors. Those acts subject to criminal penalties are identified in the bill.

Ratification of Wetland Rule

This could lead to better coordination between the state wetland delineation rules and the federal wetland delineation rules. Regulatory confusion could be reduced and this change would aid in the streamlining of wetland permitting.

Water Management District Provisions

This bill 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.

C. Government Sector Impact:**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 bill 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.

Wetlands

Generally, the impact to local and state government is insignificant. All wetlands in Florida are delineated using the same methodology.

General Local Government Impact

Other provisions in the bill either clarify certain provisions or delete obsolete provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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