

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 1126

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Altman

SUBJECT: Permitting

DATE: April 7, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Fav/CS
2.	Wolfgang	Yeatman	CA	Favorable
3.	Pugh	Cooper	CM	Favorable
4.			WPSC	
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:

Current law directs the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) to certify eligible economic development projects for an expedited permitting process.

CS/SB 1126 transfers certain responsibilities for the expedited permitting of economic development projects from OTTED to the Department of Environmental Protection (DEP). It reduces the number of jobs that an eligible business must agree to create; extends expedited permit review eligibility to biofuel production and to projects to construct facilities processing biofuel or biodiesel or generating renewable energy; and streamlines the procedures to appeal state action of both permits and development orders issued under the expedited review process.

CS/SB 1126 substantially amends section 403.973 of the Florida Statutes.

II. Present Situation:

Permits and Development Orders Issued by State and Local Governments

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; use of sovereign submerged lands; consumptive use permits relating to groundwater; well construction; and management and storage of surface water permits, including dredge-and-fill permits, environmental resource permits, and National Pollutant Discharge Elimination System (NPDES) permits delegated by the federal government.

They also are responsible for permitting phosphate mining and land reclamation; limestone mining and reclamation; heavy mineral mining; pollutant discharge; domestic wastewater discharge; drinking water facilities; pollutant discharge permits; total maximum daily loads; and permits issued by the Department of Health related to 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 ch. 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.

Expedited Permitting

Section 403.973, F.S., authorizes OTTED or a Quick Permitting County¹ to certify certain permits as eligible for expedited review. OTTED also is responsible for reviewing comprehensive plan amendments for projects that strengthen and diversify the state’s economy. Recommendations for eligible projects come from Enterprise Florida, Inc., (the state’s business-recruitment entity), or any county or city, or through the Rural Economic Development Initiative.

Eligibility criteria require that the project create at least 100 jobs, or, if located within an enterprise zone or rural counties, 50 jobs must be created. There are no specific wage requirements, although the intent language in s. 403.973(1), F.S., references creating an expedited permitting process for projects that “offer jobs and high wages...”

On a case-by-case basis, and at the request of a county or municipal governing board, OTTED also may certify a project that creates at least 10 jobs. The economic criteria by which OTTED evaluates the eligibility of a project that doesn’t meet job requirements are:

- The proposed wage and skill levels of the jobs to be created compared to those existing in the area where the project may locate;
- The project’s potential to diversify and strengthen the economy of the area in which it plans to locate;
- The amount of capital investment by the business; and

¹ A Quick Permitting County is a county certified under s. 288.1093, F.S., and eligible for a grant under s. 288.1092, F.S.

- The number of jobs that will be made available to persons served by the welfare transition program.²

Additionally, the section mentions three types of projects that are eligible for expedited permitting, although it is unclear if this list is limiting or expansive:

- Projects located in counties where the ratio of new jobs per participant in welfare transition programs, as determined by Workforce Florida, Inc., is less than 1:1 or is otherwise “critical;”³
- Projects located in brownfields; and
- Projects that are part of The Scripps Research Institute’s Florida operation (Scripps).

It also appears that projects eligible for the Innovation Incentive Program⁴ grants could be eligible for this expedited permitting process.

According to information provided by the Governor’s Office of Planning and Budget,⁵ since 1997 there have been 26 applicants for the expedited permitting process in s. 403.973, F.S., including Scripps, a Kmart and a Wal-Mart, Corrections Corporation of America, a Lockheed-Martin facility, an airport park, and an outlet mall.

Projects explicitly ineligible for this expedited permitting process are:

- Local government waste-to-energy facilities, regulated under s. 377.709, F.S.;
- Projects that handle the final disposal of solid waste, biomedical waste, or hazardous waste;
- Projects that primarily produce electrical power;
- Projects that extract natural resources;
- Projects that produce oil; or
- Projects that construct, maintain, or operate an oil, petroleum, natural gas, or sewage pipeline.

The expedited permitting process can be complicated and lengthy. The process begins with the Governor, through OTTED, creating “regional permit action teams” to evaluate permit applications from businesses that claim their projects will meet the statutory economic criteria.

The regional action teams are established by the heads of the DEP, the Department of Community Affairs, the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, voluntarily participating municipalities and counties, and other local governments and federal agencies through execution of memoranda of agreement (MOA) among their respective agencies or governments. New MOA between participating agencies and governments must be executed with each expedited permit application.

² Sections 445.017-445.0325, F.S., relating to programs operated by the Agency for Workforce Innovation.

³ Projects in these counties must meet the numerical job requirements, but do not have to be high wage or in industries that diversify the state’s economy, per s. 403.973(3)(c), F.S.

⁴ Created in s. 288.1089, F.S.

⁵ March 23, 2010, email on file with the Commerce Committee.

Despite the complex process to undergo the expedited permitting review, there are benefits for certified projects, including the:

- Identification of all permits and approvals needed;
- Designation of a project coordinator and regional 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.

Renewable energy

Section 366.91, F.S., was created in 2005 to express legislative intent to promote renewable energy projects in Florida; require public utilities, municipal, and rural electric cooperatives, by a date certain, to take a number of actions related to purchasing electricity from renewable energy producers; and define relevant terms.

For example, “renewable energy” is defined as “electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.”

“Biomass” is defined as “a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas.”

The renewable energy industry sector is one of the state’s target industry sectors, which makes it eligible for a number of state refund or tax-credit incentive programs.⁶

III. Effect of Proposed Changes:

CS/SB 1126 makes a number of changes to s. 403.973, F.S. DEP, and not OTTED, becomes the lead agency for the expedited permitting program. It reduces the number of jobs that an eligible business must agree to create; extends expedited permit review eligibility to activities to grow or produce renewable energy products; and streamlines the procedures to appeal state action under the expedited review process.

Section 1 amends s. 403.973, F.S., to transfer the responsibility for certifying eligible projects for expedited permitting from OTTED to the Secretary of the DEP. The responsibility to conduct economic assessments for projects and comprehensive plan amendments submitted for an expedited permit review remains within the OTTED. Supporters of the bill say that DEP is more

⁶ More information is available about Florida’s efforts to promote renewable energy projects is available at <http://www.eflorida.com/innovationcenter.aspx?id=6202>.

suited to lead the expedited permitting program because it administers or oversees most of the state's environmental permitting programs that affect businesses.

It also reduces by half the number of jobs a project must create before qualifying for expedited permit or comprehensive plan amendments review, but leaves unchanged existing waivers to the job-creation requirements.

Unlike current law, the project applicant and the Secretary of the DEP will work together to create the MOA, with input from the applicable agencies and participating government entities. Certain types of energy projects are specifically eligible for the expedited permitting process:

- Projects that result in the cultivation of biofuels on lands 1,000 acres or larger;
- Construction of a biofuel or biodiesel processing facility; and
- Power-generating facilities using renewable fuel sources.

For consistency, the CS also clarifies that the existing exclusion of projects that produce electricity from the expedited permitting process does not include renewable energy producers.

Under the expedited review process, appeals of local government comprehensive plan approvals for a project must occur through a summary hearing and be consolidated with the challenge of any applicable state agency actions. This differs from current law which gives the local government the option on how to handle permit and development challenges. Other provisions related to the appeals process include:

- 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 Rules of Administrative Procedure.
- For cases where the action of more than one agency of the state is 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 (as opposed to 10 days as in current law).
- Summary proceedings for renewable energy project applicants, as is the case with Innovation Incentive projects currently, must be conducted within 30 days after a party files the motion for the hearing. For all others, the summary proceedings must be conducted within 30 days after all parties agree in writing to have a hearing.
- 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 Rules of Administrative Procedure.

This section also contains several technical and conforming changes.

Section 2 provides that the CS becomes effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 job-creation requirement for expedited permit review will be reduced by half so more projects and comprehensive plan amendments will qualify. The economic benefits to businesses from CS/SB 1126 may be significant, but are indeterminate.

Projects creating, processing or using biofuels to create renewable energy will be eligible for expedited permit review. Biofuel research and production is a quickly expanding field. Expediting such permits will benefit companies involved in biofuels; however, the economic benefit is indeterminate.

C. Government Sector Impact:

The agencies estimate they can meet the provisions of the CS with existing staff and resources.

VI. Technical Deficiencies:

Supporters of the CS have stated that s. 403.973, F.S., as redrafted by this CS, will require only one MOA to be signed for an individual project, rather than individual MOAs between OTTED and each applicable agency. However, the term “memoranda” of agreement is still used throughout the section of law, seeming to indicate that more than one MOA could be utilized.

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 Environmental Preservation and Conservation on March 4, 2010:

The CS restores OTTED’s responsibility to conduct economic assessments of projects and local comprehensive plan amendments submitted for expedited permit review.

- B. **Amendments:**

None.