

# 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.)

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Prepared By: General Government Appropriations Committee

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BILL: CS/SB 2062

INTRODUCER: General Government Appropriations Committee and Senator Clary

SUBJECT: Environmental Protection

DATE: April 18, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	DeLoach	Hayes	GA	<b>Fav/CS</b>
2.			EP	
3.			WM	
4.			RC	
5.				
6.				

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## I. Summary:

This bill would require a phased approach for implementing environmental resource permitting (ERP) in northwest Florida by requiring the Department of Environmental Protection (department) and the Northwest Florida Water Management District (district) to jointly develop rules for stormwater and surface waters. Rules for stormwater management are to be developed by January 1, 2007, and rules for the management and storage of surface waters by January 1, 2008.

For stormwater management, the development of rules is to regulate the construction, operation, alteration, maintenance, abandonment, and removal of systems. The intent is to update the stormwater rules to improve water quality and flood protection. The district may implement the department's rules without adopting them.

The bill also directs joint rule development for the management and storage of surface waters. The intent is to preserve property interests while improving the management and storage of surface waters. The scope of the regulations must recognize the historically rural nature, current development trends, and the abundant natural resources of the district, and directs the permitting thresholds and requirements to reflect this distinction.

The bill directs the pursuit of federal and state permit streamlining for wetland permitting programs. Areas to pursue include streamlining measures, electronic permitting, field permitting, and certification programs for activities with minimal or cumulative impact, informal wetland determinations, and other similar measures.

The department and the district are directed to enter into an operating management agreement that delegates to the district the responsibility for managing ERP in northwest Florida to the extent that resources allow. At a minimum, the district will be responsible for regulating silviculture and agriculture.

In the event that the Legislature in any given fiscal year does not fund the ERP program, implementation is suspended for that fiscal year. The rules and statutes governing development activity in the district reverts to those in effect on April 1, 2006, until funding and staffing levels are restored.

Finally, the bill appropriates a total of \$2.9 million from the General Revenue Fund for the Fiscal Year 2006-2007 operational expenditures of the district to implement this act.

This bill substantially amends section 373.4145, Florida Statutes. The bill repeals section 373.4145(1), (2), (3), and (4), Florida Statutes.

## **II. Present Situation:**

The Environmental Resource Permitting program was created when the former Department of Natural Resources and Department of Environmental Regulation were merged to create the Department of Environmental Protection (department). The ERP program provided a streamlined and comprehensive permitting process by combining the state's dredge and fill permit with the Management and Storage of Surface Waters (MSSW) permit that was being issued by the state's water management districts. The goals of the ERP program were to prevent new construction from adversely impacting the flow and storage of surface waters, to reduce stormwater pollution, and to protect wetlands.

To date, the ERP program is implemented by four of the five water management districts in the state through operating agreements with the department. The Northwest Florida Water Management District is the only water management district that does not implement the ERP program. Instead, the department administers an interim environmental permitting program limited to wetland permitting and stormwater quality. The rules for this program have been in effect since 1984.

When the ERP program was authorized in 1993, the Legislature did not extend the program to the Northwest Florida Water Management District due to funding limitations and slower growth projections for the area. The district's ad valorem millage rate is constitutionally and statutorily capped at .05 mills, while the rest of the state's water management districts' ad valorem millage rate is capped at 0.6 to 1.0 mills by statute only.

Section 373.4145, F.S., exempts the Northwest Florida Water Management District from the ERP, as amended, until July 1, 2010. In lieu of the ERP, the department processes wetlands resource permits for many wetlands activities within the area of the district. Under the existing authority in northwest Florida, the department administers dredge and fill and stormwater programs for all non-agricultural projects under rules adopted prior to creation of the ERP program. The dredge and fill program regulates activities in most natural waterbodies and connected wetlands using boundaries determined by the 1994 unified statewide wetland

delineation methodology. The dredge and fill program does not regulate activities in isolated wetlands.

The district administers a limited MSSW program for non-agricultural facilities, primarily for the construction or alteration of dams and levees, and an agricultural MSSW program. The agricultural program regulates, to a limited extent, surface water management projects in agricultural settings, including isolated wetlands. The implementation of a full ERP program in the district will result in changes to the current environmental regulatory programs in two areas: (1) stormwater (water quality and water quantity) and (2) isolated wetlands.

In preparation of the ERP being implemented in the district, the department prepared proposed Rule 62-346. If the rule was implemented as drafted, the following changes would result:

### **Stormwater**

Currently, the department stormwater program in the district regulates activities in uplands and wetlands that create new impervious areas (under Rule 17-25). The regulation only addresses stormwater quality, not the increased quantity of stormwater (i.e. flooding) generated by development.

The district also administers a limited MSSW program for non-agricultural facilities, primarily the construction or alteration of dams and levees, and an agricultural MSSW program. On a limited basis, the agricultural program regulates surface water management projects in agricultural settings, including isolated wetlands. The MSSW program is designed to address issues relating to water flow and flooding. No changes are proposed for this program.

Under the ERP program, stormwater quality and quantity would be addressed in a single environmental resource permit. The permit is issued by the district or the department under an activity-based operating agreement similar to that in effect elsewhere in the state.

### **Wetlands**

Currently, impacts to isolated wetlands are largely unregulated, unless such impacts are addressed under a Rule 62-25 FAC permit from the department or an MSSW from the district. Dredge and fill activities in isolated wetlands are not regulated with regard to habitat value. The ERP would regulate dredging and filling in isolated wetlands related to habitat value.

No distinction is made between isolated wetlands and wetlands that are contiguous to a water body (i.e. creek, river, lake, bay, etc.) under the ERP program. In the proposed rule, wetlands are defined as any area that is wet enough under normal conditions to support wetland vegetation. Therefore, all wetlands would be regulated regardless of whether they are isolated or connected.

The proposed rule exempts certain activities from regulation. These exemptions are activities associated with typical agricultural practices that alter the topography of the land. The exemption does not apply if the alteration is “for the sole or predominant purpose of impounding or obstructing surface waters.” Therefore, any activity that alters agricultural land for the purpose of filling a wetland (i.e. obstructing a wetland) would not qualify for the exemption.

The proposed rule for the ERP allows certain activities to be conducted under noticed general permits for dredging or filling of less than 100 square feet of wetlands or other surface waters. These activities may be undertaken after notice is provided of the landowner's intent to pursue the activity. Under this provision, an isolated wetland less than 100 square feet in a surface area could be filled through the general permit.

The filling of an isolated wetland greater than 100 square feet would require an individual permit. The permit application would be reviewed pursuant to all of the criteria listed in the proposed rules, which includes protection of habitat for fish and wildlife. Modifications to the proposed project could be required to eliminate or reduce adverse impacts and to mitigate for such impacts. If the wetland is wholly-owned, under half of an acre, and was entirely constructed in uplands (i.e., a pond), then the review of the application would be limited to the impacts of the filling on water quality and impacts to adjacent waters, including groundwater, and water quantity.

### **III. Effect of Proposed Changes:**

**Section 1** requires the department and the district to jointly develop rules for the management of stormwater and surface waters, taking into consideration the differing physical and natural characteristics of the area. Rules for regulating stormwater are to be adopted by January 1, 2007, and for surface waters by January 1, 2008. The intent is to update stormwater rules to improve water quality and flood protection. For surface waters, the intent is to preserve property interests while improving the management and storage of surface waters, and while recognizing the historically rural nature of the district.

The bill authorizes the adoption of existing exemptions and general permits by the department and the other water management districts, and provides that any activity or structure that is exempt in any other water management district will be exempt in the Northwest Florida Water Management District. The rules shall specifically exempt resurfacing or paving of unpaved roads and an alteration of a wholly-owned artificially created surface water that is not connected to state waters.

The bill requires the department and the district to enter into an operating management agreement that delegates to the district the responsibilities for managing the ERP in northwest Florida to the extent resources are available. At a minimum, the responsibility for regulating silviculture and agriculture is required of the district.

The bill also provides a grandfather provision for any legal activity existing before the new program's rules take effect, as long as those activities abide by the condition of their original authorization. This includes activities that were permitted under the old northwest Florida rules, but have not yet begun construction or operation and activities proposed in applications prior to the implementation of the new rules. These projects may be amended if the modification lessens the environmental impact; however, the modifications may not extend the time limit for construction by more than two years.

The bill provides statutory exemptions common to the other four water management districts, excluding exemption from the Harris Act, and deletes statutory exemptions or the district from the ERP.

The bill provides that the regulations governing development activity in northwest Florida shall revert back to those in effect on April 1, 2006 if the Legislature fails to appropriate funds to implement this program in any given fiscal year.

In the event that the Legislature does not fund the operations of the ERP program for the area of the district, the bill provides for the regulations governing development activity in northwest Florida to revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with the act.

The bill eliminates the July 1, 2006 repeal in s. 373.4145 (1), (2), (3), and (4), F.S.

**Section 2** appropriates \$2,418,816 in recurring funds and \$525,000 in nonrecurring funds from general revenue to the Department of Environmental Protection as a transfer to the Northwest Florida Water Management District for the operational expenditures to implement this act.

**Section 3** provides an effective date for this act of July 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

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:

Additional costs to the private sector will vary depending on an individual project's requirements to address impacts to isolated wetlands and to provide additional stormwater treatment to address water quantity.

**C. Government Sector Impact:**

The bill appropriates a total of \$2,943,846 from the General Revenue Fund for the 2006-2007 fiscal year to the district to implement the stormwater provisions of this act.

An additional \$1,664,492 (\$1,389,492 recurring and \$275,000 nonrecurring) is estimated to be needed by the district in the 2007-2008 fiscal year, to implement the management and storage of surface waters provisions of this act. Due to the limited ad valorem tax resources available to the district, additional state funds will be needed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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