



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



SUNSET MEMORANDUM

Report No. 07-S28

Florida's Water Management District Environmental Resource Permitting Options for Legislative and District Governing Board Consideration

February 8, 2008

Summary

To support the Sunset Review Process, the Legislature directed OPPAGA to examine the state's five water management districts.¹ This memo is part of a series that reviews the districts' operations, and focuses on their environmental resource permit programs including their purpose, organization, responsibilities, resources, and performance. While the Department of Environmental Protection also issues environmental resource permits, this memo will concentrate on the water management districts' programs.

The memo also presents three policy options for the Legislature and district governing boards to consider regarding the water management districts' environmental resource permitting activities. These options include mandating that districts increase efforts to educate permit applicants about regulatory requirements in order to expedite the permitting process (Option 1); adjusting permit fees to avoid the need to subsidize this activity with local ad valorem tax revenues (Option 2); and mandating that permitting agencies increase coordination and move towards a 'one-stop permitting' process (Option 3). The memo discusses the advantages and disadvantages of each option. A separate interim project being conducted by the Florida House of Representatives also examines opportunities to streamline the permitting process by better coordinating the districts' activities with those other governmental entities that also issue permits.

¹ Sections 11.901-11.920, *F.S.*

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Purpose, Organization, and Responsibilities

Florida's five water management districts are responsible for managing and protecting the state's water resources and related natural systems. The districts include Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida. The districts are responsible for water supply, water quality, flood protection, and natural systems (e.g., aquatic and wetland-dependent habitats).

A primary way the districts meet these responsibilities is through their regulatory programs. The districts are statutorily authorized to issue an environmental resource permit (ERP) to persons who seek to dredge and fill wetlands; construct drainage facilities, dams, or reservoirs; provide storm water containment and treatment; or undertake other activities that affect state waters. The permitting process is intended to ensure that these construction activities do not degrade water quality, cause flooding, or adversely affect wetlands.² State law exempts certain activities, such as some agriculture and silviculture activities from ERP requirements.

Depending on activity proposed by the applicant, either the Department of Environmental Protection or the water management districts processes the environmental resource permit. Operating agreements between the department and the districts dictate which agency processes a given permit application. The department processes permit applications related to solid and hazardous waste, wastewater facilities, mines, power plants, communication cables and lines, single-family dwellings and docking facilities that are not part of a larger plan of development. The water management districts review and take action on all other ERP applications. Applicants may also be required to obtain permits for development activities from federal and local government agencies. For example, an applicant seeking to build a structure that affects navigable waters may be required to obtain a permit from the U.S. Army Corps of Engineers, an environmental resource permit from a water management district, and review and approval from the local government.

The Legislature provided the statutory authority to four of the five water management districts to issue environmental resource permits in 1994. However, the Northwest Florida Water Management District did not begin implementing an ERP program until October 2007.³ Prior to that time, the Legislature did not extend the authority for an ERP program to the district because it did not have sufficient funds to fully implement the program, and the Department of Environmental Protection issued environmental resource permits in the district's boundaries for dredge and fill and stormwater activities for non-agricultural projects while the district issued permits for agriculture and some non-agricultural facilities (e.g., construction or alteration of dams and levees).⁴ During Fiscal Year 2006-07, the district issued 34 of these types of permits; the Department of Environmental Protection was not able to provide the number of permits issued within the Northwest Florida Water Management District's boundaries during this period. The Legislature appropriated \$3.8 million to the district to implement the ERP program in Fiscal Year 2007-08, and the district expects to fully implement the program by July 2008.

² The Environmental Resource Permit consolidated two former permits – the Wetland Resource Management Permit issued by the Department of Environmental and the Management and Storage of Surface Waters permit issued by the water management districts – in an effort to streamline the permitting process.

³ The 2006 Legislature provided for a phased approach for implementing an environmental resource permitting program in the district (Ch. 2006-228, *Laws of Florida*).

⁴ The water management districts are constitutionally authorized to levy ad valorem taxes to fund their operations. The district's ad valorem millage rate is constitutionally and statutorily capped at .05 mills.

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Permit Types. There are three types of environmental resource permits: noticed general, standard general, and individual.

Noticed general permits are issued by rule for activities that have minimal or no impacts on the environment and do not have any wetland impacts. Due to the nature of noticed general permits, most applications require less staff time to review and fewer, if any, requests for additional information. District staff issue most noticed general permits.

Standard general permits are for projects that have minimal impacts on the environment, typically less than 100 acres of project area, and/or contain one acre or less of wetland or surface water impacts. District staff issue most standard general permits.

Individual environmental resource permits are required on projects at or over 100 acres, have significant impacts on water and land resources, and/or contain one or more acres of wetlands or surface water impacts. District governing boards issue individual permits.

As shown in Exhibit 1, the water management districts issued 8,483 Environmental Resource Permits in Fiscal Year 2006-07. General permits accounted for 80% of the permits issued, while individual permits represented 14%. The number of permits issued varied by district, with Southwest Florida Water Management District issuing the most permits, at 3,819. Differences in permit thresholds may account for differences in the number of permits across districts. For example, the South Florida Water Management District exempts projects that are less than 10 acres in size or contain less than 2 acres of impervious surface from environmental resource permit requirements. Other districts require permits for such activities.

Exhibit 1

Water Management Districts Issued 8,483 Environmental Resource Permits in Fiscal Year 2006-07 ¹

District	Individual	Standard General	Noticed General	Total
Southwest Florida	478	3,088	253	3,819
St. Johns River	346	2,086	83	2,515
South Florida	250	1,324	73	1,647
Suwannee River	40	266	196	502
Total	1,114	6,764	605	8,483

¹ Data for Northwest Florida Water Management District was not included in this exhibit because the district had not implemented its Environmental Resource Permitting Program during the fiscal year. The Department of Environmental Protection was not able to provide the number of permits issued within the Northwest Florida Water Management District's boundaries during this period.

Source: Water Management Districts.

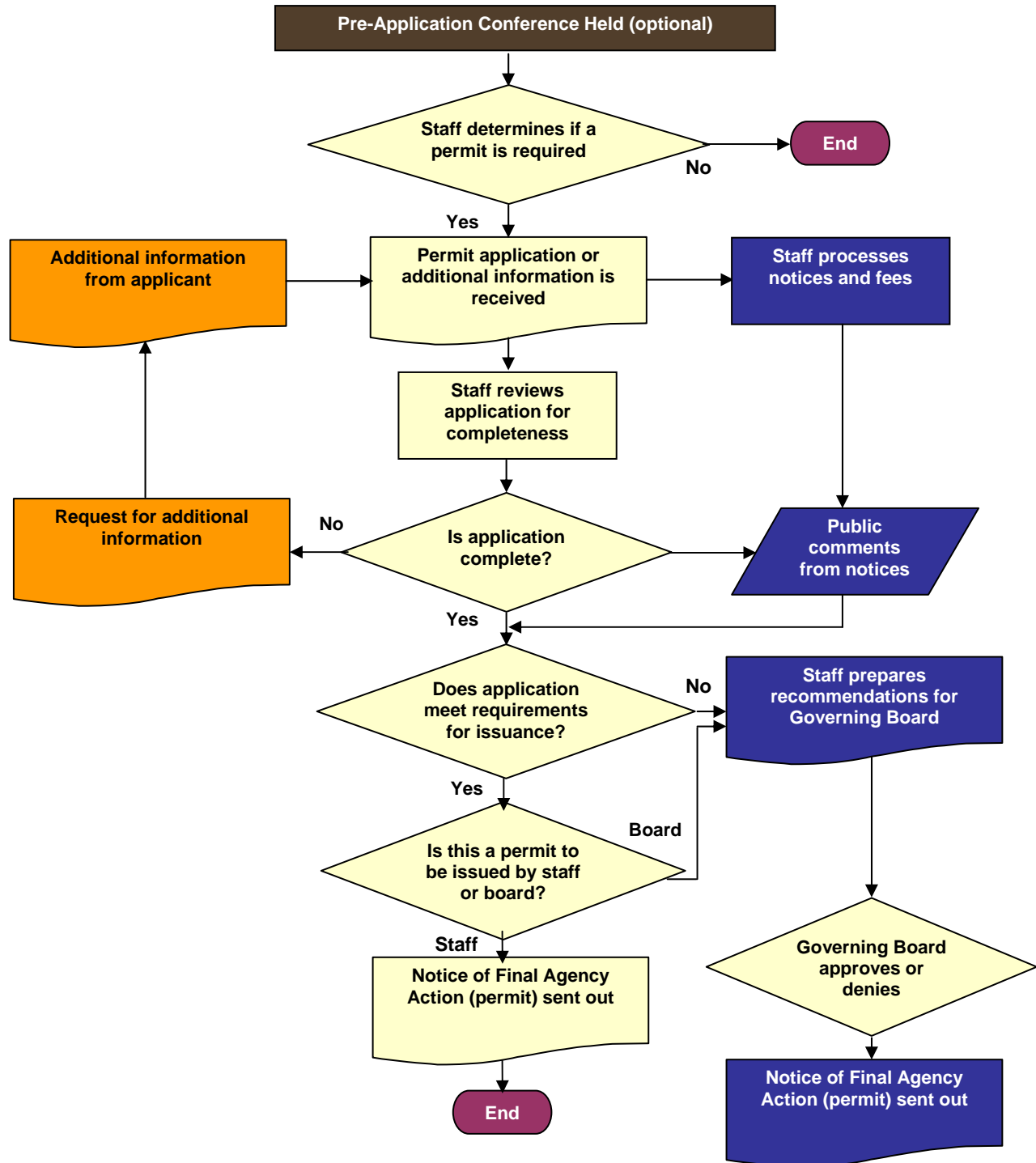
Permit Application Process

The districts follow a multi-step process for issuing environmental resource permits (see Exhibit 2). The process includes

- reviewing the permit application for completeness;
- requesting additional information from the applicant, if an application is not complete;
- deeming the application complete and determining whether the application meets requirements for issuance; and
- issuing the permit and ensuring proper public notice.

Exhibit 2

The Water Management Districts Use a Multi-Step Process to Issue Environmental Resource Permits



Through the application process, a permit applicant must demonstrate that a proposed activity will not be harmful to water resources or inconsistent with the overall objectives of the water management district. In addition, the applicant must provide reasonable assurance that state water quality standards will not be violated and such activity in, on, or over surface waters or wetlands is not contrary to the public interest. While not required, permit applicants can meet with district staff before submitting their application to discuss their proposed activity.

District staff must process environmental resource permit applications within time limits specified by law.⁵ Once an applicant submits a permit application, the district has 30 days to review the application or request additional information; there is no limit on the number of requests for additional information. When the requested materials have been received, within 30 days district staff must review it and request only information needed to clarify or to answer new questions raised by or directly related to such additional information. Each district has established timeframes in their rules for applicants to respond to requests for additional information; these timeframes vary between 30 and 120 days. Applicants can request an extension to have additional time to respond to an information request; there is no limit on the number of extension requests. Final agency action, meaning either issuance or denial, must occur within 90 days after receipt of a completed application or the last submittal of additional requested information, whichever is the latter, or the permit is issued by default.

Permit Compliance and Enforcement

Once permits are issued, permittees must comply with permit conditions. The districts conduct numerous activities to ensure compliance, including reviewing monitoring reports submitted by permittees; conducting inspections during and after project completion; and investigating public complaints.

A permittee can be found non-compliant for several reasons, including failing to adhere to conditions specified in the permit. For example, a permittee may fail to submit a required monitoring report on the project, may violate district rules in carrying out the project, or may perform activities which have not been authorized by a permit and are not exempted. For example, if a developer's project affects five acres of wetlands while the permit only authorizes one acre of impact, the permittee is in violation of permit conditions.

The nature and severity of the non-compliance determines whether the district handles enforcement formally or informally. Informal enforcement actions are conducted by telephone call, courtesy letter, and/or warning letter before a compliance case is turned over for legal enforcement. Informal enforcement actions usually occur when the issue does not represent a danger to life, property or the environment, and the district believes the issue can be resolved with the applicant more expeditiously through informal means. District officials believe it is more advantageous for the applicant and district to try and settle issues informally.

Formal enforcement actions occur if the violation represents a danger to life, property or the environment and/or the permittee had prior non-compliance issues that could not be handled informally. For example, formal enforcement action would be taken if flooding or unauthorized impacts to wetlands occur because of a permittee's actions. The formal process involves issuing a notice of violation letter. If, after receiving the letter, the permittee remains out of compliance, the district may request litigation authority from its governing board and file an administrative

⁵ Section 373.4141, F.S.

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complaint and order. Continued non-compliance can lead to an administrative hearing and possible revocation of the permit.

Permittees that violate their permit conditions are liable for damages caused and for civil penalties. The districts are statutorily authorized to recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense, with each day constituting a separate offense.⁶ The water management districts reported recovering approximately \$3.35 million in penalties for Fiscal Year 2006-07.⁷ It is the intent of the Legislature that the civil penalties imposed by the court are of such amount as to ensure immediate and continued compliance.

Most Compliance Cases Are Resolved by Informal Actions. Water management district officials report that most compliance cases are handled using informal enforcement actions. Due to the severity of enforcement actions that could be taken, each applicant, and the corresponding district tries to resolve compliance issues informally. Formal enforcement actions are usually taken for significant non-compliance issues. For example, significant non-compliance would occur when an applicant dredges and fills in 50 acres of wetlands when the permit called for only 5 acres of wetlands to be impacted.

District officials indicate that most non-compliance cases are resolved within 30 to 60 days. Typically, cases involving serious non-compliance issues or where the applicant refuses to cooperate with the district can take a substantial amount of time to resolve. Cases that cannot be resolved in an expeditious manner are handled by formal enforcement, which includes issuing a notice of violation letter. If, after receiving the letter, the permittee remains out of compliance, the district may issue an administrative complaint and order. Continued non-compliance can lead to an administrative hearing and possible revocation of the permit.

Resources

The water management districts reported allocating \$42 million for their environmental resource permit programs in Fiscal Year 2007-08 (see Exhibit 3). The districts employ approximately 433 full-time equivalent employees to process permit applications and conduct compliance activities. Staffing for ERP activities has remained stable over the last several years, while the number of permits issued and associated compliance activities have increased. To meet this increased workload and ensure that permits are processed within statutory time limits, some of the districts have hired consultants to review permit applications and conduct compliance activities.

The districts charge fees for environmental resource permits, but these fees only cover a small fraction of ERP program costs, with other funds being used to subsidize permitting activities. For example, the Southwest Florida and South Florida Water Management Districts report that permit fees cover, about 20% and 25%, respectively, of program costs. The districts use other revenue sources, including ad valorem tax revenues and legislative appropriations (provided to the Northwest Florida and Suwannee River Water Management Districts) to fund the remaining program costs.

⁶ Section 373.129, F.S.

⁷ Penalty data is reported for all five water management districts. Data for the Northwest Florida Water Management District includes only penalties collected as part of the agriculture/silviculture surface water component of the environmental resource permit in Fiscal Year 2006-07 because the program was not fully implemented during this period.

Exhibit 3

The Water Management Districts Reported Budgeting \$42 Million for Environmental Resource Permit Programs in Fiscal Year 2007-08 ¹

District	Budget, Fiscal Year 2007-08	Full Time Equivalents
South Florida	\$13,007,115	129
St. Johns River	12,460,556	144.45
Southwest Florida	10,049,165	117.64
Northwest Florida ¹	4,943,713	26.8
Suwannee River	1,667,000	15
Total	\$42,127,549	432.89

¹ Northwest Florida Water Management District is phasing in its Environmental Resource Permitting program during Fiscal Year 2007-08. The district expects to fully implement its program by July 2008.

Source: Water Management Districts, Fiscal Year 2007-08, which is from October 1 to September 30.

Timeliness of Permit Reviews

Over the years, stakeholders have raised concerns about excessive delays caused by the districts' application review processes and requests for additional information. A related concern is that district requests for additional information are excessive and unnecessary. Stakeholders have also raised concerns about the lack of coordination between permitting agencies at the federal, state and local levels. The primary concern has been that individuals may be required to obtain permit approvals from federal, state, and local agencies for the same project. (The Florida House of Representatives is conducting a separate interim study on current federal, state, and local regulations regarding environmental resource permitting to determine whether state regulatory standards provide adequate protections of wetlands and the impacts of a multi-tiered regulatory system.)

Our analysis of district permitting data concluded that districts are meeting their statutory timeframes for permit issuance. Requests for additional information are the major cause for permit delays. While the districts have taken some steps to expedite the permitting process by offering pre-application meetings and an appeals process to challenge the legality of information requests, these processes are not always used by applicants and additional steps to educate applicants about permit requirements would be beneficial.

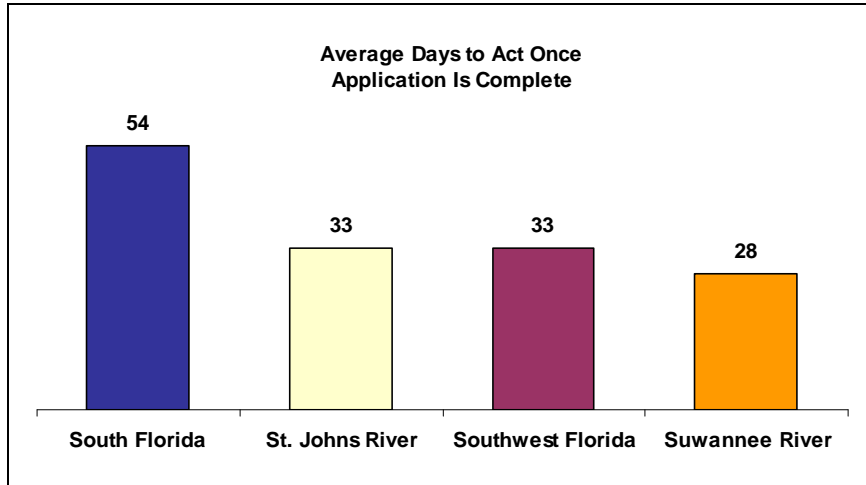
Districts Are Meeting Their Statutory Timeframes for Permit Issuance. The water management districts have established a performance measure that reflects how long, on average, it takes staff to issue a permit once all required materials are submitted and the application is deemed complete. According to state law, final agency action must occur within 90 days after receipt of a completed application or the last submittal of additional requested information, whichever is the latter, or the permit is issued by default.

Performance data reported by the districts to the Legislature shows that in Fiscal Year 2006-07, the districts met their statutory time limits for environmental resource permits issued (see Exhibit 4). According to this data, the districts, on average, took between 28 days (Suwannee River) and 54 days (South Florida) to issue a permit once the application was deemed complete.⁸

⁸ The amount for South Florida was calculated by averaging the number of days to issue individual (61 days) and general permits (47.6 days).

Exhibit 4

Water Management Districts Generally Are Meeting Statutory Timeframes to Issue Environmental Resource Permits ^{1,2}



¹ Data for Northwest Florida Water Management District was not included in this exhibit because the district had not implemented its Environmental Resource Permitting Program during the fiscal year.

² The amount for South Florida was calculated by averaging the number of days to issue individual (61 days) and general permits (47.6 days).

Source: Water Management Districts August 1 Tentative Budget Submission, Fiscal Year 2006-07, which is from October 1 to September 30.

While this measure is useful for determining whether the districts have met their statutory timeframes for issuing permits, it provides limited information about the overall time it takes to issue a permit since it does not account for the time between application submittal to when it is deemed complete. This is an important consideration because our analysis of permits issued during Fiscal Year 2006-07 found that 80% of permit applications were submitted incomplete. Thus, most applications required at least one request for additional information to prepare them for staff review and final action (e.g., issuance or denial).

Our analysis of permits issued in Fiscal Year 2006-07 found that it typically takes three to four months from the time an environmental resource permit application is initially submitted until the permit is issued (see Exhibit 5). The amount of time varies significantly by type of permit issued. For example, it typically took the districts an average of less than 30 days to issue noticed general permits, while individual permits took over 7 months (222 days) on average. Noticed general permits are generally issued in less time than individual permits because the proposed activities involve minimal or no wetland impacts and permits can be issued by district staff after their review. Conversely, applications for individual permits require more extensive staff review due to the complexity of the proposed development, and district governing boards, which meet only monthly, must approve or deny individual permits.

Exhibit 5

Water Management Districts Typically Take 3-4 Months to Issue Environmental Resource Permits, Counting Time for Submitting Additional Information ¹

District	Total Number of Permits	Median Days to Issue Noticed General Permits	Median Days to Issue Standard General Permits	Median Days to Issue Individual Permits	Median Days to Issue for All Permits
South Florida	1,647	29	117	305.5	127
St. Johns River	2,515	38	106	272.5	118
Southwest Florida	3,819	28	102	172	104
Suwannee River	502	10	48	140.5	28
All Districts	8,483	28.5	104	222.25	111

¹ Data for Northwest Florida Water Management District was not included in this exhibit because the district had not implemented its Environmental Resource Permitting Program during the fiscal year.

Source: OPPAGA analysis of Water Management District data, Fiscal Year 2006-07.

Water management districts are implementing electronic permitting programs to help expedite the timely issuance of permits. For example, the St. Johns River and South Florida Water Management Districts have implemented an electronic permitting program that allows applicants to complete, submit, and track applications on-line as well as to submit compliance reports via the Internet. The program is expected to help streamline operations by eliminating the need for paper documents and reducing the need to input application information into data systems. The Northwest Florida and Southwest Florida districts are in the process of implementing similar electronic permitting programs.

The districts also report encouraging applicants to attend pre-application meetings with district staff. These meetings allow permit applicants an opportunity to discuss proposed activities and obtain district feedback. While the pre-application meetings are voluntary, district staff reports that they save time in the permitting process because they result in more complete permit application submittals. According to district staff, most applicants do not participate in these meetings.

Requests for Additional Information Are the Major Cause for Permit Delays, But Applicants Rarely Challenge These Requests. Several factors affect the time necessary to issue permits. The most significant factor affecting timeliness is requests for additional information due to incomplete applications.⁹ Our analysis found that on average, each request for additional information added 85 days to the time it took to issue a permit. The presence of wetlands and larger parcel sizes added to the complexity of the project and required additional staff review time. In addition, district staff indicates that third-party challenges also increase the time to issue permits.

Florida law establishes that the water management districts may only request information needed to clarify the application or to answer new questions raised by previously sent information. However, there are no statutory limits regarding how many times a district can request additional information from an applicant. A concern frequently raised by applicants is that districts

⁹ We conducted a regression analysis to determine how several factors affect the time to issue a permit. The regression analysis was conducted using available data from three water management districts: St. Johns River, Southwest Florida, and South Florida. Data was not available for the Suwannee River and Northwest Florida Water Management Districts. Factors included in our regression analysis included permit type, parcel size, the presence of wetlands, and whether the district requested additional information. These factors explained 47% of the variation in the time to issue a permit.

repeatedly ask for additional information. Our analysis found that 86% of permit applications have two or less requests for additional information, although some had as many as 13 information requests.

Florida law has established a 30-day timeframe for districts to respond to or request additional information, and our analysis showed that districts were meeting this time limit (see Exhibit 6). In addition, each district has established timeframes in their rules for applicants to respond to requests for additional information, with the times varying between 30 and 120 days. Districts may deny an application if a permittee fails to respond to a request for additional information within a timely manner. However, district officials reported applicants often ask for an extension to respond to a request for additional information, resetting the time clock and thus delaying permit approval.

Exhibit 6

Water Management Districts Met Deadlines for Requesting Additional Information ¹

District	Average days for WMD to request RAI	Average days for Permittee to respond to RAI
St. Johns River	27	53
Southwest Florida	27.5	31.5
South Florida	28.5	46.75

¹ Information on requests for additional information could only be provided by South Florida, Southwest Florida, and St. Johns River Water Management districts. Suwannee River and Northwest Florida did not track requests for additional information in their databases during the time period covered by our analysis.

Source: OPPAGA analysis of Water Management District data.

Florida statutes provide applicants the ability to request a hearing if they believe the request for additional information is unwarranted or not authorized by law or rule.¹⁰ According to the water management districts, no hearings were requested during Fiscal Year 2006-07. In addition, the applicant may request that the district proceed to process the permit application without providing the requested information. The districts reported that since most applicants are seeking a timely resolution, they usually pursue less formal means to address issues with requests for additional information. For example, applicants may request a meeting with district permitting staff to discuss the permit application and information request. District officials reported that this process typically resolves any issues an applicant might have with a request for additional information.

Options for Legislative and District Governing Board Consideration

Through their regulatory programs, Florida's five water management districts work to fulfill their responsibilities for water supply, water quality, flood protection, and natural systems. Issuing environmental resource permits (ERP) is a primary activity within the districts' regulatory programs, with this activity allocated \$42 million in Fiscal Year 2007-08. However, permit fees do not cover program costs, and the districts use other funds to subsidize permitting activities. In addition, over the years, stakeholders have raised concerns about the districts' ERP process, including concerns about excessive delays caused by the application review process and requests for additional information. Our analysis of district permit data found that requests for additional information are the major cause for permit delays. Moreover, district staff reports that

¹⁰ Section 373.4141, F.S.

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applicants often request extensions for more time to respond to information requests, which lengthens the permitting process. Based on these findings, we determined that there are additional steps that the Legislature and district governing boards could consider to help improve the process.

Exhibit 7 presents three policy options for the Legislature and governing boards to consider for streamlining the environmental resource permitting process and increasing program self-sufficiency. These options include mandating district to increase outreach efforts to applicants to help ensure that they understand permit requirements, (Option 1); increasing permit fees to reduce the need to subsidize this activity with local ad valorem tax revenues (Option 2); and increasing coordination among permitting agencies (Option 3). The exhibit outlines the policy options and describes the advantages and disadvantages associated with each option.

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Exhibit 7

The Legislature and District Governing Boards Could Consider Three Options to Improve and Streamline the Environmental Resource Permitting Process

Option	Advantages	Disadvantages
Option 1 – Mandate increased outreach efforts to educate applicants about permit requirements		
<p>The Legislature would direct water management districts to increase efforts to educate applicants about regulatory requirements by holding periodic workshops for applicants and consultants on permitting processes and criteria as well as by advertising and encouraging applicants to participate in pre-application meetings.</p>	<ul style="list-style-type: none"> ▪ It might decrease the number of incomplete applications submitted and expedite the permitting process because applicants would better understand regulatory requirements and resolve issues prior to application submittal 	<ul style="list-style-type: none"> ▪ It could increase staff time and costs to conduct educational workshops and meetings with applicants
Option 2 – Modify permit fees avoid relying on local ad valorem tax revenues		
<p>The Legislature would direct the water management districts to set permit fees at a level to support district environmental resource permitting programs. This would avoid the need to subsidize these activities with property tax revenues.</p>	<ul style="list-style-type: none"> ▪ It would eliminate need to subsidize program activities using taxpayer’s dollars (a portion of district ad valorem revenues are currently supplementing program costs) ▪ The regulated entity would bear regulatory program costs, which is consistent with the Legislature’s general intent regarding regulatory programs (s. 216.0236, <i>Florida Statutes</i>)¹ 	<ul style="list-style-type: none"> ▪ It would increase the costs of obtaining regulatory permits ▪ It could increase un-permitted activities because individuals might be unwilling to pay increased fees
Option 3 – Increase coordination among permitting agencies		
<p>The Legislature would direct the water management districts to establish a working group to develop strategies to increase coordination among permitting agencies at the federal, state, and local level. Working group members could include staff from the Department of Environmental Protection, water management districts, the U.S. Army Corps of Engineers, and local government representatives. The working group would submit a report proposing any statutory changes that would be necessary to implement the strategies to the Speaker of House and Senate President by January 1, 2009.</p>	<ul style="list-style-type: none"> ▪ It could provide a more efficient delivery of government services ▪ It could reduce costs to the public and private sector by reducing the need to obtain approvals from multiple agencies ▪ It could avoid permitting processing delays 	<ul style="list-style-type: none"> ▪ It could increase staff time and costs to conduct working group meetings

¹ The section of law provides that “It is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. It is also the intent of the Legislature that the fees charged for providing a regulatory service or regulating a profession or business be reasonable and take into account the differences between the types of professions or businesses being regulated.”

Source: OPPAGA analysis.