

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 560

INTRODUCER: Budget Subcommittee on General Government Appropriations; Environmental Preservation and Conservation Committee; and Senator Dean

SUBJECT: Water Management Districts

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	Fav/CS
2.	<u>McKay</u>	<u>Roberts</u>	<u>GO</u>	Favorable
3.	<u>Pigott</u>	<u>DeLoach</u>	<u>BGA</u>	Fav/CS
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides the water management districts (WMDs) greater flexibility to:

- Enter into interagency agreements for resource study and management for impacts to water resources that cross WMD boundaries;
- Apply an adjoining WMD's reservations, minimum flows and levels (MFLs), and recovery or prevention strategies without having to undertake rulemaking to adopt them for those rules adopted after July 1, 2012;
- Allow a WMD to issue a consumptive use permit (CUP) under certain circumstances when that CUP would violate another WMD's reservations, MFLs, or recovery and prevention strategies;
- Grandfather CUPs issued before July 1, 2012, from the provisions of the bill unless the permittee requests modification or increase of the CUP;
- Allow a WMD to offer its employees and the employees of another WMD a group health insurance program in order to minimize health insurance premiums; and
- Jointly develop the water supply development component of a regional water supply plan with a regional water supply authority.

The bill also clarifies that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements unless they affect a substantial interest of a party.

The bill substantially amends sections 373.046, 373.223, 373.605, 373.709 and 373.171, Florida Statutes.

II. Present Situation:

Interagency Agreements

Subsection 373.046(6), F.S., currently allows the WMDs to enter into an interagency agreement designating one WMD with regulatory responsibilities for the geographic area of projects that affect multiple WMDs or a local government. However, the WMDs do not have the statutory authority to enter into similar agreements for non-regulatory resource management activities, studies, or projects. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Conditions for Issuance of Consumptive Use Permits

The WMDs were established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, it cannot use the adopted reservation, MFL, and recovery and prevention strategies adopted by a neighboring WMD without separately going through its own rule making process. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

The goal of establishing MFLs is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.

Section 373.042, F.S., requires the Department of Environmental Protection (DEP) or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. However, the WMDs have thus far been solely responsible for establishing MFLs. The WMDs submit annual MFL priority lists to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to chapter 120, F.S., challenges. MFLs are established using the best available data and are independently and scientifically peer reviewed. To date, 322 MFLs have been adopted and 200 are on the current priority lists from the WMDs.

Health Insurance Benefits for Employees of WMDs

Section 373.605, F.S., authorizes the WMDs to provide group insurance programs for their employees. However, no legislative authority exists for WMDs to pool their employees to

negotiate better insurance rates. Each WMD provides its own insurance programs. WMDs with smaller workforces have difficulty providing plans with adequate coverage at competitive rates. In addition, the quality of health care plans provided currently varies widely among WMDs.

Regional Water Supply Planning

The WMDs are required to conduct water supply needs assessments. A WMD that determines existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period must prepare a regional water supply plan.¹ The plans must contain:

- A water supply development component,
- A water resource development component,
- A recovery and prevention strategy,
- A funding strategy,
- The impacts on the public interest, costs, natural resources, etc.,
- Technical data and information,
- Any MFLs established for the planning area,
- The water resources for which future MFLs must be developed, and
- An analysis of where variances may be used to create water supply development or water resource development projects.²

Currently, only the Southwest Florida WMD is required to jointly develop the water supply development component with a regional water supply authority.³

Cooperative Funding Programs

Senate Bill 2080, passed during the 2009 Regular Session, addressed cooperative funding programs.⁴ However, its statutory placement in s. 373.0363, F.S., limits its application instead of applying generally to all cooperative funding programs, as was intended. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection, and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

III. Effect of Proposed Changes:

Section 1 amends s. 373.042, F.S., to allow that any person substantially affected under s. 373.223(6), by a proposed establishment of a reservation, minimum flow or level, or recovery or prevention strategy in an adjoining district, may request a preliminary review by the DEP before the rule adoption hearing by the governing board.

Section 2 amends s. 373.046, F.S., to allow the WMDs to enter into interagency agreements to share funding and resource management responsibilities for activities, studies, or projects for

¹ See s. 373.709, F.S.

² Section 373.709(2), F.S.

³ Section 373.709(3), F.S.

⁴ Chapter 2009-243, s. 1, L.O.F.

resources that affect multiple WMDs in a geographic area. This section does not apply to shared regulatory responsibilities already provided for in subsection 373.046(6), F.S. In addition, this section allows a WMD to provide funding assistance to another WMD for resource management activities, studies, or projects if the funding WMD receives some or all of the benefits of the resource management activities. The bill also clarifies that it does not impair any interagency agreement in effect on July 1, 2012.

Section 3 amends s. 373.223, F.S., to allow a WMD to use and consider an adjoining WMD's reservations, minimum flows and levels, and recovery and prevention strategies without adopting them by rule when determining the effect a proposed CUP may have on an adjoining WMD's water resources. The WMD may not issue the CUP if doing so would violate the adjoining WMD's reservations, minimum flows and level, and recovery and prevention strategies. If a party brings a chapter 120, F.S., challenge, the WMD that adopted the rule is responsible for defending it.

Clarifies that when a district is considering a modification to a permit issued prior to July 1, 2012, that would increase permitted quantities or otherwise increase impacts to a reservation or minimum flow and level, it must also consider the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule on or after July 1, 2012, by the adjoining district.

Section 4 amends s. 373.605, F.S., to allow a WMD to offer its employees and the employees of other WMDs a group health insurance program. It also deletes an obsolete section.

Section 5 amends s. 373.709, F.S., to direct the WMDs to jointly develop the water supply development component of a regional water supply plan with a regional water supply authority. Currently, only the Southwest Florida WMD is required to do so.

Section 6 amends s. 373.171, F.S., to clarify that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements. However, parties may challenge the program pursuant to s. 120.569, F.S., if any part of the program affects their substantial interests.

Section 7 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will result in a positive but indeterminate fiscal impact to the WMDs. It may also allow for streamlining of some administrative and non-regulatory functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Budget Subcommittee on General Government Appropriations on January 24, 2012:**

- Clarifies that when a district is considering a modification to a permit issued prior to July 1, 2012, that would increase permitted quantities or otherwise increase impacts to a reservation or minimum flow and level, it must also consider the reservations, minimum flows and levels, and recovery or prevention strategies adopted by rule on or after July 1, 2012, by the adjoining district.
- Provides a process for substantially affected parties to request a preliminary review by the Department of Environmental Protection prior to rule adoption of the establishment of a reservation, minimum flow or level, or recovery or prevention strategy in an adjoining district.

CS by Environmental Preservation and Conservation on December 6, 2011:

The CS provides the WMDs greater flexibility to:

- Apply an adjoining WMD's reservations, minimum flows and levels (MFLs), and recovery or prevention strategies without undertaking rulemaking to adopt them for rules adopted after July 1, 2012;
- Allow a WMD to issue a CUP under certain circumstances when that CUP would violate another WMD's reservations, MFLs, or recovery and prevention strategies;
- Grandfather CUPs issued before July 1, 2012, from the provisions of the bill unless the permittee requests modification or increase of the CUP; and

- Jointly develop the water supply development component of a regional water supply plan with a regional water supply authority.

The CS clarifies that a WMD's cooperative funding programs are not subject to chapter 120, F.S., rulemaking requirements unless they affect a substantial interest of a party.

Finally, the CS fixed the technical deficiency that limited the WMDs to providing only health insurance benefits.

B. Amendments:

None.