

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1748

SPONSOR: Senator Lawson

SUBJECT: Wetland protection

DATE: March 13, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Branning	Kiger	NR	Favorable
2.			AGG	
3.			AP	
4.				
5.				
6.				

I. Summary:

This bill amends s. 373.4145, F.S., to provide for an extension of the repeal of the interim permitting program for the Northwest Florida Water Management District. Certain obsolete provisions are deleted.

This bill substantially amends s. 373.4145, F.S.

II. Present Situation:

In 1993, the Legislature enacted ch. 93-213, L.O.F., which combined the Department of Environmental Regulation and the Department of Natural Resources into one department — the Department of Environmental Protection (DEP). In addition, the act sought to streamline governmental services and provide for the delivery of services to the public in a timely, cost-efficient manner. As a result, the act created the “Environmental Resource Permit” (ERP) which was intended to consolidate all permits for activities involving dredging and filling, and management and storage of surface water (MSSW), including stormwater control, into a single type of permit. The water management districts assumed the lead role for the issuance of these permits. Four of the five water management districts have established ERP programs. While the Northwest Florida Water Management District (NFWFMD) has had the authority to operate a MSSW program pursuant to ch. 373, F.S., the water management district has never fully operated such a program due to funding limitations. The NFWFMD has a constitutional millage cap of .05 mil, while the remaining four water management districts are capped at 1.0 mil. Over the years, there have been several attempts to place the issue on the ballot to amend the State Constitution to bring the NFWFMD’s constitutional millage rate on a par with the other water management districts, but previous efforts have failed to get the item on the ballot.

Section 373.4145, F.S., was created in 1993 to provide for an interim environmental permitting program for the NFWFMD. Since the NFWFMD was financially unable to implement an ERP program, the DEP operates a limited permitting program in this water management district with state financial subsidies for the district. Within the NFWFMD, the DEP's permitting authority is limited to wetland permitting rules which were in effect under the Henderson Wetlands Act of 1984. The DEP was, therefore, prohibited from implementing a complete ERP program on behalf of the water management district. Section 373.4145, F.S., provided a 5-year period in which the DEP would implement the old dredge-and-fill provisions and the stormwater permitting provisions in lieu of the streamlined ERP provisions. The interim provisions were scheduled to expire on July 1, 1999.

The 1999 Legislature extended the interim permitting program in the NFWFMD until 2003. The DEP and the NFWFMD were directed to begin developing a plan to fully comply with the ERP provisions contained in part IV of ch. 373, F.S., beginning in 2003. The plan is to also address:

- The division of ERP responsibilities between the DEP and the NFWFMD;
- The methodology of delineating wetlands in the NFWFMD;
- The authority of the NFWFMD to implement federal permitting programs related to activities in surface waters and wetlands; and
- The implications of the Bert J. Harris, Jr. Private Property Rights Protection Act (ch. 70, F.S.) on implementing the provisions of part IV of ch. 373, F.S., within the jurisdiction of the NFWFMD. Currently, the other four water management districts' ERP rules are exempt from the Bert Harris Private Property Rights Protection Act since their rules were adopted prior to the May 11, 1995, date specified in the act which prevented a cause of action against rules.

The DEP and the NFWFMD are to jointly prepare an interim report on their progress to the Governor and the Legislature by March 1, 2001, and a final report on March 1, 2003.

On March 1, 2001, the DEP and the NFWFMD issued the interim report that was required by s. 373.4145, F.S. In order to implement a full ERP program in Northwest Florida by July 1, 2003, the report identified certain interim action steps that must be completed. Those action steps and recommendations included:

- An analysis addressing staffing and other implementation costs associated with implementation of the ERP program in Northwest Florida should be conducted by the DEP and the NFWFMD.
- Funding mechanisms should be selected by the Legislature based on the results of the costs analysis.
- ERP rulemaking should be initiated for Northwest Florida no later than January 1, 2002 by DEP and the NFWFMD.

- Section 373.4145, F.S., should be amended by the Legislature to provide continuation of the authority for existing rules until the effective date of the ERP rules.
- Section 373.4145, F.S., should be amended by the Legislature to specifically authorize or incorporate grandfathering provisions applicable to implementation of ERP rules in Northwest Florida.
- In order to apply the same level of Bert J. Harris Act exposure to the ERP program in Northwest Florida as it exists in the rest of the state with the other water management districts, s. 70.001, F.S., should be amended to grandfather the ERP rules in Northwest Florida to the extent they are substantially consistent with the ERP rules in the rest of the state.

As of this date, the final report as required by s. 373.4145, F.S., has not been issued.

In the past few years, citizens in the Florida Panhandle and the NFWFMD have expressed concerns that the wetlands are not being protected to the same degree in their area as the rest of the state since the ERP program is not fully implemented in the NFWFMD. Also, since an ERP program does not exist in this area, water quantity issues and flooding are not addressed and regulated as they are in the rest of the state.

In preparation for the repeal of the interim permitting program, the DEP and the NFWFMD have drafted proposed ERP rules for this district and have held several public hearings and workshops. The proposed rules are modeled after those in effect in the other water management districts.

III. Effect of Proposed Changes:

This bill amends s. 373.4145, F.S., to provide for an extension of the repeal of the interim permitting program for the NFWFMD. Specifically, the bill provides that the interim permitting program contained in subsections (1), (2), (3), and (4) are to be repealed 12 months after the effective date of a voter approved amendment to s. 9, Art. VII of the State Constitution, increasing the authorized millage available to the NFWFMD. Further, the Legislature acknowledges the statutorily required plan prepared by the NFWFMD and the DEP in 2003 for wetland protection, but due to limited financial resources available at the local and state level in 2003, implementation of the recommended plan must be postponed until such revenues become available.

Certain obsolete provisions are deleted. Subsection (7) of s. 373.4145, F.S., is deleted. These are the provisions that required the DEP and the NFWFMD to prepare the interim and final report. Provisions related to certain jurisdictional declaratory statements that expire on January 1, 2002, are also deleted.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

No significant impact.

C. Government Sector Impact:

No significant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.