

# 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.)

BILL: CS/SB 1250

SPONSOR: Natural Resources Committee

SUBJECT: Department of Environmental Protection

DATE: March 16, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill addresses some of the issues contained in the Senate Natural Resources Committee Interim Report No. 98-38, *Review of the Department of Environmental Protection*. The Office of the Youth Corps is deleted from the Office of the Secretary. The Division of Water Facilities is renamed the Division of Water Resource Management and the Division of Environmental Resource Permitting is deleted. The expiration date for the interim permitting authority of the Department of Environmental Protection in the Northwest Florida Water Management District is extended until the effective date of rules to be adopted by the Department of Environmental Protection and the Northwest Florida Water Management District. Requires the department and the water management district to develop a plan to implement a permitting program in this district and to submit that plan to the Governor and the Legislature by a date certain. Requires that the rules adopted by the department and the district must be substantially equivalent to those in effect for the rest of the state. The repayment of a loan for the startup costs for the NPDES program is forgiven.

This bill substantially amends ss. 20.255, 373.4145, 252.937, 378.901, and 403.021, 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). The primary goal of the act was to eliminate the duplication and overlapping regulatory programs to enhance the provision of services to the public.

The Senate Natural Resources Committee was assigned an interim project to review the overall performance of programs in the DEP and determine if programs are operating more efficiently.

Overall, the review concluded that the available performance information is inconclusive for fiscal year 1993-1994 through fiscal year 1997-1998 to determine whether the DEP is operating its programs more efficiently or whether costs savings have been realized.

The review found that there were certain program-related functions in the Office of the Secretary which could be integrated into the various divisions of the department so that these functions will be aligned with program performance measures to assure more accountability for these functions and reduce the number of positions that are budgeted in an administrative component. The Division of Water Facilities should be renamed the Division of Water Resource Management to reflect a recent department reorganization of certain bureau functions.

In 1993, the Environmental Reorganization 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 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 Northwest Florida Water Management District has a constitutional millage cap of .05 mil, with the remaining four water management district 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 Northwest Florida Water Management District's constitutional millage rate on a par with the other water management districts, but all 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 Northwest Florida Water Management District. Since the Northwest Florida Water Management District 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 Northwest Florida Water Management District, the DEP's permitting authority is limited to wetlands 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 expire on July 1, 1999. It is not entirely clear what impact this will have on environmental permitting in this water management district. The authority for the DEP to issue dredge and fill permits pursuant to rules adopted under the Henderson Wetlands Act would expire and the water management district is still unable financially to implement an ERP program. The committee's report therefore recommended that to insure that there will continue to be an environmental permitting program in the Northwest Florida Water Management District, legislative clarification of the situation that will exist after portions of s. 373.4145, F.S., expire on July 1, 1999, is needed.

Section 403.087, F.S., provides that the fees charged for permits must cover the costs of reviewing and issuing those permits. Despite this requirement, most permit fees collected by the

DEP are insufficient to cover the costs associated with those permits. For example, s. 403.0885, F.S., further specifies that the Legislature intended for National Pollutant Elimination Discharge System (NPDES) permits to be adequate to cover the entire cost of surveillance and other filed services required for these permits. Although the fees for these permits were originally established to cover the costs of the program, several factors have negatively impacted the annual NPDES fee revenue. As a result, the NPDES revenues covers only 60 percent of program costs. Similarly, the revenues derived from the issuance of most of the other permits issued by the DEP do not cover the costs to issue such permits.

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

This bill addresses some of the issues which were raised in the Senate Natural Resources Committee's Interim Report No. 98-38, *Review of the Department of Environmental Protection*.

Section 20.255, F.S., is amended to delete the Office of Youth Corps from the DEP's Office of the Secretary, since this office no longer exists.

The Division of Water Facilities is renamed the Division of Water Resource Management in recognition of expanded functions assigned to this division, and the Division of Environmental Resource Permitting is deleted since it no longer exists.

Section 373.4145, F.S., is amended to extend the expiration date for the interim permitting authority of the Department of Environmental Protection in the Northwest Florida Water Management District until the effective date of rules adopted by the DEP and the Northwest Florida Water Management District. The DEP and the Northwest Florida Water Management District are directed to develop a plan to implement all or a portion of the Management and Storage of Surface Water program under part IV of ch. 373, F.S., no later than January 1, 2002. The plan shall include the following:

- Recommendations for development of rules under part IV that are substantially equivalent to those in effect in the rest of the state;
- The division of permitting responsibilities between the department and the Northwest Florida Water Management District;
- Funding and staffing;
- Application of the unified wetlands delineation methodology to isolated wetlands;
- Implementation of federal wetlands permitting programs;
- Means of addressing the implications of s. 70.001, F.S.; and
- Any legislation needed to implement the plan.

The plan shall be presented to the Governor , the President of the Senate, the Speaker of the House of Representative, and to the chairs of the relevant substantive and appropriations committees by January 1, 2000.

The DEP and the Northwest Florida Water Management District are authorized to adopt rules implementing all or a portion of the Management and Storage of Surface Water program under part IV, that are substantially equivalent to those in effect in the rest of the state. Such rules shall be effective no later than January 1, 2002.

Section 86 of ch. 93-213, L.O.F., is amended to forgive the repayment of a \$3.2 million loan from the Pollution Recovery Trust Fund to the Department of Environmental Protection. This loan was to be used by the department to cover the startup costs for the state National Pollutant Discharge Elimination System (NPDES) program.

Sections 252.937, 387.901, and 403.021, F.S., are amended to correct a cross-reference.

#### **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:**

This bill would allow the DEP to continue operating the dredge-and-fill and stormwater permitting program in the Northwest Florida Water Management District until the effective date of rules adopted by the DEP and Northwest Florida Water Management District relating to an environmental permitting program in this district. This will allow the water management district time to develop strategies and justification for implementing a complete ERP program

similar to the programs in the other four water management districts. Implementation of a complete ERP program in the Northwest Florida Water Management District would probably increase the workload of either the DEP or the Northwest Florida Water Management District. This is because the ERP program would extend the permitting program to include isolated wetlands and a flood control program. In recent years, the Northwest Florida Water Management District has experienced a significant increase in development activity which has increased the effects caused by flooding. The cost to implement an ERP program in this area is not known at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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