



EPC BILL SUMMARY
2009 LEGISLATIVE SESSION
-MARCH 23, 2009 UPDATE-¹

HB 73 Permit Process for Economic Development Projects (Identical SB 852)

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Designates act "Mike McHugh Act" and the bill requires DEP and Water Management Districts to adopt programs to expedite processing of wetland permits (ERP) for certain economic development projects that have been identified by municipalities and counties as "target industry business" per section 288.106, F.S. (see definition below) The local governments shall identify specific businesses as targeted industry businesses by commission resolution. Mandatory pre-application meetings are required. The normal 90-day permit process (after an app is complete) is reduced to 45 days. In this economic climate this bill may pass, where in past years it has died in committee. The bill would add more pressure on DEP, WMD, and delegated local governments to review and issue wetland permits quicker. EPC staff has no objection, but note concern about additional burdens on smaller staffs. This bill may impact EPC work load when we get partial wetland delegation in near future. EFFECTIVE DATE: 07/01/2009.

"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 in consultation with Enterprise Florida, Inc.:

1. Future growth.--Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to Florida's growing access to international markets or to replacing imports.
2. Stability.--The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not necessarily subject to decline during an economic downturn.
3. High wage.--The industry should pay relatively high wages compared to statewide or area averages.
4. 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 which include defense and homeland security businesses.
5. 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.
6. Economic benefits.--The industry should have strong positive impacts on or benefits to the state and regional economies.

The office, in consultation with Enterprise Florida, Inc., shall develop a list of such target industries annually and submit such list as part of the final agency legislative budget request submitted pursuant to s. 216.023(1). 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. (see 288.106, F.S.)

SB 114 Contaminated Property/Notification

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Current law requires the DEP to notice any adjacent property that is discovered to be contaminated also when the other property is undergoing rehabilitation. This bill would additionally require the DEP to

¹ KEY TO FONTS and HIGHLIGHTING:

- a) Yellow highlight of bill number and title and/or ****TRACK**** = bill EPC needs to track closely
- b) Red font and/or "[ADDITIONAL INFO]" = updated info on a previously analyzed bill
- c) Red font and/or **[NEW]** = addition of a new bill previously unanalyzed in this summary

provide notice within 60 days to property owners within a 1-mile radius of contaminated property. The DEP must also provide notice to schools in the 1-mile radius and those schools must then notify teachers and parents. Finally, the DEP must make available additional information about the contamination. This could be a very costly and unfunded mandate, especially in densely populated areas. It may be more appropriate to require the mailing based on the potential for pollution plumes to migrate, as opposed to an arbitrary 1-mile radius. EPC staff does not object, as it does not appear to require delegated programs to implement this.

EFFECTIVE DATE: 07/01/2009.

SB 118 Wekiva Onsite Sewage Treatment and Disposal

Sponsor: Sen. Lee Constantine – Seminole/Orange Counties (St. Johns River basin)

SB 118 would provide financial assistance to low-income property owners in certain parts of the Wekiva River Basin to upgrade their Onsite Sewage Treatment and Disposal System (OSTDS – aka septic tank/drain field systems). As currently drafted, SB 118 is limited to only the Wekiva River area. The Bill would basically establish a septic tank/drainfield upgrade program in the Wekiva area, with a funding mechanism for low-income households, which would be administered by the Health Dept., in coordination with the DEP, and the SJRWMD. The older OSTDS are proposed to be replaced by “nitrogen reducing performance-based treatment systems.”

Residents of Hillsborough County (and other parts of the state), may want to be included in this initiative, particularly if it could provide dollars to Hillsborough County residents for upgrading faulty septic tank systems (to reduce the nutrient loads to waterbodies), provided that they meet the low-income criteria stipulated in the bill. EPC staff suggests expanding the bill by targeting other watersheds where faulty septic tanks have been identified as a source for water quality problems/nutrient impairments (e.g. the Hillsborough River).

SB 148 Mangrove Protection (HB 625 is very similar)

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The bill proposes to change:

(1) the \$5,000 penalty for “trimming without a permit” to “failing to comply with any provisions of the mangrove statute.”

(2) Non-substantive change to the intent section

(3) Allows DEP to adopt additional General Permits (GPs) and exemptions – reading the statute – these DEP GPs or exemptions would most likely not be binding on the local government - like the statutory mangrove fringe exemption is - but we may want to look into this a little more.

(4) Finally there is a new exemption for the prohibition of trimming mangroves on lands set aside for conservation, preservation, or mitigation. Trimming would be allowed where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans. That’s a little vague because it says “enhance public use of, or access to, conservation areas.” Think of trimming to expand a ball park or similar issue. This could be abused. In general, EPC staff does not have objections to this bill.

[ADDITIONAL INFO] A recent committee substitute has created a tiered approach to the penalties for mangrove violations (as opposed to just \$5000 for any violation), based on the severity of the violation.

HB 155 -- Vessel Safety (SB 306 identical)

The bill prohibits a boat owner to allow a person to operate their boat if that person does not have a boat safety training card. Additionally, it prohibits the allowing the operation of a boat by anyone younger

than 16 (current law is 14). The current law still requires anyone operating a boat to have adequate training, it just doesn't require them to hold a card. Boat rentals (livery) also will have to do extra confirmation that the renter has appropriate training. Thus, this means EPC staff would need to carry their boater card while operating an EPC vessel and the card is acquired via the appropriate FWCC training course (typically \$35 course).

HB 255 -- Pest Control

EXCERPT FROM HOUSE STAFF ANALYSIS: "HB 255 codifies the Interstate Pest Control Compact (IPCC) into Florida statutes, which is necessary for Florida to maintain membership in the IPCC. The IPCC was formed in 1968 with the assistance of the Council of State Governments and is comprised of 37 states, including Florida. The IPCC provides funding resources to states that may not have the necessary available capital to respond to a pest outbreak posing a threat to agriculture. Member states pay an initial assessment of \$2,000 base plus a percentage of the value of the state's agriculture and forestry crop values. Over the six year period of 1995-2001, Florida's payment totaled \$39,342. Since becoming a member in 1995, Florida has received \$240,522 in funding from the IPCC Insurance Fund for noxious weed and tomato virus control activities." This bill does not appear to be an EPC issue; no comments.

SB 274 FL Springs Protection Act

Sponsor: Senator Lee Constantine (R) Seminole and Orange Counties.

As written, SB 274 would set up a pilot water quality/quantity protection program for four large (1st magnitude) springs in Florida (Ichetucknee, Rainbow, Silver, and Wakulla), none of which are located in Hillsborough County. The Bill calls for the establishment of "spring protection zones" for these four springs by 12/1/2010. The Bill also has ties to the statewide "impaired waters" program because, by July 2011, it calls for the FDEP to adopt "total maximum daily loads to address nitrogen concerns in the springs."

Analysis: Preliminary cost estimates to address impaired waterbodies in Florida, the majority of which are for nutrient impairments, are very high (10's of billions of dollars). The main thrust of SB 274 is to address nutrient loads coming from[coming from or going into?] four major springs in central Florida, so in that respect, the Bill has the potential to save public dollars to comply with "total maximum daily loads" for those four watersheds over the long run. EPC staff has no objection to the bill.

Additional info: There are a large number of impaired waters in Hillsborough County, many with nutrient impairments. As currently drafted, SB-0274 does not apply to waterbodies within Hillsborough County. However, the management actions under SB-0274 for addressing nutrients in the four pilot watersheds will likely have relevance to management actions eventually enacted for nutrient impaired waters in Hillsborough County. SB-0274 could therefore set a valuable precedent for developing Basin Management Action Plans to address high nutrients for other, smaller springs around the state, including those in Hillsborough County.

SB 360 Growth Management (Committee Substitute #1 dated March 3)

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This is an omnibus growth bill that, among other things, proposes to create the "Community Renewal Act." The main goal is to relieve regulatory restraints on development within densely populated urban areas, thus (1) encouraging economic development within these areas and (2) discouraging urban sprawl. Some argue that as long as land is cheaper in the rural and suburban areas, no legislation will halt sprawl.

PER SENATE STAFF ANALYSIS SB 360-C1 proposes the following as follows:

- Extends the compliance deadline for local governments to submit financially feasible capital improvement elements (CIE) from December 1, 2008 to December 1, 2011, and eliminates one of the penalties for failing to adopt a public schools facility element.
- Creates Transportation Concurrency Exception Areas (TCEAs) in all local government jurisdictions with an average of at least 1,000 people per square mile, and in counties, including the municipalities located therein, which have a population of at least 1 million. TCEAs are not created for designated transportation concurrency districts within a county that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees.
- Creates a waiver from transportation concurrency requirements on the state's strategic intermodal system for certain Office of Tourism, Trade, and Economic Development (OTTED) job creation projects.
- Applies the alternative state review process to comprehensive plan map amendments in jurisdictions where the local government has 1,000 or more persons per square mile or a county, including the municipalities located therein, which has a population of at least 1 million, and map amendments in Rural Areas of Critical Economic Concern (RACEC) communities if certified by the OTTED as supporting a RACEC target industry. This reduces the statutorily prescribed timeframe from 136 days to 65 days.
- Decreases the allowable submittal of text amendments to comprehensive plans from twice a year to once a year, unless the text amendment is directly related to a future land use map amendment.
- The proposed legislation deletes a penalty for a local government's failure to adopt a school facilities element into their comprehensive plan by the December 1, 2008. The penalty would prohibit local governments from adopting amendments to the comprehensive plan increasing residential density.
- Section 380.06(29), F.S., is added to exempt local governments containing an average of at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million from the DRI process. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.
- Section 163.31801(3)(d), F.S., is changed to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

EFFECTIVE DATE: Upon becoming law.

SB 494 Water Conservation/Automatic Sprinkler Systems

SB 494 is sponsored by Sen. Michael Bennett, whose senate district is south of Hillsborough covering parts of Manatee, Desoto, Charlotte, and Lee counties. SB 494 is water conservation oriented, and would strengthen the requirements for, and inspection programs of, automatic shutoff mechanisms on outdoor sprinkler systems. It proposes a model ordinance and penalties. Requires sprinkler contractors to test the shutoff mechanisms. It looks good on paper, but if passed seems difficult for the state to enforce. If counties would have to adopt it, it may be costly and difficult to enforce. EPC staff does not object.

[ADDITIONAL INFO] A recent committee substitute makes the proposed model ordinance a mandatory requirement of the DEP and then the local governments must adopt the model on or before October 1, 2010. Any local government that has a more stringent water conservation code would be exempt from adopting this code.

HB 559 Mosquito Control Districts (Identical SB 924)

Requires board of commissioners in mosquito control districts containing Outstanding Florida Waters to develop, adopt, and implement mitigation/remediation plans if it is discovered that the mosquito control activities had created adverse effects to water. The plans must be adopted by July 2010. It also authorizes the board to levy taxes for specified purposes. This could be costly for the counties, but EPC staff has no objections. EFFECTIVE DATE: 07/01/2009.

HB 593 Water Resources

The bill updates current law regarding the advancement of Florida-friendly landscape. It deletes references to "xeriscape." Current law says that HOA restrictive covenants cannot prohibit FL-friendly landscape practices if the covenant was entered after October 2001. The bill proposes to delete the 2001 date, thus prohibiting all HOAs from denying FL-friendly landscaping. The bill also revises eligibility criteria for certain WMD incentive programs for local governments with conservation ordinances and it requires certain local government ordinances and amendments to incorporate specified landscape irrigation and design standards. The bill also updates criteria for water well contractor licensing. No objection from EPC staff. EFFECTIVE DATE: 07/01/2009.

HB 625 -- Mangrove Protection

****TRACK****

This bill is very similar to the first version of SB 148, but now the senate bill has a committee substitute that has a tiered penalty scheme proposed, as opposed to \$5000.

House Bill 625 proposes to change:

- (1) the \$5,000 penalty for "trimming without a permit" to "failing to comply with any provisions of the mangrove statute."
- (2) Allows DEP to adopt additional General Permits (GPs) and exemptions by rule where in the past all mangrove regulations are in the statutes. Depending on how future GPs or exemption rules are crafted, it may require EPC to revise its mangrove rules.
- (3) Finally there is a new exemption for the prohibition of trimming mangroves on uninhabited islands and lands set aside for conservation, preservation, or mitigation. Trimming would be allowed where necessary to protect the public health, safety, and welfare or to enhance public use of, or access to, conservation areas in accordance with approved management plans. That's a little vague because it says "enhance public use of, or access to, conservation areas." This could open the door to trimming to expand a ball park or similar issues. This could be abused.

SB 630 Impact Fees/Moratorium on Imposition or Collection (Identical H 1129)

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This bill establishes a 3-year moratorium on the imposition or collection of impact fees by a county or municipality. Provides for expiration of the moratorium on 10/1/2012. The bill states in part, "Notwithstanding any law, ordinance, or resolution to the contrary, a county or municipality may not impose or collect any impact fee for any purpose from October 1, 2009 through September 30, 2012." Most local governments are concerned about the language in this bill, as it would temporarily stop many sources of revenue that are needed to assist in building new infrastructure to support growth. EFFECTIVE DATE: 07/01/2009.

HB 681 Tax on Sales, Use, and Other Transactions (Identical S 1358, Compare H 1163)

Deletes exemption for sales of drinking water in containers, but not flavored or carbonated. EPC staff has no position on this matter. EFFECTIVE DATE: 07/01/2009.

SB 692 Motor Vehicles/Lake Beds

The bill amends current law to clarify that motor vehicles cannot be driven on exposed/dry lake beds that are in public use. This could impact EPC and County investigators who need to drive on a lake beds to do research and investigate matters. We don't believe the law would be used to penalize environmental scientists, but that could be clarified in the required rulemaking. No EPC staff objection.

HB 707 Construction Defects/Mgmt of Wastewater

This bill requires Dept. of Health to notify local governments and local offices of DEP when health advisories regarding beach swimming advisories are issued due to fecal coliform or enterococci bacteria samples. Upon notice, the local offices of DEP must to conduct investigations of wastewater treatment facilities with 1 mile of the beach to see if they had any incidents and provide results of such investigations to the local governments. EPC staff has no objections. EFFECTIVE DATE: 07/01/2009.

HB 755 -- Water Conservation (SB 494 is very similar)

This bill is water conservation oriented, and would strengthen the requirements for, and inspection programs of, automatic shutoff mechanisms on outdoor sprinkler systems. It proposes a model ordinance and penalties ranging from \$50 to \$250. Requires sprinkler contractors to test the shutoff mechanisms. The DEP would be authorized to delegate these enforcement powers to the Water Mgt. Districts or to local governments. Very similar to the first version of SB 494.

SB 982 "Protection of Urban and Residential Environments and Water Act"

****TRACK****

This bill is proposed to be effective July 1, 2009. The intent of the bill is to only require mandatory adoption of the last year's FDACS model code by those local governments that have a water segment that is listed by the DEP as impaired for nutrients. This still would impact a large amount of local governments. All other local governments are merely encouraged to adopt it. The bill does say local governments can also adopt "additional" more stringent provisions, but it doesn't explain how or under what conditions, but those answers can be found in the FDACS model. The FDACS model code allows local governments to be more stringent with a demonstration of impaired waters, or harm to health or environment, or a showing that water quality will improve with a more stringent rule.

The bill requires commercial applicators to be certified by Green Industry BMP program run by FDACS and IFAS. Some key language in the FDACS model code is as follows:

1. Only apply fertilizer in conformance with FDACS rule 5E-1.003(2), F.A.C.
2. The model has a prescribed application rate depending on the type of grass and the region of the State.
3. You can apply at a higher rate only if you verify a soil or tissue deficiency through an approved test.
4. The restricted season is defined as not applying fertilizer during large storm events or imminent rainfall (not a summer months' prohibition).

Some areas that need to be addressed are as follows:

1. If the local government has waters listed as nutrient impaired, the bill would mandate adoption of the FDACS model code, not just an ordinance that is substantially equivalent. The bill states that if you want to be more stringent, you can add "additional" conditions. This suggests that locals could not just draft an ordinance

from scratch. The EPC suggests that a more reasonable bill would say, adopt the FDAC model code or an ordinance substantially equivalent to the FDACS model code. This would give local governments more flexibility to deal with local issues (and it may allow for grandfathering), but of course many different ordinances (as opposed to a state mandated one) could confuse commercial applicators that work in multiple jurisdictions.

2. The bill does not have a provision for grandfathering of existing ordinances, thus presumably Sarasota County (and other local governments who pass an ordinance before July 1, 2009) may have to rescind their existing ordinances, adopt the FDACS model, and then add more stringent provisions as needed. Orange County and Pinellas County are rumored to be adopting ordinances in the near future.

3. The bill has no guidance on enforcement provisions, and the FDACS code barely has any. The FDACS model the bill proposes to adopt has a definition section that defines “code enforcement officer” and “administrator” and in those two definitions they hint that those two entities would do the enforcement, but the body of the code has no enforcement provisions or guidance.

The Tampa Bay Estuary Program (TBEP) model code that many local bay area counties and cities are considering implementing is a stronger code for the protection of water quality, but this FDACS model adopted in the bill that still gives local governments flexibility to be more stringent is a good start if the above suggestions can be included.

HB 987 Water Mgmt. Districts

This bill states that a Water Mgt. District (WMD) may not issue certificates of participation unless the electors of the district approve the issuance of the certificates of participation in a referendum. A certification of participation is a financing mechanism in which an individual buys a share of the lease revenues of an agreement made by a municipal or governmental entity, rather than the bond being secured by those revenues. EPC staff has no position in this matter. Could cost more money to hold referendums.

[ADDITIONAL INFO] ERM adds the following: Most likely, HB 987 has close ties to financing the state’s proposed land purchase of some 180,000 acres from U.S. Sugar in the Everglades. The South Florida Water Management District (SFWMD) proposes to finance the land purchase by issuing “certificate of participation” bonds for about \$1.75 billion. Under the current legislation, the SFWMD Governing Board, with final approval from Governor Crist, has the authority to issue these bonds. HB 0987 would call for a public referendum for Water Management Districts (e.g. the SFWMD) to issue “certificate of participation” bonds for purchases such as this one. Apart from the SFWMD, staff is not sure if the four other Water Management Districts deal in “certificate of participation” bonds. Recommendation: Oppose HB 0987; support Governor Crist, and the South Florida Water Management District, in their efforts to have a transparent and streamlined process for purchasing large tracts of land that are needed for Everglades/Lake Okeechobee, and Florida Bay restoration.

SB 1002 Beach Erosion Control Projects

The bill cleans up an obsolete funding provision in a DEP coastal protection law. No objection.

SB 1004 Coastal Zone Protection

Chp. 161 has a requirement that the state land planning agency (the DCA) shall develop and maintain a biennial coastal building zone construction training program for the local enforcement agencies. This bill eliminates obsolete provisions that required the first training program by a certain date in 1987. No EPC impact or objection. EFFECTIVE DATE: 07/01/2009.

SB 1014 State Parks and Preserves

This bill merely deletes a 1997 DEP rulemaking deadline for aquatic preserves. No objection from EPC staff.

HB 1053 Injection Wells (Identical SB 1438)

This bill amends current injection well laws. It appears to only apply to Class V injection wells (including but not limited to domestic wastewater injection wells) in Monroe County (FL Keys). The law creates minimum standards for backup wells that are needed in case the primary injection well can't be used. The bill provides exceptions to requirements of DEP regarding minimum casing for injection wells used by facilities. No EPC staff objection. EFFECTIVE DATE: Upon becoming law.

HB 1079 Petroleum Restoration Program

This bill creates Petroleum Restoration Program Advisory Board in DEP made up of 7 political and DEP appointees. The board must meet four times per year to discuss strategies for statutory or rule changes, funding, staffing, site ranking, and any other strategies intended to improve the efficiency of the program. The board shall prepare an annual report, including, but not limited to: "(a) A review of the department's 'Preapproval Standard Operating Procedures Manual' and rules related to petroleum site owners, operators, and environmental contractors; (b) A review of the productivity and efficiency of the program and the issues affecting the quality and cost-effectiveness of site assessment and restoration; (c) Recommendations for improving program policies to increase the number of site cleanup completion orders issued by 10 percent annually and achieve restoration of all sites in the program by 2025." The board must submit annual report to DEP Secretary and the Legislature on January 31st of each year. EPC staff has no objection. EFFECTIVE DATE: 07/01/2009.

[ADDITIONAL INFO - 3/10/09] The seven-member Board will be made up of appointments named the Senate president (1), Speaker of the House (1) and FDEP Secretary (5). Purpose of the Board is to: 1) Review the Pre-Approval SOP and rules, 2) Review program efficiency and effectiveness, and 3) Make recommendations to improve the program. One interesting facet in the bill call for "improving program policies" to increase the number of Site Rehabilitation Cleanup Orders (SRCOs) annually by 10% and complete restoration at all program sites by 2025.

[NEW]

HB 1133 Stormwater Assessment Fee and Ag Land Permitting (see also SB 1974)

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In addition denying counties the ability to charge Ag lands a stormwater management fee, HB 1133 adds the "or enforce" language regarding local program adopting or enforcing laws on Ag lands that already must comply with similar State laws or BMPs, but it does protect "county" (not city or local gov't) wetland rules adopted prior to January 1, 2009. It also requires people moving next to farms to sign a form waiving nuisance claims. At a minimum, this would mean all non-wetland local rules that apply to farms may be unenforceable if a state rule or BMP already applies to the farm. The bill also exempts farm fences from any local permits or fees (currently all nonresidential farm buildings are exempt). EPC staff objects to this bill.

PER ANALYSIS FROM COUNTY STORMWATER STAFF THEY STATE, IN PART, AS FOLLOWS:

[The bill states:] "A county may not charge an assessment or fee for stormwater management on land classified as agricultural land pursuant to s. 193.461, if the farm operation has an agricultural discharge permit or implements best management practices adopted as

rules under chapter 120 by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, unless the county adopts an ordinance that provides credit against the assessment or fee for the water quality and flood control provided by the farm operation through its permitted stormwater management system or implementation of the best management practices."

We expect that the Florida Stormwater Association will be opposed to the above wording in HB 1133 and SB 1974. In unincorporated Hillsborough County, the stormwater fee rate for single family residential parcels is \$12 per year. The charges appear on the annual property tax bill as non-ad valorem assessments, which are subject to discount for early payment. The stormwater fee of \$12 per year for agricultural properties is for those parcels that have impervious area, that is, roofed and/or paved area. If there is no impervious area on an agricultural property, there is no stormwater charge. For 2008, the number of agricultural properties in unincorporated Hillsborough County was 6,915, and of those, 4,362 had a \$12 stormwater charge, for a total agricultural billing of \$52,344.00. The 2008 total billing for all parcels, including agricultural properties, was \$5,734,268.90. Revenue from the stormwater fee, including that from agricultural properties, has been used for stormwater capital projects (flood control and water quality improvements), stormwater master plans and NPDES permit activities. If the above wording in HB 1133 and SB 1974 is enacted into law, Hillsborough County would be prevented from charging a stormwater fee for qualifying agricultural properties, as the Hillsborough County Stormwater Management Utility Ordinance specifically prohibits credits. Further, a precedent would be set for owners of other types of properties to request similar legislation for their properties, which, if enacted, would reduce and potentially eliminate stormwater fee revenue to Hillsborough County.

SB 1186 Permitting of Landfills

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The bill prohibits the DEP from approving an application for the construction or expansion of a Class I landfill if the DEP finds in an order that the applicant violated state laws or rules during the past 3 years from issuance of the order. The timing of finding of the violation is poorly crafted. The violations should be pegged to the application date not the enforcement order date. The violations must relate to improper disposal of hazardous waste, medical waste, or polychlorinated biphenyl waste in a disposal facility. The bill also requires the DEP to conduct a study concerning the relationship of the location of Class I landfills and Class III waters and the potential pollution. The DEP must report these findings to report to the Governor and the Legislature by Feb. 2010. EFFECTIVE DATE: 07/01/2009.

SB 1328 Commercial Fertilizer Application

****TRACK****

This bill is not as holistic as other fertilizer application bills and models, as it deals strictly with certification programs. It proposes to amend Chp. 482, F.S. which currently is only a pest control law, not a fertilizer law. The bill requires by January 1, 2010, that all employees who apply fertilizer commercially to urban lawns (not Ag) must carry an identification card that identifies them as being certified to apply fertilizers. The DEP would be charged with creating a training program to qualify persons to apply fertilizer using best-management practices (BMPs). The training will be based on "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida," published by the DEP. The bill provides extremely detailed topics for the training. It requires the training to include topics, such as: non-point source pollution, fertilizer characteristics, soil types, application rates, turf grass species, irrigation, Florida landscape plants, pesticides, etc. The bill provides detailed prerequisites for the trainers. The bill allows a rule-based registration fee of \$50 to \$150 for the training and \$25 to \$75 for annual re-certification. Certification under this limited/targeted program does not allow application of pesticides or pesticide-fertilizer mixes. Additionally, the bill allows for the imposition of administrative fines not to exceed \$1000 for violations of this section. This bill does not appear to pre-empt local governments who have a fertilizer ordinance, but the underlying statute clearly pre-empts most aspects of pesticide regulation (see 482.242). Arguably any local law that has a fertilizer application training or certification process, could not be in conflict with this bill. Thus a future ordinance by Hillsborough County may not be able to collect much revenue if the DEP is already charging a state fee. This bill is proposed to be effective July 1, 2009.

[NEW]

HB 1349 Environmental Protection (see SB 2104)

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This is an omnibus land acquisition and environmental bill that is supportable, but the House Committee on Ag and Natural Resource has a substitute or amendment dated 3/19/09 that weakens State wetland permitting. This bill deals mainly with state land acquisition issue and amends the make-up of the Acquisition and Restoration Council. Counties would no longer have only 40 days to accept a offer to purchase State land that is proposed to be sold.

Here are some key issues in the published (not the committee amendment) version of HB 1349:

- 1) Page 14 of 28 – slight change to sovereign submerged lands ownership by governments.
- 2) Page 16 of 28 – proposes that not only Air operation permits, but Air construction permits, may not issue by default after 90 days and may include reasonable conditions. Before it said only operation permit “shall” not issue by default. Thus, they may be opening up the concept that some Air permits can issue by default, but that is not clear.
- 3) Page 17 of 28 – proposes to exempt major source of Air pollution from ELRA administrative fine procedures (thus we could not assess \$10,000 or less in penalties into an NOV for these cases).
- 4) Page 18 of 28 – clarifies in ELRA NOV proceedings that the respondent can collect attorney’s fees from the agency if the Final Order does not impose penalties, damages, or corrective actions. This is a good change, b/c in the past a respondent could collect attorney’s fees if a Final Order didn’t award penalties (but theoretically the Respondent could have been required in the Final Order to do substantial corrective actions, but not pay penalties, and he could still recover attorney’s fees as if they won the case.)
- 5) Page 18 through 26 of 28 – it adds a host of drinking water, wastewater, mangroves, wetland, and waste penalties in ELRA. These are good changes to clarify the ELRA penalty matrix for wastewater and other violations. A wetland violation in a conservation easement is increased from \$1000 to \$10000.
- 6) Protects governments better from losing land under the marketable record title laws.

EPC Staff can support large portions of this bill, but would object to any weakening of wetland permitting regulations that the committee is proposing.

It is unclear if the wetland amendment has passed the committee, but clearly the webpage for 1349 shows 1349 passed the committee with a substitute. This amendment states that if certain scientists submit a application for a wetland permit under Chp. 373, and the DEP/WMD deem is complete, then it should be found to comply with the laws, and that if the DEP/WMD denies it, the DEP/WMD has the burden to prove non-compliance. I assume if we got partial wetland delegation, we’d have to live by this language too. See language below:

48 | being performed by areas affected by the proposed activity.
49 | (b) A permit application that is determined to be complete
50 | by the department that has been prepared and signed by licensed
51 | professionals including scientists, engineers, geologists,
52 | architects or other qualified professions shall be presumed to
53 | comply with the provisions of this section. In the event the
54 | department determines to deny the permit application or the
55 | application is challenged by a third party, the burden shall be

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

56 | on the department or the challenging party to demonstrate non-
57 | compliance by a preponderance of the evidence.

SB 1490 Fertilizer Application/Phosphorus

****TRACK****

Sponsor: Senator Pruitt (R) – parts of Martin, St. Lucie, Palm Beach, Okeechobee, & Indian River counties

SB 1490 prohibits **state-wide** the application of phosphorus containing fertilizer. SB 1490 includes language on phosphorus control that is very similar to language found in the FDACS Rule [Rule 5E-1.003(2)] for urban turf fertilizers. **Key to us: SB 1490 would not, as drafted, preempt locals from acting to control improper urban fertilizer use to clean up nutrient impaired waterbodies.** It is proactive in trying to cut back on nutrient loads from urban stormwater runoff in Florida, and specifically in the Lake Okeechobee and Indian River areas.

The bill reads in part: “Other than no-phosphate and no-phosphorus fertilizers, fertilizer containing phosphorus may not be applied to urban turf anywhere in this state on or after July 1, 2011, unless a soil or tissue test that is conducted pursuant to a method approved by the Department of Agriculture and Consumer Services indicates ... [various deficiencies].”

EPC staff has no objection. Monitor SB 1490 for amendments.

SB 1904 Water Supply Development Projects

This bill allows the DEP and the WMDs to grant 50 year permits to water suppliers who collaborate with mainly rural landowners as incentive for landowners to either provide land or funding to help expedite alternative water supply projects. EFFECTIVE DATE: 07/01/2009.

[ADDITIONAL INFO] Sponsor: Senator Altman (R) – parts of Brevard, Orange, and Seminole counties

Analysis: the statute currently allows for 50-year permits in certain specific cases (excerpt below). SB 1904 would appear to broaden the applicability of 50-year permits to the development of Alternative Water Supply (AWS) projects. SB 1904 aims to give incentive (by extending the life of their permit) for permittees to work cooperatively with the state in developing AWS projects, as those projects appear in *Water Supply Plans* developed by the Districts and FDEP. From that basis, we should support SB 1904, as AWS projects can reduce pumping demands on rivers and ground water for drinking water supply, reserving more water for the environment.

[NEW]

SB 1974 Stormwater Assessment Fee and Ag Land Permitting (see HB 1133)

****TRACK****

In addition denying counties the ability to charge Ag lands a stormwater management fee, SB 1974 adds the “or enforce” language regarding local program adopting or enforcing laws on Ag lands that already must comply with similar State laws or BMPs, but it does protect “county” (not city or local gov’t) wetland rules adopted prior to January 1, 2009. It also requires people moving next to farms to sign a form waiving nuisance claims. At a minimum, this would mean all non-wetland local rules that apply to farms may be unenforceable if a state rule or BMP already applies to the farm. The bill also exempts farm fences from any local permits or fees (currently all nonresidential farm buildings are exempt). EPC staff objects to this bill.

SB 1994 Motor Vehicle Emission Standards (Identical H 1309)

Last year the DEP was allowed to create a motor vehicle emission standards rule similar to that of California’s. The DEP passed the Florida Clean Car Emission rule in January 2009, but it can’t take effect until ratified by the Legislature. This bill would ratify the rule (section 62-285.400, F.A.C.) of the DEP and it requires the DEP and the HSMV to develop a proposal to implement the rule, monitor compliance with it, and report back to the Legislature. EPC staff has no objection. EFFECTIVE DATE: 07/01/2009.

[ADDITIONAL INFO] Florida Clean Car Emission Rule is Florida’s version of the California motor vehicle emissions standard for green house gases (GHG). The rule came about as a result of Governor Crist’s Executive Order 07-127. The purpose of the rule is to reduce GHG emissions from cars and trucks by the maximum amount allowed under federal law. It is estimated that 27% of Florida’s GHG come from cars and trucks. The new state rule will be in addition to a proposed federal rule, Corporate Average Fuel Economy (CAFE) standards, which raises the federal standard for minimum miles per gallon (MPG) in vehicles. Both rules, coupled together, will result in greater GHG reductions across the state, which is part of Governor Crist’s commitment to making Florida a leader in addressing the climate change threat.

SB 2016 Environmental Permitting (Identical HB 1123)

****TRACK****

This is an amendment to a current law, which mainly sought to streamline state and federal permitting for wetland impacts under 10 acres. The bill requires the DEP to streamline/consolidate federal and state wetland permitting programs, but with no acreage threshold. As always, this is contingent on the federal government allowing for the consolidation. Among other things it authorizes expansion of a state programmatic general permit program and other general permits by the DEP and water management districts for certain dredge and fill activities. Unilaterally the DEP can establish a state programmatic general permit for 5 acres or less, but still subject to federal approval. The DEP and WMDs are instructed to review their rules and try to delete any inconsistencies with federal permitting. Delays the effective date of a rule adding slash pine and gallberry to the list of facultative plants until the state and federal delineation rules are aligned. The EPC staff has some concerns about this bill if it is proposing to weaken the State’s wetland mitigation laws to conform to federal standards; and also it may redefine “watershed” to allow mitigation to expand beyond smaller watersheds, thus allowing out of county or out of state mitigation, as long as it is in the same larger watershed. So EPC staff would oppose this bill in part, as described above. EFFECTIVE DATE: 07/01/2009.

[ADDITIONAL INFO]: DEP annual reporting to the Legislature on impediments to federal streamlining. WMD and DEP will compare mitigation rules with the federal rules.

- The report will identify inconsistencies
- Recommend rule amendments to address inconsistencies
- Recommend ways to *increase watershed* (not good for Hillsborough County)

- WMD and DEP *shall amend rules* to eliminate inconsistent or contradictory provisions, reduce redundant and duplicative requirements, and
- Expand watersheds. It basically say the state must adopt the federal mitigation standards

The WMD and DEP will submit a report that states if there are state laws that prohibit adopting the same mitigation as the feds. The report must identify the state law and explain why it prevents the state from adopting the same federal mitigation.

[NEW]

SB 2104-c1 Environmental Protection (see also HB 1349)

****TRACK****

This is an omnibus land acquisition and environmental bill that is supportable, but the House version (1349) may have bad amendment regarding wetland permitting.

- 1) This bill deals mainly with state land acquisition issue and amends the make-up of the Acquisition and Restoration Council. Counties would no longer have only 40 days to accept a offer to purchase State land that is proposed to be sold.
- 2) Proposes that not only Air operation permits, but Air construction permits, may not issue by default after 90 days and may include reasonable conditions. Before it said only operation permit “shall” not issue by default. Thus, they may be opening up the concept that some Air permits can issue by default, but that is not clear.
- 3 Proposes to exempt major source of Air pollution from ELRA administrative fine procedures (thus we could not assess \$10,000 or less in penalties into an NOV for these cases).
- 4) Clarifies in ELRA NOV proceedings that the respondent can collect attorney’s fees from the agency if the Final Order does not impose penalties, damages, or corrective actions. This is a good change, b/c in the past a respondent could collect attorney’s fees if a Final Order didn’t award penalties (but theoretically the Respondent could have been required in the Final Order to do substantial corrective actions, but not pay penalties, and he could still recover attorney’s fees as if they won the case.)
- 5) Adds a host of drinking water, wastewater, mangroves, wetland, and waste penalties in ELRA. These are good changes to clarify the ELRA penalty matrix for wastewater and other violations. A wetland violation in a conservation easement is increased from \$1000 to \$10000.
- 6) Protects governments better from losing land under the marketable record title laws.

[NEW]

SB 2120 Florida Springs Stewardship Task Force

This bill creates a 9 person Florida Springs Stewardship Task Force. The appointees are mainly made by State agencies and the Legislature. Among other things the task force must compile data on first magnitude springs, inventory existing BMPs and land practices used around the state to project springs, take public testimony on spring protection, propose a program to implement BMPs, cost-sharing efforts, and education to protect springs, and report back to the Legislature. It does require all State agencies to assist the task force and request all local governments to cooperate. The task force would expire in January of 2010. This has surfaced in the past few years, but has never passed. EPC staff has no objection.

[NEW]

DRAFT DEP WATER CONSERVATION BILL

****TRACK****

- 1) It redefines "alternative water supply" to include quantifiable water conservation measures. Thus, conservation projects will then be eligible for state funding.
- 2) Creates a Clearing House that must inventory conservation practices and promote those practices statewide. Provides funding for this.
- 3) Tightens local laws governing local or investor owned sewerage systems and connections to ensure these facilities don't impact impaired waterbodies. Local government also can't give variances to local laws for applicants for sewer systems if the system is in a impaired water basin.
- 4) Providers of reclaimed water must notify their customers of the benefits of reclaimed water and any recommendations to use less fertilizer with nutrient rich reclaimed water.
- 5) Allows for state revolving loan funding for water conservation projects.
- 6) Provide for funding of the Water Protection and Sustainability Program through a severance fee imposed on any producer of bottled water for each gallon of water withdrawn from surface or groundwater in the state used to produce and bottle water. (the fee is \$0.06 per gallon)
- 7) Deletes multiple provisions for past water quality funding programs set to sunset this July 2009.

[NEW]

ENVIRONMENTAL STREAMLING BILL (PCB ANR 09-02) – from House Comm. on Ag and Natural Resources

****TRACK****

Here are some initial comments on the bill. Please note these comments are mainly geared toward EPC functions, and I did not comment on all portions of the bill that may have impacts on other County, DEP, or Water Mgmt District functions.

- 1) Page 2 of 39 – “All construction and operating permits, development orders, building permits or other land use approvals, issued by the state or any local entity... that are due to expire or did expire October 1, 2008 through October 1, 2011 are hereby extended or renewed for a period of 3 years beyond the previously identified expiration date.” THUS, all our permits (local and DEP delegated) set to expire in that window of time would automatically extend for three years, without need for renewal. This hampers the ability to deny or modify a renewal for a failing or bad facility. This bill also expressly allows mitigation associated with the soon to expire permit to be extended for the same additional three years. This law can't impact/modify federal programs (thus we could argue that certain Air permits would still have to follow the federal permitting process for renewal).
- 2) Page 4 of 39 – statutory language that confirms the status quo in other programs and laws that allows an applicant to tell an agency to process the permit application, even if the agency thinks it is incomplete.
- 3) Page 6 of 39 – A county cannot pre-condition a development permit by requiring that the applicant first get state or federal approvals.
- 4) Page 9 of 39 – provides more guidance on how to fill dredge holes.
- 5) Page 10 of 39 – Allows a permit applicant 120 days to respond to an agency request for additional info. Current ruled-based law is 90 days to respond (see rule 62-4.055, FAC). Additionally, this statute allows another 90 days extension after the first 120 days, without showing any cause. Then additional extensions after the first 210 days will need a showing of good cause.
- 6) Page 12 through 15 of 39 – makes it mandatory that all Water Mgmt District Governing Boards delegate down to their Executive Directors the power to issue ERPs and WUPs. Currently law says it

“may” be delegated and currently many ERPs and WUPs must be approved at a monthly Gov. Board meeting, as opposed to on a daily basis.

- 7) Page 16 of 39 – where farmers and public agencies cooperate to find new waters supplies on farm land, the public agency may get a 50 year WUP. (There is another bill that has similar language to this.)
- 8) Page 17 through 20 of 39 – creates a wetland exemption and a wetland GP for various public facilities (parking at a park, boat launches, rip rap, ditch filling, filling dredge holes, etc.) (This language is also found in a separate wetlands bill.)
- 9) Page 21 of 39 – DEP must maintain a list of potential wetland mitigation projects applicants can choose to do. Local gov’ts can make an inventory too of projects that need to be done that could qualify as mitigation for applicants.
- 10) Page 22 of 39 – DEP must develop a project management plan to implement e-permitting and on-line payments. A report is due to the Legislature on Jan. 15, 2010.
- 11) Page 22 of 39 – DEP must expand the use of internet based self certification services. This section has some odd language about local governments being “prohibited from specifying the method or form of documentation that a project meets the provisions for authorization.” I truly don’t know the intent of this language; it may mean local governments can’t dictate what documentation is needed for self certification.
- 12) Page 26 of 39 – SWFWMD (and a few others) must pass a rule similar that SFWMD already has called a “No Notice General Permit for Activities in Uplands” [See 40E-400.315(1)] That current SFWMD rule allows for No Notice GPs for projects less than 10 acres, and less than two acres of impervious surface, and that have no wetland impacts. I read this as quick permit process for the small strip-malls and stand-alone stores that aren’t built in wetlands. Also, when they are no notice GPs, that typically means there is no right to a Chp. 120 hearing.
- 13) Page 26 through 38 of 39 – this large section deals with the current law about expedited permitting for certain businesses that bring economic development/jobs to a region (this is different from another bill proposal to have expedited wetland permitting for targeted businesses). This current law would be amended to have the DEP Secretary, instead of the Governor, in charge of authorizing team permitting of these projects. It appears local governments would still issue their own permits, but those local permits would be subject to Chp. 120 permit challenges and those challenges must be expedited (that’s on page 31). This 120 challenge concept is optional under the current law. This section also allows for expedited permitting of certain biofuel projects.
- 14) Page 26 of 39 – amends a current wetland exemption to allow the rebuilding of a dock to be configured differently as long as the square footage doesn’t change and if it has no new impacts. Current law only allows you to benefit from the wetland permit exemption if you replace/rebuild a dock and it is an exact rebuild of an old dock.
- 15) Page 38 of 39 - This is the worst of all the clauses for most state and local regulatory agencies. This provision says that from between 10/1/2008 and 10/1/2011 “no more stringent or additional permitting standards, regulations or criteria related to construction, development, building or other land use activity shall be adopted or enforced by any state or local governmental entity pursuant to chapters 125, 161, 163, 166, 253, 373, 378, 379, 380, 381, 403, or 553, Florida Statutes, or any other local ordinance, without express legislative direction and authorization.” I find this language poorly crafted, as it doesn’t clearly state who the State or locals cannot be more stringent than. I read it to mean the DEP, WMDs, and local governments cannot adopt or enforce anything more stringent than what already exists as of 10/1/08. Others could read it to mean, nothing can be adopted or enforced by State or locals, than what is currently state law or federal law. This appears to only apply to permits that involve development, construction or land use, so maybe some permits that don’t involve construction or changes to land use may not be implicated (such as Air permits or wastewater discharges). This section also has a provision stating that this law can’t impact federal delegations.
- 16) Page 38 of 39 – DEP/WMDs shall not calculate the area taken up by boat lifts and davits when calculating square footage for sovereign state land leases.

BILLS NOT REVIEWED AND/OR SUMMARIZED BY EPC STAFF YET

HB 1123

SB 2080

HB 1109

HB 1515

SB 2294

HB 1241

HB 1229

HB 1219

SB 2636

SB 2618

HB 1453