

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 2026

INTRODUCER: Community Affairs Committee and Senator Altman

SUBJECT: Regulatory Reform

DATE: March 31, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.			EP	
3.			CM	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

The CS/SB 2026 (the bill) provides a retroactive 3-year extension from the date of expiration for any permit issued by the Department of Environmental Protection (DEP), any permit issued by a water management district (WMD) under part IV of ch. 373, F.S., any development order issued by the Department of Community Affairs (DCA), pursuant to s. 380.06, F.S., and any development order, building permit, or other land use approval issued by a local government which expired or will expire on or after September 1, 2008 to September 1, 2011. Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension.

The bill provides for electronic notice of administrative hearing rights, provides requirements for the placement of dredge and fill material on submerged lands, provides for 50-year consumptive use permits for specified alternative water supply projects, and clarifies the authority of local governments and state agencies to impose certain regulations on the taking of wild animal life and freshwater aquatic life. The bill transfers responsibilities for the expedited permitting of certain economic development projects from the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the DEP.

This bill amends the following sections of Florida Statutes: 120.569, 120.60, 125.022, 166.033, 253.034, 258.42, 373.026, 373.079, 373.083, 373.118, 373.236, 373.406, 373.441, 373.4141, 403.061, 403.813, 403.814, and 403.973. This bill creates sections 161.032, 373.4061, and 379.1051, Florida Statutes, and creates one undesignated section of law.

II. Present Situation:

Permits Issued by State and Local Government

State agencies and the five water management districts have statutory authority to issue permits for a variety of issues including but not limited to, coastal construction, the use of sovereign submerged lands, consumptive use permits relating to groundwater, well construction, management and storage of surface water (dredge and fill permits, environmental resource permits, NPDES permits delegated by the federal government), phosphate mining and land reclamation; limestone mining and reclamation; heavy mineral mining; pollutant discharge and domestic wastewater discharge, drinking water facilities, pollutant discharge permits, total maximum daily loads, and permits issued by the Department of Health related to the public health and safety.

Under home rule authority, counties and cities have the authority to regulate development within their jurisdictional boundaries, including issuing permits and development orders, and imposing impact fees. The “Local Government Comprehensive Planning and Land Development Regulation Act” was created in chapter 163, F.S., to assist local governments in planning for future development and growth through the creation and adoption of the local government comprehensive plan containing required and optional elements, including a capital improvements element, a future land use plan element, a traffic circulation element, and an intergovernmental coordination element.

Development of Regional Impact Program and Date of Buildout

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.¹ For those land uses that are subject to review, numerical thresholds are identified in s. 380.0651, F.S., and Chapter 28-24, Florida Administrative Code. Examples of the land uses for which guidelines are established include: airports; attractions and recreational facilities; industrial plants and industrial parks; office parks; port facilities, including marinas and dry storage; hotel or motel development; retail and service development; recreational vehicle development; multi-use development; residential development; and schools.

Section 380.06(19)(c), F.S, provides in part:

In recognition of the 2007 real estate market conditions, all phase, buildout, and expiration dates for projects that are developments of regional impact and under active construction on July 1,

¹ S. 380.06(1), F.S.

2007, are extended for 3 years regardless of any prior extension. The 3-year extension is not a substantial deviation, is not subject to further development-of-regional impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under this subsection.

During the 2008 Regular Session, the Legislature considered a proposal to provide a 3-year extension for all development order, phase, buildout, commencement and expiration dates, and all related local government approvals for DRIs and Florida Quality Development if the development was under active construction on July 1, 2007, or for which a development order was adopted after July 1, 2006.²

Alternative Water Supply

In 2005, the Legislature enacted chapter 2005-291, Laws of Florida, to recognize the important of alternative water supply in sustaining the state's economic growth and reduce the impact to groundwater supplies. The Legislature recognized that the demand for natural supplies of water would continue to increase, but that cooperation among all water users is necessary to develop county-wide and multi-county projects to achieve economies of scale. The legislation defined the role of the water management districts and local governments in the development of alternative water supply projects, including the formulation and implementation of strategies and programs to efficiently and effectively provide for the development and use of alternative water supplies.

Sovereign Submerged Lands

Chapter 253, F.S., designates the Board of Trustees of the Internal Improvement Trust Fund, which consists of the Governor, the Attorney General, the Commission of Agriculture, and the Chief Financial Officer, as the custodians of the state's sovereign submerged lands. Section 253.03, F.S., provides for the assessment of fees for the severance of spoil materials dredged from sovereignty submerged lands, and directs the DEP to review all applications for the use of state-owned submerged lands

Mitigation

The Legislative Committee on Intergovernmental Relations issued a report in March, 2007, as a result of a project to review permitting practices to identify opportunities to improve the consistent and predictability in permitting water-related facilities in Florida. The report noted that a marine construction project is subject to regulatory mitigation requirements, and if involving sovereign submerged lands, is subject to proprietary or public interest mitigation requirements as well. Regulatory mitigation is designed to directly offset environmental impacts, but proprietary or public mitigation involves compensation for the use of public property as well as action to offset impacts. The report noted that "environmental permitting staff and the marine construction industry would benefit from a transparent process for identifying activities to serve as public interest and regulatory mitigation projects."³

² CS/CS/SB 474 by the Transportation Committee, the Community Affairs Committee, and Senator Garcia, relating to Growth Management.

³ <http://www.floridalcir.gov/UserContent/docs/File/reports/marina07.pdf> (last visited March 2009)

E-permitting

The DEP currently accepts certain types of permit applications online and provides an online self-certification process for private docks associated with detached individual single-family homes on adjacent uplands if the dock is the sole dock on the parcel. An applicant can easily determine if a private single family dock can be constructed without further notice or review by the DEP. Also, the five water management districts have designed and support a shared permitting portal. The portal is designed to direct the user to the appropriate district website for information on district permitting activities.

With respect to self-certification, the LCIR report indicated that some local governments do not accept self-certification for permit-exempt projects identified in statute, rule, or listed under the DEP's self-certification process for single-family docks. Some local governments require a signoff from the DEP permit review staff to verify the exempt status of the project submitted under self-certification.

Expedited Permitting

Section 403.973, F.S., authorizes the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor, or a Quick Business County to certify certain businesses as eligible to use an expedited permitting and review of comprehensive plan amendment process for projects that strengthen and diversity the state's economy. Recommendations for eligible projects come from Enterprise Florida, any county or city, or the Rural Economic Development Initiative. Eligibility criteria provide that the business create at least 100 jobs, or, if located within specified areas such as an enterprise zone, 50 jobs. Benefits for certified projects include identification of all permits and approvals needed, designation of a project coordinator and regional team permit action team contacts, final agency action on permit applications within 90 days of receipt of complete application, waiver of the twice-a-year limitation on comprehensive plan amendments, and waiver of interstate highway concurrency with approved mitigation.

Fish and Wildlife Conservation Commission

Art. VII, s. 9 of the State Constitution, was created in 1998 when voters adopted Amendment 5 to the State Constitution as proposed by the Constitution Revision Commission. The amendment merged the old Game and Fresh Water Fish Commission with the Marine Fisheries Commission to create the Fish and Wildlife Conservation Commission. The new commission was granted the authority to exercise the exclusive regulatory and executive powers of the state over wild animal life and freshwater aquatic life, and was granted some authority to exercise regulatory and executive powers of the state over marine life.

In *Caribbean Conservation Corp., Inc., et al v Florida Fish and Wildlife Conservation Commission, et al*, 838 So.2d 491 (Fla 2003), the Florida Supreme Court issued an Opinion finding that the commission's authority over endangered and threatened marine species is statutory and not constitutional, and the Court stated:

.."the [petitioners] and [respondents] agree that the commission's jurisdiction and authority over marine life was to be whatever the jurisdiction and authority of the Marine Fisheries Commission was over marine life as to March 1, 1998" and "When the two constitutional sections are read together, we conclude that the provisions gave to the FWCC regulatory and executive powers with respect to marine life, including the regulatory and executive powers of the Marine

Fisheries Commission in effect on March 1, 1998. However, whether this gave to the FWCC the regulatory and executive powers over all marine life depends on whether regulatory and executive powers over some marine life remained with other agencies after the voters approved the revision 5 amendments," and "The power in respect to marine life which the Marine Commission had on that date did not include the power which had been given to DEP." ⁴

III. Effect of Proposed Changes:

Section 1. Creates an undesignated section of law to provide a retroactive 3-year extension and renewal from the date of expiration for any permit issued by the DEP, any permit issued by a WMD under part IV of ch. 373, F.S., any development order issued by the DCA pursuant to s. 380.06, F.S., and any development order, building permit, or other land use approval issued by a local government which expired or will expire on or after September 1, 2008 to September 1, 2011. For development orders and land use approvals, including but not limited to certificates of concurrency and development agreement, the extension applies to phase, commencement, and buildout dates, including a buildout date extension previously granted under s. 380.016(19)(c), F.S.

The conversion of a permit from the construction phase to the operation phase for combined construction and operation permits is not prohibited. The completion date for any mitigation associated with a phased construction project is extended and renewed so that the mitigation takes place in the appropriate phase as originally permitted. Entities requesting an extension and renewal must notify the authorizing agency in writing by September 30, 2010, and must identify the specific authorization for which the extension will be used.

Exceptions to the extension are provided for certain federal permits, and owners and operators who are determined to be in significant noncompliance with the conditions of a permit eligible for an extension. Permits and other authorizations which are extended and renewed shall be governed by the rules in place at the time the initial permit or authorization was issued. Modifications to such permits and authorizations are also governed by rules in place at the time the permit or authorization was issued, but may not add time to the extension and renewal.

Section 2. Amends s. 120.569, F.S., to provide that notwithstanding any other provision of law, notice of the procedure to obtain an administrative hearing or a judicial review, including items required under the uniform rules adopted pursuant to s. 120.54(5), F.S., may be provided via a link to a public Internet site.

Section 3. Amends s. 120.60, F.S., to provide that when an applicant believes an agency's request for additional information is not authorized by law or by agency rule, the agency, at the applicant's request, must process the permit application within required timeframes.

Section 4. Amends s. 125.022, F.S., to prohibit counties from requiring, as a condition of development permit approval, that a permit applicant obtain a permit or approval from a state

⁴ On March 1, 1998, the Department of Environmental Protection had regulatory and executive authority over limited entry commercial fishing programs. See s. 370.14, F.S. (1998) relating to the spiny lobster trap certificate program, a commercial trap reduction program implemented by the Department of Environmental Protection in which limited entry to the program was based on crawfish landings.

agency or the federal government. No right to obtain a state or federal permit is created on the part of the applicant when a county does issue a development permit. In the event that a permit applicant fails to obtain other required permits, the issuance of a development permit by a county does not create a liability.

Section 5. Creates s. 161.032, F.S., to provide that when an applicant applies for a coastal construction permit, the DEP has 30 days to review the application and request additional information. If the applicant believes that the agency does not have the authority in law or rule to request additional information, the applicant may request a hearing under s. 120.57, F.S.

Once additional information is received, the DEP has 30 days to review it and request additional information, if necessary. No new issue may be raised unless it is directly related to the first request for additional information. If the applicant believes that the agency does not have the authority in law or rule to request additional information, the applicant may request the DEP to process the application and the DEP must comply.

An applicant has 90 days from receipt of a request for additional information to provide that information to the agency, and additional extensions may be granted when the applicant shows good cause for failure to meet to the deadline. Failure of an applicant to timely file requested information by a deadline will result in denial of the application without prejudice.

Section 6. Amends s. 166.033, F.S., to prohibit municipalities from requiring, as a condition of development permit approval, that a permit applicant obtain a permit or approval from a state agency or the federal government. No right to obtain a state or federal permit is created on the part of the applicant when a municipality does issue a development permit. In the event that a permit applicant fails to obtain other required permits, the issuance of a development permit by a municipality does not create a liability.

Section 7. Amends s. 253.034, F.S., to provide that the deposition of dredged material on state-owned submerged lands for restoration purposes must be conducted so as to reap the maximum environmental benefit. Fill requirements are provided.

Section 8. Amends s. 373.026, F.S., to require the DEP to expand the use of Internet based self-certification services for appropriate exemptions and general permits issued by the DEP and the WMDs. The DEP and the WMDs must identify and develop general permits for activities which currently require individual review and which could be expedited through the use of professional certifications.

Section 9. Amends s. 373.441, F.S., to provides that activities subject to a permit issued under authority delegated to a local government or a local pollution control program by the DEP or a WMD, may not be regulated by the DEP or the WMD unless that delegation agreement provides for such regulation.

Section 10. Amends s. 373.4141, F.S., to provide that a permit applicant has 90 days from receipt of a request for additional information to submit such information. An additional 90-day extension may be granted if an applicant notifies the DEP or the WMD that additional time is necessary. Additional extensions may be granted if the applicant shows good cause. Failure to

timely submit requested additional information will result in the denial of the application without prejudice.

Section 11. Amends s. 373.079, F.S., to provide that each WMD governing board must delegate all of its authority to take final action on consumptive use permits, and permits for the management and storage of surface waters, or petitions for variances and waivers relating to requirements for such permits under certain conditions. The delegation of authority is not subject to the rulemaking requirements of ch. 120, F.S.

Section 12. Amends s. 373.083, F.S., to conform to the changes proposed in s. 373.079, F.S.

Section 13. Amends s. 373.118, F.S., to provide that each WMD governing board must delegate general permitting powers and duties to the district's executive director, and the delegation is not subject to the rulemaking requirements of ch. 120, F.S.

Section 14. Amends s. 373.236, F.S., to provide for 50-year consumptive use permits for alternative water supply projects where a landowner has made an extraordinary contribution of land or construction funding to enable the expeditious implementation of an alternative water supply project. The permits may be granted to municipalities, counties, special districts, regional water supply authorities, multijurisdictional water supply entities, and publicly owned or privately owned utilities created for or by the private landowners on or before April 1, 2009, if an agreement has been entered into for the efficient pursuit of alternative water supply projects identified in a district's regional water supply plan and meeting the water needs of the project applicant and the landowner.

The authority of a WMD or the DEP to modify or revoke a consumptive use permit is not limited by the conditions authorizing a 50-year consumptive use permit.

Section 15. Amends s. 373.406, F.S., to provide an exemption for ERP or other permit requirements for the construction of public use facilities in accordance with Florida Communities Trust grant-approved projects on county-owned natural lands. Fill restrictions are provided.

Section 16. Creates s. 373.4061, F.S., to provide for a Noticed General Permit for environmental restoration activities conducted by counties. A general permit is granted to counties for the construction, operation, alteration, maintenance or removal of systems for purposes of environmental restoration or water quality improvements, subject to provided limitations and conditions. Specific restoration activities are authorized, and qualification requirements are created.

If conditions, limitations, authorized purposes, and qualifications are met, the general permit constitutes a letter of consent by the Board of Trustees of the Internal Improvement Trust Fund under chapters 253 and 258, F.S., and board rules, where applicable, for the county to enter onto state-owned submerged lands to the extent necessary to complete the permitted activities. No authorized activity divests the state of its ownership right in sovereign submerged lands.

Section 17. Amends s. 403.061, F.S., to provide that the DEP has the power and authority to:

- Adopt rules that include special criteria for approval of docking facilities with 10 or fewer slips where construction and operation of such facilities will not result in the closure of shellfish waters.
- Maintain a list of projects or activities, including mitigation banks, that applicants may consider when developing proposals to meet mitigation or public interest requirements. The contents of the list are not a rule under ch. 120, F.S., and listing a project or activity does not imply departmental approval. Counties are encouraged to develop an inventory of projects for inclusion on the list with input from stakeholders.
- Develop a project management plan to implement an e-permitting program, including an implementation timeline, estimated costs, and transaction fees. The plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.
- Expand the use of Internet based self-certification services for exemptions and general permits issued by the department.

Section 18. Amends s. 403.813, F.S., to provide that the fill requirements for the replacement or repair of existing docks and pier exempt from permitting requirements do not preclude the use of different construction materials or minor deviations to allow updated to current structural and design standards.

Section 19. Amends s. 403.814, F.S., to require the DEP to expand the use of Internet based self-certification services for exemptions and general permits required under chapters 253 and 403, for projects which have a cumulative minimal adverse environmental impact. The DEP must identify and develop general permits for activities which require an individual review to expedite the permit through the use of professional certifications. The DEP must submit a report on its progress to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.

Section 20. Amends s. 403.973, F.S., to transfer the responsibility for certifying as eligible for expedited permitting those economic development projects that create high-wage jobs from the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor to the Secretary of DEP, and to provide that businesses creating 50 jobs, or businesses creating 25 jobs in the project is located in specified areas are eligible to submit permit applications and local comprehensive plan amendments for expedited review.

Projects that result in the cultivation of biofuel feedstock or lands 1,000 acres or larger, or the construction of a biofuel or biodiesel processing facility or certain renewable energy generating facilities are eligible for expedited permitting.

Recommended orders issued by an administrative law judge for challenges to state agency action in the expedited permit process must inform the parties of the right to file exceptions to the recommended order and to file responses in accordance with the Uniform Rules. In cases where the action of more than one agency of the state are challenged, the Governor shall issue the final order, except for the issuance of department licenses required under any federally delegated or approved permit program for which the department must enter the final order within 45 days of receipt from the administrative law judge. The recommended order must inform the parties of the

right to file exceptions to the recommended order and to file responses in accordance with the Uniform Rules.

Provides that projects which derive electrical power from certain renewable fuel sources are not eligible for expedited review.

Section 21. Amends s. 258.42, F.S., to provide that slips located at private residential single-family docks in aquatic preserves, which docks contain boat lifts or davits that do not float in the water when loaded, may be roofed but may not be enclosed. The roof may not overhang the lift by more than 1-foot, and may not be considered to be part of the square footage calculation of the terminal platform when determining if the dock can be placed in an aquatic preserve without having to go through the permitting process.

Section 22. Creates s. 379.1051, F.S., to provide legislative recognition of the constitutional authority of the Fish and Wildlife Conservation Commission to regulate the taking of wild animal life and fresh water aquatic life. A state agency or a local government may not impose any requirement that creates additional restrictions or limitations on activities that conform with commission rules, management plans, guidelines, permits, or other authorizations. This provision may not affect a voluntary agreement between a landowner and a state agency or other unit of government, or limit the authority of a local government as otherwise provided by law.

Section 23. Provides that the act will take effect upon becoming a law and shall apply retroactively where expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the State Constitution, provides that “except upon approval of each house of the legislature by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

This bill does limit the authority of municipalities or counties to raise revenue. No exemptions or exceptions apply. Therefore, this bill will require approval by a two-thirds vote of the membership of each house of the legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The development community should see a substantial benefit from the provisions of this bill as permits, development orders, and other land use approvals which expired as of October 1, 2008 or will expire through October 1, 2011, are automatically extended.

C. Government Sector Impact:

This bill is expected to have a substantial impact on state and local government and will be heard by the Revenue Estimating Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs Committee on March 31, 2009:**

The “strike amendment” is the subject of this analysis.

B. Amendments:

None.