

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 859 Expiration of Permits and Agreements During Natural Emergencies

SPONSOR(S): Grant

TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee		Nations	Dearden
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law under section 252.363, F.S. provides that once the Governor issues a state of emergency for a natural emergency the time period for a party to exercise rights under certain permits and other authorized agreements is automatically delayed. The countdown of the time period remaining to exercise the rights under the permit is halted for the duration of the state of emergency, plus 6 months from the end of the state of emergency. Currently, the emergency tolling under this chapter applies to:

- Development orders issued by local governments;
- Building permits;
- Permits issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, F.S.; and
- The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c), F.S.

HB 859 allows for additional permits and agreements to be eligible under the tolling statute during a state of emergency. These include consumptive use water permits under Part II of ch. 373, F.S. and local development agreements and permits under the Florida Local Government Development Agreement Act.

The bill applies retroactively to emergency declarations issued by the Governor for natural emergencies since March 1, 2020. The retroactive provision allows for the existing authorized permits as well as those added by the bill to receive the emergency tolling and the six month extension provided by statute for the declared emergency in response to COVID-19.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides that it is effective upon becoming a law and applies retroactively.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Emergency Management Act

Chapter 252, F.S., the State Emergency Management Act (Act), establishes the framework for how Florida prepares, responds, and recovers from emergencies and disasters. It confers upon the Governor, the Division of Emergency Management (division),¹ and the governing body of each county and municipality certain emergency powers in the event of emergencies² and disasters³ resulting from natural,⁴ technological,⁵ or manmade⁶ causes to ensure preparations of the state will be adequate to deal with, reduce vulnerability to, and recover from such emergencies and disasters; to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state.⁷

The Governor, the division, and counties and municipalities have specific emergency powers and authority granted to them in the event of an emergency. The individual powers are broad, but also include specific parameters in which they may be executed.

Governor

The Act vests the authority to declare a state of emergency in the Governor.⁸ The Act authorizes the Governor to assume or delegate direct operational control over all or any part of emergency management functions in the event of an emergency.⁹ This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law.¹⁰ The Act specifically authorizes the Governor to use all resources of state government and counties and municipalities of the state as reasonably necessary to cope with the emergency.¹¹ Although the emergency powers reside in the Governor, the Governor may delegate certain powers to the State Coordinating Officer to manage and coordinate emergency efforts.¹²

¹ The Division of Emergency Management is established within the Executive Office of the Governor as a separate budget entity. It is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities under part I of ch. 252, F.S. The director of the division is appointed by and serves at the pleasure of the Governor, and is the head of the division for all purposes. Section 14.2016(1), F.S.

² "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

³ "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Section 252.34(2), F.S.

⁴ "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. Section 252.34(8), F.S.

⁵ "Technological emergency" means an emergency caused by technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident. Section 252.34(10), F.S.

⁶ "Manmade emergency" means an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government. Section 252.34(7), F.S.

⁷ Section 252.32, F.S.

⁸ Section 252.36(2), F.S.

⁹ Section 252.36(1)(a), F.S.

¹⁰ Section 252.36(1)(b), F.S.

¹¹ Section 252.36(5)(b), F.S.

¹² The State Coordinating Officer (SCO) is the authorized representative of the Governor to manage and coordinate state and local emergency response and recovery efforts. The SCO is provided the authority to commit any and all state resources necessary to cope with the emergency and the authority to exercise those powers in accordance with ss.

The Governor must delegate emergency responsibilities to officers and agencies of the state and to counties and municipalities prior to an emergency and threat of an emergency and must use the services and facilities of existing officers and agencies of the state and counties and municipalities as the primary emergency management forces of the state. All such officers and agencies must cooperate with the division and extend their services and facilities to the division, as it may require.¹³

Declaring a State of Emergency

Upon the existence of an actual or impending “emergency”, Florida law allows the Governor to declare a state of emergency through executive order.¹⁴ A state of emergency declaration activates state and local emergency management plans. The Division coordinates with local governments to provide assistance in the distribution of necessary supplies, equipment, and other resources to effectively respond to the emergency.¹⁵ The state of emergency continues until the Governor finds that the threat or danger no longer exist. A state of emergency lasts for 60 days and may be renewed by executive order at the end of that 60 day period. A state of emergency may also be terminated by a concurrent resolution of the Florida Legislature.¹⁶

Emergency Tolling and Extension of Permits

Section 252.363, F.S. provides that upon the declaration of an emergency by the Governor for a natural emergency¹⁷, the period remaining to exercise the rights under a permit or other authorization is automatically delayed for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period. This applies to the following:

- The expiration of a development order issued by a local government;
- The expiration of a building permit;
- The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373 of F.S.; and
- The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).¹⁸

Florida law further requires for the holder of the permit or other authorization to notify the issuing authority of the intent to exercise the tolling and extension granted under the section within 90 days. The notice must be in writing and identify the specific permit or other authorization qualifying for extension.¹⁹ Therefore, the 6 month extension is not automatic upon the termination of the state of emergency.²⁰

252.36(3)(a) and 252.36(5)-(10), F.S. Executive Order 20-52 designated the Director of the Division of Emergency Management as the SCO and the State Health Officer and Surgeon General as a Deputy SCO.

¹³ Section 252.36(8), F.S.

¹⁴ S. 252.36(2), F.S. An “emergency” is defined as “any occurrence, or threat thereof, . . . which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.”

¹⁵ S. 252.35(1), F.S.

¹⁶ S. 252.36(2), F.S.

¹⁷ The Florida Supreme Court has ruled that a pandemic is a “natural emergency” within the meaning of s. 252.34(8), F.S. (“Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.) See *Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).

¹⁸ S. 252.363(1)(a), F.S.

¹⁹ *Id.* at (1)(b).

²⁰ Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute.” See AGO 2012-13, available at: <http://www.myfloridalegal.com/ago.nsf/Opinions/ODF58A091F0DDBE852579EB00743D48> (last visited Mar. 4, 2021).

State of Emergency for COVID-19

On March 9, 2020, Governor DeSantis declared a state of emergency in response to the COVID-19 pandemic and its impacts on the state of Florida.²¹ Executive Order 20-52 has been renewed continuously since March of 2020. The most recent extension was EO 21-45 on February 26, 2021, and expires on April 26, 2021.²²

Florida Water Resources Act of 1972

Chapter 373 of Florida Statutes, known as the Florida Water Resources Act (FWRA), creates a framework for a regulatory system that governs water rights, uses, planning, and quality control for the state's water resources. The FWRA provides that the Florida Department of Environmental Protection (DEP) and the 5 cooperating water management districts²³ partner to ensure the continued water supply, water quality, flood protection and floodplain management, and protecting natural systems.

Consumptive Water Use Permits

Part II of Chapter 373, F.S. creates a framework for permitting consumptive use of water projects. Consumptive water uses are regulated by DEP as well as the water management district with proper jurisdiction.

A consumptive use permit (CUP), also known as a water use permit (WUP), allows the holder to withdraw a specified amount of water from the ground, canals, lakes, or rivers, for reasonable-beneficial uses that will not interfere with any presently existing legal use of water, and is consistent with the public interest. The water removed may be used for numerous purposes including but not limited to, drinking water, agriculture, and golf course irrigation. Water used for domestic purposes, home irrigation, and firefighting are not included under a CUP/WUP. CUP/WUPs require water conservation to prevent wasteful uses, require reclaimed water instead of higher-quality groundwater where appropriate, and set limits on the amount of water that can be withdrawn.²⁴

There are projects that require a CUP/WUP that cannot be issued until a permit has been issued under Part IV of ch. 373, F.S. and a recommendation of approval by staff of the issuing agency has been received.²⁵

Management and Storage of Surface Waters

Part IV of Ch. 373, F.S. governs construction and other projects that affect surface water resources. Part IV authorizes DEP and the water management district with proper jurisdiction to regulate these projects to further the state's interest in protecting and maintaining its surface water resources.²⁶

The projects regulated by Part IV Ch. 373, F.S. are any construction, alteration, operation, maintenance, abandonment, and removal of any water management system. Water management systems are dams,

²¹ Executive Order 20-52 (Mar. 9, 2020), available at: https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited Mar. 4, 2021).

²² The state of emergency declared in Executive Order 20-52, as extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, and 20-316 will be extended for 60 days following the issuance of this order for the entire State of Florida. See Executive Order 21-45 (Feb. 26, 2021), available at: https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-45.pdf (last visited Mar. 1, 2021).

²³ Florida's five districts are the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. See Florida Department of Environmental Protection, *Water Management Districts*, available at: <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Mar. 4, 2021).

²⁴ See South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited Mar. 4, 2021).

²⁵ Florida Department of Environmental Protection, *2021 Florida Water Plan*, available at: <https://fddep.maps.arcgis.com/apps/Cascade/index.html?appid=473b768b4af049bf91b2879b83ea961c>. (last visited Mar. 4, 2021).

²⁶ See Florida Department of Environmental Protection, *Division of Water Resource Management*, available at: <https://floridadep.gov/water> (last visited Mar. 4, 2021).

impoundments, reservoirs, etc.²⁷ Regulated projects also include any projects that have direct or indirect effects on surface water resources, such as dredging, filling, canal construction, ditch construction, impoundments, fill roads, etc. All of these projects are governed by Part IV Ch. 373, F.S. and fall within the jurisdiction of DEP and the water management district with proper jurisdiction.

Growth Policy and Land Development Regulation

The Community Planning Act established under Part II of Ch. 163, F.S. governs growth policy and development in Florida. The Community Planning Act establishes a framework for how local governments plan for future developments and adopt and amend comprehensive plans for future growth.²⁸ One of the responsibilities of local governments planning procedures is the review and approval of rights related to the development of real property.

Local Government Development Agreements

The Florida Local Government Development Agreement Act²⁹ establishes the framework for development agreements between local governments and developers. A development agreement is a contract between a local government and a property owner/developer. These agreements provide vested rights applicable to the property to the developer in exchange for public benefits provided by the developer. The Florida Local Government Development Agreement Act authorizes these agreements subject to these procedures and requirements:

- Legal description of the land subject to the agreement, and the names of its legal and equitable owners;
- The duration of the agreement;
- The development uses permitted on the land, including population densities, and building intensities and height;
- A description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
- A description of any reservation or dedication of land for public purposes;
- A description of all local development permits approved or needed to be approved for the development of the land;
- A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
- A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
- A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction.³⁰

Effect of Proposed Changes

The bill amends s. 252.363, F.S. to provide that additional permits and authorizations are subject to tolling and extension during a declared state of emergency for a natural emergency.

²⁷ See Environmental Resource Permit Applicant's Handbook, *available at*: https://www.flrules.org/gateway/readRefFile.asp?filename=010_4a--AHI_thruAppendix_D_ADA_3-5-14.doc&refId=3174 (last visited Mar. 4, 2021).

²⁸ S. 163.3167(1), F.S.

²⁹ See S. 163.3220-163.3243, F.S.

³⁰ 7 Fla. Jur. 2d Building, Zoning, and Land Controls s. 168 (2020) (from s. 163.3223, F.S.)

Consumptive Water Permits

The bill provides that permits and agreements issued by DEP or a water management district with proper jurisdiction under Part II of ch. 373, F.S. may be tolled and extended during a state of emergency for a natural emergency.

Local Government Development Agreements

The bill also provides that development permits and agreements entered into pursuant to the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity, may be tolled and eligible for an extension during a state of emergency for a natural emergency.

Effective Date and Retroactivity

The bill is effective upon becoming a law, and the bill applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Therefore, permits or authorizations added to the statute may receive tolling and extension for the state of emergency Governor DeSantis declared on March 9, 2020, in response to the COVID-19 pandemic and its effects on Florida.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.363 to provide for additional permits to be eligible under the tolling provisions during a declared state of emergency.

Section 2: Provides that the effective date is upon becoming a law and applies retroactively.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The holders of permits added to the emergency tolling and extension statute may benefit financially due to the time extension.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES