

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73
SPONSOR(S): Schenck
TIED BILLS:

Expedited Permitting Process for Economic Development Projects

IDEN./SIM. BILLS: SB 852

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Governmental Affairs Policy Committee</u>	<u>10 Y, 0 N</u>	<u>Haug</u>	<u>Williamson</u>
2)	<u>Agriculture & Natural Resources Policy Committee</u>	<u>17 Y, 0 N</u>	<u>Kliner</u>	<u>Reese</u>
3)	<u>General Government Policy Council</u>	<u></u>	<u>Kliner</u>	<u>Hamby</u>
4)	<u>Policy Council</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Current law provides that a permit under Part IV of Chapter 373, F.S., including Environmental Resource Permitting (ERP) and wetland resource permits, must be approved or denied within 90 days after receipt of the original application.

This bill requires the Department of Environmental Protection (DEP) and the water management districts to adopt programs that create a 45-day expedited permitting process for businesses identified by a municipality or county as a target industry business. Projects requiring approval by the Board of Trustees of the Internal Improvement Trust Fund are exempt. The programs are limited to wetland resource and environmental resource permits.

The bill requires a mandatory pre-application review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant may take to ensure expeditious permit application review.

The fiscal impact on the DEP and water management districts is indeterminate due to the uncertainty of the number of permits affected by the expedited permitting process.

This bill may be cited as the "Mike McHugh Act" and has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida, through the Department of Environmental Protection (DEP), has several programs that regulate most land (upland, wetland, and other surface water) alterations throughout the state. One such program is the Environmental Resource Permit (ERP) program. The ERP program includes new activities in uplands that generate stormwater runoff from upland construction, as well as dredging and filling in wetlands and other surface waters.

The ERP program is in effect throughout the state, excluding the Northwest Florida Water Management District, which has just implemented rules for stormwater permitting only effective October 1, 2007. In 2006, a phased approach for implementation of environmental resource permitting in Northwest Florida was enacted. The law requires the DEP and the District to jointly develop rules "taking into consideration the differing physical and natural characteristics of the area" for stormwater management no sooner than January 1, 2007, and for the Management and Storage of Surface Waters, no sooner than January 1, 2008. The rules for ERP permitting are in Chapter 62-346, F.A.C. Rules for the Management and Storage of Surface Waters (wetlands) are expected to take effect by the end of the year. When the Rules are completed the entire state will be subject to the ERP program.

Environmental Resource Permit applications are processed by either the DEP or one of the state's water management districts, in accordance with the division of responsibilities specified in operating agreements between the DEP and the water management districts. Under these agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining (except borrow pits that do not involve on-site material grading or sorting);
- Power plants, transmission and communication cables and lines, and natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a water management district has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and

- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs).

The water management districts review and take action on all other ERP applications, mostly commercial and residential development.

Current law provides that a permit under Part IV of Chapter 373, F.S., including ERP and wetland resource permits, must be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.¹ Currently, ERP and wetland resource permits may be expedited in at least seven instances.

1. Section 373.4141(3), F.S. – requires applications for permits associated with affordable housing, including ERP and wetland resource permits, to be expedited to a greater degree than other projects.
2. Section 373.4592, F.S. – various references to expediting permits and activities impacting the Everglades, Lake Okeechobee, Caloosahatchee and St. Lucie River.
3. Section 403.0752, F.S. – creates the Ecosystem Management Agreement program. The program allows the DEP to offer expedited permitting as an incentive under an ecosystem management agreement. This would include ERP and wetland resource permits, though the statute does not specify the degree to which a permit must be expedited.
4. Various provisions in Chapter 403 dealing with power plant sitings as they relate to ERP's portion of the review.
5. Section 403.973, F.S. – creates an expedited permitting program for certain economic development projects. For eligibility, an applicant business must create either: 100 jobs, 50 jobs if the business is located in an enterprise zone or in a county of a certain population, or on a case-by-case basis at the request of a county or municipal government. The program includes ERP and wetland resource permits, though it does not specify the degree to which a permit must be expedited.
6. Section 337.0261, F.S. – expedited permitting for aggregate mining.
7. Section 380.0655, F.S. – expedited permitting for marinas with 10 percent or more of the slips open to the public.

Effect of Proposed Changes

The bill creates s. 380.0657, F.S., which requires the DEP and the water management districts to adopt programs to expedite the processing of wetland resource and environmental resource permits when such permits are for the purpose of economic development projects that have been identified by a municipality or county as meeting the definition of target industry businesses under s. 288.106, F.S. Projects that require approval by the Board of Trustees of the Internal Improvement Trust Fund are not subject to the provisions of this bill.

The bill requires the DEP to either approve or deny a permit application within 45 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application. The bill further requires a mandatory pre-application review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application review.

Pursuant to s. 288.106(1)(o), F.S., a "target industry business" means a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by the Office of Tourism, Trade and Economic Development (OTTED) in consultation with Enterprise Florida, Inc.:

¹ Section 373.4141, F.S.

- Stability – The industry may not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry may be more resistant to recession. Special consideration should be given to Florida's growing access to international markets or to replacing imports. Demand for products of this industry is not necessarily subject to decline during an economic downturn.
- High wage – The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent – The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis. Special consideration should be given to the development of strong industrial clusters that include defense and homeland security businesses.
- Industrial base diversification and strengthening – The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
- Economic benefits – The industry should have strong positive impacts on or benefits to the state and regional economies.

OTTED, in consultation with Enterprise Florida, Inc., must develop a list of such target industries annually and submit the list as part of the final agency legislative budget request submitted pursuant to s. 216.023(1), F.S. A target industry business may not include any industry engaged in retail activities; any electrical utility company; any phosphate or other solid minerals severance, mining, or processing operation; any oil or gas exploration or production operation; or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.²

In order to receive an expedited permit pursuant to the bill, a business must be identified by the county or municipality, by resolution of the county or city commission, as meeting the definition of a “target industry business” under s. 288.106, F.S.

The bill’s cited name, the “Mike McHugh Act,” recognizes the work of Mike McHugh, the Director of the Hernando County Office of Business Development.

B. SECTION DIRECTORY:

Section 1. Creates the “Mike McHugh Act”

Section 2. Creates s. 380.0657, F.S., requiring the DEP and the water management districts to expedite wetland and environmental resource permits for economic development projects that meet the target industry definition.

Section 3. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

² Section 288.106(6), F.S.

Unknown. The number of potential new expedited permit applicants cannot be determined.³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those economic development projects identified by local governments as targeted industry businesses will see their permit applications prioritized by the DEP. As a result of this prioritization, other permit applicants that might also provide economic development for their locale but do not have a statutory requirement for expedition could find their permits delayed.⁴

D. FISCAL COMMENTS:

To be eligible for incentives, a business must be designated as a target industry business by a county or municipality. The number of businesses designated by a county or municipality to receive incentives under this bill could vary substantially. Currently, counties and municipalities do not designate target industry businesses making it difficult to estimate the number of projects that this bill may affect. The bill requires a permit covered by this section to be issued within 45 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application; thus, the bill may significantly increase the workload on certain DEP staff and water management district staff depending on the number of eligible permit applicants. Due to the uncertainty of the number of permits affected, the increase in workload and fiscal impact on the DEP is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

Sections 373.043 and 373.044, F.S., grant rulemaking authority to DEP and the water management districts, respectively, to implement the provisions of Chapter 373, F.S., which include ERP and wetland resource permitting. According to the Joint Administrative Procedures Committee, however, that grant of rule-making authority does not appear to extend to Chapter 380, F.S., which this bill amends. Nevertheless, the bill may be able to be implemented without rules.

³ Department of Environmental Protection SB 852 (identical to HB 73) Draft Bill Analysis (Feb 3, 2009) at 3 (on file with the Governmental Affairs Policy Committee).

⁴ *Id.* at 4.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Department of Environmental Protection:

Establishing a new 45-day time to process creates a number of problems. Staff recommends that this provision be deleted from the bill. At minimum, language needs to be added to the effect that "Issuance of a notice of intent by the department or Water Management District, as applicable, shall be deemed to meet this time period." Doing so is necessary to provide time for action by a Water Management District Board, if necessary, and for publication of notice of the agency action, if necessary.

This bill is narrowly focused on only Part IV, chapter 373, F.S., relating to permits for certain targeted industries. A much broader and more comprehensive expedited permitting and comprehensive plan amendment process already exists in s. 403.973, F.S. Creating a new and narrower process in-lieu of utilizing the existing process would not appear to be prudent public policy.⁵

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

⁵ *Id.* at 4.