

**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: March 9, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Kiger</u>	<u>EP</u>	<b>Fav/CS</b>
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	<u>WPSC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The committee substitute (CS) transfers certain responsibilities for the expedited permitting of economic development projects from the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor to the Department of Environmental Protection (DEP). It expands expedited permit review eligibility to biofuel production and power generation. It also changes the procedures to appeal state action under the expedited review process.

The CS becomes effective upon becoming law.

This CS substantially amends section 403.973 of the Florida Statutes.

**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, 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, National Pollutant Discharge Elimination System (NPDES) permits delegated by the federal government). They are also 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 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

### **Expedited Permitting**

Section 403.973, F.S., authorizes the OTTED in the Executive Office of the Governor, or a Quick Permitting County<sup>1</sup> to certify certain business permits as eligible for expedited review. The OTTED is also responsible for reviewing comprehensive plan amendments for projects that strengthen and diversify the State’s economy. Recommendations for eligible projects come from Enterprise Florida, any county or city, or the Rural Economic Development Initiative. Eligibility criteria require 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 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.

It has become clear after discussions with regulated community stakeholders that the process is too cumbersome to be utilized effectively. 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 understanding between their respective agencies or governments. New memoranda of agreement between participating agencies and governments must be executed with each expedited permit application.

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<sup>1</sup> 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.

### III. Effect of Proposed Changes:

**Section 1** amends s. 403.973, F.S., to transfer the responsibility for certifying eligible projects for expedited permitting for economic development projects that create high-wage jobs from the OTTED in the Executive Office of the Governor to the Secretary of the DEP. The responsibility to conduct economic assessments for projects and comprehensive plan amendments submitted for expedited permit review remains within the OTTED. It reduces by half the number of jobs a business must create before qualifying for expedited permit or comprehensive plan amendments review. The applicant and the Secretary of the DEP develop the memorandum of agreement with input solicited from the respective heads of agencies and participating government entities.

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 would become eligible for expedited permit review. "Renewable energy" is defined as in s. 366.91(2), F.S., to mean electrical energy produced from one or more of the following 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.

Under the expedited review process, appeals of local government comprehensive plan approvals for a project shall 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 greater control over the appellate procedures.

The CS requires that 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. Additionally, the CS provides that for 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 (as opposed to 10 days as in current law). 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 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:

Removing the OTTED from the environmental aspects of the expedited permit review chain may lead to streamlining of expedited permit and comprehensive plan amendment reviews by the DEP. Businesses would then need to execute only one memorandum of agreement with the DEP, not separate ones with each agency or governmental entity. Additionally, the job creation requirement for expedited permit review was reduced by half so more projects and comprehensive plan amendments will qualify. The economic benefits to businesses from this CS 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:**

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 Environmental Preservation and Conservation on March 4, 2010:**

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

B. Amendments:

None.

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

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