

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 17, 1998 Revised: 4/20/98 _____

Subject: Water Management Districts

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises the requirements for the review and approval of water management district (WMD) budgets, effective in FY 1999-2000, including a requirement that the Legislature statutorily adopt or modify program priorities for WMD budgets, and permits the use of a Global Positioning System (GPS) for a survey of delineated wetland boundaries. This bill also creates the Independent Public Fiscal Office in the Joint Legislative Auditing Committee to provide fiscal oversight of each WMD. It directs the committee to employ staff to work in each WMD and provides protection from retaliation for WMD employees who provide information to fiscal office employees.

This bill amends sections 373.421 and 373.536, and creates section 373.0835, Florida Statutes.

II. Present Situation:

Chapter 373, F.S., the Water Resources Act of 1972 (the “act”), provides the primary policy for water resource regulation in the state. The act provides for five water management districts (WMDs) encompassing the state which are organized along hydrologic boundaries. Each district is headed by a governing board that is appointed by the Governor and confirmed by the Senate. The districts are subject to the general direction of the Department of Environmental Protection (DEP) and have been delegated a number of functions by the DEP. The WMDs regulate water quality and quantity through a permitting system. Collectively, the WMDs have grown over the years to a size exceeding that of many state agencies, with more than 3200 employees and operating budgets totaling approximately \$850,517,000 in FY 1997. The districts fund their operations primarily with ad valorem revenues, permit fees, and any funds appropriated by the Legislature from the Surface Water Improvement and Management Trust Fund and the Water Management Lands Trust Fund.

As the WMDs have grown in size and complexity, their activities have become increasingly controversial. Much attention has been focused on the issue of appointed officials levying ad valorem taxes. WMDs are limited to a millage not exceeding 1.0 mill by Art. VII, s. 9(b) of the State Constitution (except for the Northwest Florida WMD which may only levy 0.05 mill). The WMDs are further restricted, pursuant to s. 373.503(3)(a), F.S., in the amount of millage they are permitted to levy as set forth below:

1. Northwest Florida WMD - 0.05 mill.
2. Suwannee River WMD - 0.75 mill.
3. St. Johns River WMD - 0.6 mill.
4. Southwest Florida WMD - 1.0 mill.
5. South Florida WMD - 0.80 mill.

Pursuant to Art. VII, s. 1 of the State Constitution, the state may not levy ad valorem taxes upon real property.

The functions of the WMDs have been subject to review by the Legislature on eight occasions since 1988. These reviews have resulted in a number of changes designed to improve WMD functions, and, in recent years, to increase their fiscal accountability.

Pursuant to s. 373.536(5), F.S., the Executive Office of the Governor must analyze the WMD's annual budgets and is authorized to approve or disapprove them, in whole or in part, but may not otherwise change the budgets.

Section 373.421, F.S., provides a methodology for the delineation of wetlands. The methodology does not specifically authorize the use of a Global Positioning System (GPS).

III. Effect of Proposed Changes:

Section 1. Section 373.421, F.S., is amended to provide that whenever a survey or certified survey of delineated wetland boundaries is required for any purpose under ch. 373, F.S., the survey may be performed by conventional methods of land surveying or by use of a GPS. When a GPS is used in the survey, the equipment must provide for submeter or less accuracy and must be operated by, or under the supervision of, a registered land surveyor licensed in Florida or by an individual specifically trained in the use of the make, type, and model of the GPS equipment being employed. The presence of the registered surveyor's seal and signature constitutes proof that the survey was conducted by or under the supervision of a Florida-licensed registered land surveyor. A survey of wetland boundaries using GPS which is conducted in accordance with s. 373.421, F.S., is not an approximate wetland delineation for purposes of the rules adopted under s. 373.421(2), F.S.

Section 2. Section 373.536, F.S., is amended to require the Legislature, beginning in WMD FY 1999-2000 and each fiscal year thereafter, to statutorily adopt or modify program priorities for WMD budgets. The Executive Office of the Governor must present to the Legislature by February 1, 1999, and annually thereafter, recommended program priorities for WMDs and recommended legislation to statutorily adopt or modify program priorities for WMD budgets for the coming fiscal year. The program priorities may vary for each district and must be based on the statutorily mandated programs and activities of the districts and the particular needs within each district in the following four areas of responsibility:

- Water supply.
- Water quality.
- Flood protection and floodplain management.
- Natural systems.

Beginning in FY 1999-2000, and annually thereafter, each WMD must incorporate the applicable program priorities in the development of its budget.

The bill requires that, as part of its review of WMD budgets pursuant to s. 373.536, F.S., the Executive Office of the Governor determine whether each district's budget is consistent with the applicable program priorities. In determining whether a district's budget is consistent with the applicable program priorities, the Executive Office of the Governor must consider comments on or objections to the proposed budget by the public and members of the Legislature, including comments and objections submitted by the chairs of the House and Senate appropriations committees pursuant to s. 373.536(5)(d), F.S., and the district's need to address natural disasters, other unforeseen circumstances, or issues of substantial concern to the citizens of the region. By September 15, 1999, and annually thereafter, the Executive Office of the Governor must notify, in writing, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the substantive and fiscal committees having jurisdiction over WMD activities as to all determinations made pursuant to s. 373.536(6), F.S.

The bill requires that, based on the authority granted the Executive Office of the Governor to approve or disapprove, in whole or in part, the budget of each WMD, and in accordance with the specific processes outlined in s. 373.536(5)(b), F.S., the Executive Office of the Governor disapprove those portions of a WMD's budget that it determines, under s. 373.536(6)(c), F.S., are inconsistent with the applicable program priorities.

Section 3. Section 373.0835, F.S., is created to provide for the Independent Public Fiscal Office as part of the Joint Legislative Auditing Committee. The office will provide fiscal oversight of each WMD on behalf of the people of the state. The fiscal staff employed by the office will work with the employees of the WMDs, analyze the programs and expenditures of each district, examine all internal audit reports, and make recommendations to the governing board of each

district about programs and expenditures that are unnecessary or exceed the district's authority as delegated by the Legislature.

The committee will employ staff to work in the main administrative office of each WMD as follows:

- South Florida WMD, two full-time employees.
- Southwest Florida WMD, two full-time employees.
- Northwest Florida WMD, one full-time employee.
- Suwannee River WMD, one full-time employee.
- St. Johns River WMD, one full-time employee.

WMDs and independent contractors for the districts are prohibited from taking retaliatory action against any employee who discloses information to an employee of the Independent Public Fiscal Office about any program or expenditure that is unnecessary or exceeds the WMD's authority as delegated by the Legislature.

This act shall take effect October 31, 1998.

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:

The authorization to use GPS technology for wetland delineation surveys may benefit surveyors through increased efficiency.

C. Government Sector Impact:

The Joint Legislative Auditing Committee reports that the seven positions required to be located in the WMDs will require an annual expenditure of \$285,989 in salary, not including associated expenses.

It appears the budget review responsibilities of the Executive Office of the Governor and the Legislature could be accomplished as part of their normal workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be some difficulty in implementing the provisions in Section 2 due to the timing of the budget preparation by WMDs. Usually, tentative budgets for FY 1999-2000 would not be available until June or July, 1999. The bill requires the Legislature to statutorily adopt or modify program priorities before the districts have prepared a tentative budget which would reveal proposed programs and activities of the districts.

It is not clear what would happen if the Legislature fails to adopt statutory program priorities for the districts. There have been occasions in the past when the Senate and House could not agree on provisions relating to water management districts.

The Joint Legislative Auditing Committee reports that stationing its employees in the WMDs would not be cost-effective, as it would require considerable travel by supervisory staff and close supervision that would not always be available. The committee suggests that it could accomplish the bill's purposes by using 6 positions based at headquarters assigned to conduct semi-annual financial reviews.

The concept of "outposting" of legislative auditing staff to agency locations is not new. State agencies routinely experience the regular presence of auditing staff as part of their daily activities. The permutations proposed in this bill do, however, raise significant integrity problems with the operation of the Legislative Branch. *First*, by having employees of the Joint Legislative Auditing Committee directly placed in water management district field offices it becomes more difficult for the Office of the Auditor General to conduct its own post-audit of the districts' financial operations. The Auditor General is effectively placed in the position of examining the actions of a district which have been influenced, in part, by the actions of employees of its own supervising

agency, the Joint Legislative Auditing Committee. Whether this violates any generally accepted auditing principles then becomes less important than the development of an organizational relationship in which a detached, external review of agency operations becomes internally compromised.

Second, the proper organizational relationship for legislative review is by amendment of ch. 11, F.S., which establishes the structure and functions of the internal components of the Legislative Branch. Separate legislation, CS/CS/SB 1574, made significant changes to the present organizational structure. Work papers prepared preliminary to the filing of that bill indicated all joint legislative operations would be subject to review. A review of the Joint Legislative Auditing Committee has as yet not been undertaken to determine its role and scope in the legislative apparatus. This bill suggest the expansion of that office prior to that leadership review.

Third, the 1994 Legislature directed the development of a system of Performance-Based Program Budgeting and commissioned the creation of a separate legislative Office of Program Policy Analysis and Governmental Accountability. That Office is designed to assess agency performance in the light of legislatively established benchmarks. Its ability at achieving that objective would be undermined, too, should it find itself in the position of evaluating actions of a district which have been internally influenced by fellow legislative staff reporting to the same supervising joint committee.

VIII. Amendments:

#1 by Governmental Reform and Oversight:

The amendment deletes section 3 of the bill, which created an independent public fiscal office, and instead requires the Auditor General to conduct semi-annual operational reviews of the expenditures of each water management district. Additional staff is provided to the Auditor General to perform the audits, as well as an appropriation of \$280,000. (WITH TITLE AMENDMENT)