

**STORAGE NAME:** h2067s1z.wrm

**DATE:** June 14, 1999

**\*\*FINAL ACTION\*\***

**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
WATER & RESOURCE MANAGEMENT  
FINAL ANALYSIS**

**BILL #:** CS/HB 2067 (formerly PCB WRM 99-02)

**RELATING TO:** Extending the interim wetlands permitting program for the Northwest Florida WMD

**SPONSOR(S):** Committee on General Government Appropriations (FRC); Committee on Water and Resource Management (RLC); Rep. Alexander and others

**COMPANION BILL(S):** CS/HB 2069 (s), CS/SB 1250 - 2nd engrossed (s), CS/SB 2282 - 1st engrossed (s), HB 467 - 1st engrossed (c), CS/CS/SB 864 - 3rd engrossed (c), CS/CS/SB 908 - 2nd engrossed (c), and CS/SB 1384 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) WATER & RESOURCE MANAGEMENT YEAS 12 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
- (3)
- (4)
- (5)

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**I. FINAL ACTION STATUS:**

CS/HB 2067 first passed the House by a vote of 108-10 after the adoption of several amendments on April 26, but was reconsidered later in the day because a mixup in the amendments resulted in the wrong one being adopted. On reconsideration, CS/HB 2067 passed the House by a 112-6. On April 28, the Senate took up the bill, added two amendments, and passed it by a vote of 40-0. The following day, the House concurred in the Senate amendments and approved the bill 112-1. The Governor signed the bill on June 11, 1999, and it has been designated chapter 99-353, Laws of Florida.

**II. SUMMARY:**

Within the Northwest Florida Water Management District (NFWFMD), wetlands activities are regulated under a different program than the environmental resource permitting (ERP) program used in the rest of the state. The statutory authorization for the NFWFMD program expires July 1, 1999.

CS/HB 2067 would extend the repeal another four years, to July 1, 2003. Additionally, the legislation would direct DEP and the NFWFMD to develop a plan by which the permitting for activities proposed in surface waters and wetlands shall fully comply with the provisions of part IV, chapter 373, F.S. (which governs the wetlands permitting program used in the rest of Florida), by the same date. The plan would address the division of wetlands permitting responsibilities between DEP and the NFWFMD; the process by which the NFWFMD shall implement the existing wetlands delineation methodology; the ability of the NFWFMD to implement federal permitting programs related to activities in surface waters and wetlands; and the Chapter 70 (Bert Harris Private Property Rights Act) implications of implementing an ERP program within the NFWFMD.

Additionally, DEP and the NFWFMD shall submit a joint interim report on their progress in developing the plan to the Governor and the Legislature on March 1, 2001, and a final report on March 1, 2003.

CS/HB 2067 has minimal fiscal impact on DEP and the NFWFMD. However, if the Legislature in four years decides to fully implement an ERP in the Panhandle area, both agencies likely will seek additional staff positions and funding.

In addition, CS/HB 2067: deletes the requirement that DEP repay a \$3.2 million "loan" it borrowed from its Pollution Recovery Trust Fund in 1993 to implement the federally delegated National Pollutant Discharge Elimination System program; extends for another three years the current wetlands jurisdiction determinations on several Northwest Florida projects; clarifies that once a county becomes eligible for payment-in-lieu of taxes it shall receive payments for 10 years; includes the text of CS/SB 2282, relating to a process by which DEP will develop total maximum daily loads for impaired Florida waterbodies; ensures that the winners in court actions related to chapter 373 permits, licenses, or requirements have the opportunity to seek reimbursement for their legal and court costs; deletes the three-day, \$5 nonresident freshwater fishing license; and makes technical cross-reference changes.

CS/HB 2067 takes effect upon becoming a law.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Wetlands permitting

The 1993 Environmental Reorganization Act merged the departments of Natural Resources (DNR) and Environmental Regulation (DER) into the Department of Environmental Protection, for the purposes of streamlining the old agencies' governmental services so that they would be provided delivery of services to the public in a timely, cost-efficient manner. One of the outcomes of the legislation was the creation of an "environmental resource permit" (ERP) which consolidated the old DER wetlands dredge-and-fill permits, and management and storage of surface waters permits (the water management districts' old MSSW permits) into a single 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 NFWFMD has had the authority to operate a MSSW program pursuant to chapter 373, F.S., it has never fully operated such a program due to funding limitations. The NFWFMD has a constitutional millage cap of .05 mill, with the remaining four water management districts capped at 1 mill. Over the years, several unsuccessful attempts have been made to place on a statewide ballot an amendment to the state Constitution that raises the NFWFMD's constitutional millage rate to 1 mill.

Section 373.4145, F.S., was created in 1993 to provide for a five-year, interim environmental permitting program for the NFWFMD. Since the NFWFMD was financially unable to implement an ERP program, DEP operates a limited permitting program in this water management district with state financial subsidies for both. Last fiscal year, DEP spent \$1.96 million of its state General Revenue funding to operate the wetlands permitting program in the Panhandle, while the NFWFMD used \$300,000 in state General Revenue to implement its small wetlands program.

Within the NFWFMD, DEP's permitting authority is limited to wetlands permitting rules which were in effect under the Henderson Wetlands Act of 1984. The Henderson Act differs from the ERP program in several ways, primarily that activities in isolated wetlands or activities in uplands that could impact water quality or wildlife habitat are not regulated by the state. Considerations of the impacts of stormwater runoff also are not part of these Henderson Act wetlands resource permits.

Meanwhile, the NFWFMD only processes permits for the construction, operation and maintenance of dams used in agricultural operations. It regulates agricultural and silvicultural activities largely through the use of BMPs.

Except where delegated, the U.S. Army Corps of Engineers implements federal wetlands regulations uniformly throughout Florida.

The interim provisions of s. 373.4145, F.S., expire on July 1, 1999. Much legal uncertainty exists as to how permit applications for wetlands activities would be processed if the Legislature allows the repeal to occur without implementation of a specific replacement program. Would DEP and the NFWFMD be able to implement any type of wetlands permitting program they chose? Would the ERP program by default be the law of the land in the Panhandle? Or would there be no mechanism, besides the federal program, to permit wetlands activities?

In addition, since July 1, 1994, wetlands in Florida have been delineated using the same statewide methodology adopted by the Legislature in the spring of 1994. However, within the boundaries of the Northwest Florida WMD there are a number of projects that were "grandfathered in" (pursuant to s. 373.414(13), F.S.) using the previous wetlands jurisdictional determination. As of April 1999, there are 90 issued, valid "jurisdictional declaratory statements" that will expire on or before July 1, 2003, and a handful of others that either have longer expiration dates or are at some other stage in the process. The statutes are silent about what would happen to these grandfathered-in projects.

Another legal issue to be addressed relates to chapter 70, F.S., the Bert J. Harris Jr. Private Property Rights Act, which provides protections for property owners against governmental laws and regulations that inordinately restrict an existing use of, or vested interest in, real property. Pursuant to s. 70.001(12), F.S., no cause of action can be brought against a governmental entity for applying laws, rules or regulations enacted on or before May 11, 1995. Because the ERP rules were adopted

prior to that date, they are exempt from Chapter 70 provisions. The policy question is whether the Legislature also would exempt any ERP rules adopted by the NFWFMD.

There is an appropriations issue, as well, implicit in the discussion of implementing an ERP program in the Panhandle. Last fiscal year, DEP spent \$1.96 million of its state funding to operate the wetlands permitting program in the Panhandle, while the NFWFMD used \$300,000 in state General Revenue to implement its small wetlands program. Based on a January 1998 report prepared by the Governor's Office, it would cost between \$2.8 million and \$4.4 million a year to implement an ERP program in the NFWFMD.

#### NPDES "loan forgiveness"

Section 86 of ch. 93-213, L.O.F., provided statutory authority for DEP to accept delegation of the National Pollutant Discharge Elimination System, which permits wastewater discharges. To implement the program, DEP received authorization from the Legislature to hire 54 FTEs, and to use \$3.2 million in the Pollution Recovery Trust Fund for start-up costs. DEP had hoped that the fees charged for NPDES permits would cover the costs of reviewing and issuing those permits, plus finance other aspects of the program. Historically, however, the NPDES revenues have been covering about 60 percent of program costs, and DEP has been unable to repay the "loan" from the Pollution Recovery Trust Fund.

#### Payment in Lieu of Taxes

Certain counties, municipalities and other local governmental entities are eligible to receive "payment in lieu of taxes" (PILT), intended to compensate them for loss of ad valorem tax revenues caused by the state or water management district buying lands through the Preservation 2000 program. The criteria are complicated: eligible counties are those which either levy an ad valorem tax of at least 8.25 mills or who experience a tax loss that exceeds .01 percent of the county's total taxable value, and which have a population of 75,000 or less. (For areas of critical state concern, the population threshold is 100,000.) For a local government (e.g., municipalities, the county school board and mosquito control districts) to qualify for PILT, it must have a population of less than 10,000, and either levy at least 8.25 mills or experience a tax loss that exceeds .01 percent of its total taxable value.

The payment amount is to be based upon the actual taxes paid on the property for three years preceding acquisition subject to certain conditions. Payments are limited to 10 consecutive years beginning the year the property becomes eligible.

Since 1993, 16 counties have received PILT from the water management districts for a total of \$556,609. Nine counties, two school boards, one mosquito control district and the Lower Keys District have received PILT from the state during that same time, for a total of \$1.36 million.

In past years, an otherwise eligible county or local government would lose PILT if it raised its millage rate, or forgot to file for the money, or its population exceeded the threshold. The Legislature has amended the language at least twice in recent years to reflect that once a county or local government becomes eligible, it should receive the full 10 years of PILT, but DEP or the Department of Revenue has still denied one or more local governments additional PILT for varied reasons. For example, last year, Walton County's property values escalated to such an extent that even with all the large state land purchases there, the county was ruled ineligible because its property tax loss from Preservation 2000 acquisitions did not exceed the .01 percent threshold.

#### Total maximum daily loads, or TMDLs

The federal Water Pollution Control Act of 1972 (commonly referred to as the Clean Water Act, or CWA) set forth the basic framework for pollution control in the nation's water bodies. Its goal was "fishable and swimmable water for every American." By setting national standards and regulations for pollution discharge, the CWA sought to restore and protect the health of the nation's water bodies. National water-quality standards were strengthened; pollution could no longer be discharged without a permit; the use of best available technologies for pollution control were encouraged; and monies for building and improving sewage treatment plants were provided.

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. Those waters that qualify as "impaired" (i.e. don't meet the specific pollutant limits for their designated uses) must be submitted to the US Environmental Protection Agency (EPA) under section 303(d) of the CWA. States must then develop total maximum daily loads (TMDLs) for each pollutant that exceeds the legal limits for that water body. If states fail

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to develop TMDLs, then EPA is required to do so. Section 303(d) and TMDL development were largely ignored for 20 years until lawsuits filed against the EPA in various states brought them renewed attention.

Approximately 30 lawsuits are active nationwide, although settlements are in the works. On April 22, 1998, Earthjustice filed a civil action on behalf of the Florida Wildlife Federation, Inc.; Environmental Confederation of Southwest Florida, Inc., and Save Our Creeks, Inc. The complaint alleged that the defendants, EPA and its Secretary, Carol Browner, have not enforced Florida's adherence to the CWA. In particular, the lawsuit alleged that EPA had not required Florida to comply with section 303(d) of the CWA in generating a list of impaired waters and subsequent TMDL development for those waters.

There are three basic components of the lawsuit: 1) a tighter completion schedule for TMDLs by the DEP, 2) specific concerns regarding the priority of TMDL development for Lake Okeechobee, the Indian River Lagoon, and the Suwannee River, and 3) for Florida to implement a watershed management approach. On September 22, 1998, DEP briefed EPA and Earthjustice on their proposed 13-year schedule for TMDL development, its priority for TMDL development for the named waters, and its planned adoption of a watershed management approach. Settlement talks are ongoing, and EPA is optimistic that a settlement can be reached with Earthjustice.

As discussed above, section 303(d) of the CWA requires states to submit a list of waters that do not meet relevant water quality standards and to prioritize TMDL development and implementation for those waters. The 303(d) list is updated every two years and lists not only impaired water bodies, but the pollutants that violate water quality standards and a prioritized schedule for TMDL development for all waters on the list, noting those scheduled for development over the next two years.

The DEP submitted its first 303(d) list in 1992 simply using the listed SWIM waterbodies. In 1994, the DEP submitted its first "true" 303(d) list which combined the SWIM list with "poor" waters from the 305(b) report. In the 305(b) report, state waters were categorized as good (i.e. met all designated uses), fair (i.e. partially met all designated uses), and poor (i.e. do not meet designated uses). Approximately 320 water segments were listed, and the proposed schedule for TMDL development was two per year. The 1996 303(d) list had approximately the same number of water segments listed, but the TMDL development schedule was accelerated to eight per year.

The 1998 303(d) list was first submitted to the EPA based on waters rated as "poor." However, the EPA then stated that not only should the "poor" waters from the 305(b) report be included on the list, but the "fair" waters as well since they failed to "meet all designated uses." With the addition of the "fair" waters, the 1998 list included more than 750 water segments. The DEP then re-evaluated the "fair" waters and re-submitted the list, now with 709 water segments, to the EPA on April 1, 1998 and finally received approval in late November. The proposed TMDL schedule was again accelerated to a total of 13 years for TMDL development and implementation.

TMDLs will be developed by the DEP using a basin/watershed management approach. The DEP has drafted a general framework document for their Watershed Management Approach. Pollution load reduction goals, if established by the water management districts, may be used as the basis for the TMDL. In preparation for TMDL development, the DEP is currently working on pilot projects and refining computer models with a focus on nonpoint source modeling. TMDLs have already been established for Tampa Bay, Lake Thonotosassa, the Halifax River and the Manatee River. However, there is currently no acknowledgment in state statutes of either the TMDL program or the procedure for TMDL development and adoption.

A settlement agreement is being negotiated by Earthjustice and EPA, but as of the date of this analysis, is not public. Early indications are that one of the provisions will direct EPA to develop and implement the TMDL for Lake Okeechobee if DEP hasn't done so within two years.

#### Freshwater fishing licenses

The Game and Fresh Water Fish Commission (which will be incorporated into the new Fish and Wildlife Conservation Commission on July 1, 1999) issues a number of recreational fishing licenses. One of the newer licenses is the three-day, \$5 nonresident recreational freshwater fishing license, created in 1997. In FY 1997-1998, 77,003 of these licenses were sold, generating \$385,015 in revenue. (FY 1998-1999 data is not available.)

Game commission staff contend that the availability of the 3-day license caused a decline in sales of the \$15, seven-day recreational fishing licenses. From FY 1996-1997 to FY 1997-1998, sales of this particular license dropped by more than 56,000, meaning a net loss of revenue of about \$460,000. The agency asked the Legislature during the 1999 Session to repeal the \$5, three-day license in hopes that tourists will, with no other option, purchase the \$15, seven-day license.

Reimbursement of legal fees and court costs

Since 1974, s. 120.69, F.S., has given judges the discretion to award to prevailing parties, in enforcement actions brought by state agencies in circuit court, all or part of the costs of litigation, attorney's fees and expert witness fees. In 1978, the Legislature passed s. 57.105, F.S., which provides that in cases where a state agency brings a civil action, and the court finds that the losing party failed to raise a justiciable issue of either law or fact, the court shall award reasonable attorney's fees to the prevailing party.

To address the concerns of small-business owners that they were at a disadvantage when trying to defend themselves against civil or administrative actions brought by a state agency, the Legislature in 1984 passed the "Florida Equal Access to Justice Act," s. 57.111, F.S. The act allows small businesses, as defined in the legislation, to seek recovery of reasonable attorney's fees and other legal costs -- for a maximum of \$15,000 -- if they prevailed in a civil or administrative action brought by a state agency. Exempt from the provisions of this section are proceedings involving rulemaking, rate making or "sounding in tort" (which means that the legal action is one in which a plaintiff is seeking a remedy or damages because of some alleged act of negligence against him or her by the agency).

More recently, questions have been raised about the applicability of s. 57.111, F.S., to individuals who mount a defense against an agency action, as well as whether the five water management districts (WMDs) are "state agencies" for the purposes of chapter 57. The WMDs are more commonly defined as "local governments" because of their regional nature and authority.

B. EFFECT OF PROPOSED CHANGES:

Under CS/HB 2067:

- o The current repeal date of interim wetlands permitting program for the NFWFMD is extended to July 1, 2003.  
  
DEP and the NFWFMD are directed to develop a plan by which the permitting for activities proposed in surface waters and wetlands shall fully comply with the provisions of part IV, chapter 373, F.S., beginning July 1, 2003. The plan shall address the division of ERP responsibilities between DEP and the district; the process by which the district shall implement the existing wetlands delineation methodology; the ability of the district to implement federal permitting programs related to activities in surface waters and wetlands; and the Chapter 70 (Bert Harris Private Property Rights Act) implications of implementing an ERP program within the district.  
  
DEP and the NFWFMD shall submit a joint interim report on their progress in developing the plan to the Governor and the Legislature on March 1, 2001, and a final report on March 1, 2003.
- o Valid wetlands jurisdictional declaratory statements for projects within the Northwest Florida WMD that meet certain other criteria shall be extended to January 1, 2002.
- o A process would be established for restoring Florida's waters through the establishment of TMDLs for pollutants of impaired water bodies as required by the federal Clean Water Act. Specifically, the bill addresses development of the 303(d) list, TMDL assessment, calculation, allocation, and implementation. The bill calls for the TMDL process to be integrated with existing protection and restoration programs in the State and for coordination with state agencies and affected parties.
- o DEP does not have to repay \$3.2 million to its pollution Recovery Trust Fund.
- o Once a county receives a PILT check, it is entitled to receive these benefits for the full 10 years.

- o Prevailing parties in court actions resulting from Chapter 373, F.S., provisions may be awarded reasonable attorney's fees and other legal costs.
- o The \$5, three-day nonresident recreational freshwater fishing license is repealed.
- o Certain technical name changes are made to reflect changes in the reorganization of DEP because of the creation of the new Fish and Wildlife Conservation Commission (the subject of CS/SB 864). References to the current DEP Division of Water Facilities are changed to the division's name, as of July 1, 1999, the "Division of Water Resource Management".

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

CS/HB 2067 authorizes the DEP to promulgate rules relating to the methodology for TMDL assessment, delisting water bodies from the subsidiary list, the administration of funds, and for pollutant trading procedures. The DEP secretary is authorized to adopt rules relating to TMDL calculations and allocations. The DEP is authorized to adopt by order a subsidiary list from the 303(d) list.

The DEP and the water management districts are authorized to promulgate rules relating to measures necessary to achieve the pollution reduction targets established by the TMDL for non-agricultural nonpoint sources of pollution.

The Department of Agriculture and Consumer Services (DACS) is authorized to promulgate rules relating to measures necessary to achieve the pollution reduction targets established by the TMDL for agricultural nonpoint sources of pollution.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, DEP and the NFWFMD would be directed to develop a plan by which the state would implement an ERP program in the Panhandle area, and to report back to the Legislature.

In addition, DEP will be the lead agency in administering the TMDL program and provides for coordination with local governments, water management districts, DACS, local soil and water conservation districts, environmental groups, regulated interests, other state agencies and affected pollution sources.

- (3) any entitlement to a government service or benefit?

No. However, CS/HB 2067 does try to ensure that once a county or other local government becomes eligible for payment in lieu of taxes, that eligibility lasts for 10 full years.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

DEP's elevated level of responsibility regarding development and implementation of TMDLs is indeterminate, as is DACS' responsibility for developing agricultural Best Management Practices as a non-regulatory tool in achieving TMDLs. However, a provision in CS/CS/SB 908 makes available about \$5.4 million in documentary stamp tax revenues -- to be halved between DEP and DACS -- to implement a TMDL program.

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No, but implementation of a TMDL could result in higher costs relating to point sources of pollution (e.g. wastewater treatment plants, power plants, etc.) and nonpoint sources of pollution (e.g. urban stormwater management and agricultural runoff) that could in turn be passed on to the consumer.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 57.111, 252.937, 372.57, 373.136, 373.4145, 378.901, 403.021, 403.031, and 403.805, F.S. Amends s. 86 of chapter 93-213, Laws of Florida. Creates ss. 372.5711 and 403.067, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 373.4145, F.S., to extend by four years the July 1, 1999, repeal of certain provisions within the section. Specifies new repeal date would be July 1, 2003. Directs the Department of Environmental Protection (DEP) and the Northwest Florida Water Management District (NFWFMD) to begin developing a plan by which the permitting for activities in surface waters and wetlands within the jurisdiction of the NFWFMD shall fully comply with the provisions in part IV, chapter 373, F.S., relating to the environmental resource permit. Specifies issues to be addressed within the plan. Directs DEP and the NFWFMD to jointly prepare, for the Governor and the



Legislature, an interim report by March 1, 2001, and a final report by March 1, 2003. Extends certain jurisdictional declaratory statements to January 1, 2002.

Section 2: Amends s. 252.937, F.S., to reflect name changes.

Section 3: Amends s. 378.901, F.S., to reflect name change.

Section 4: Amends s. 403.021, F.S. to reflect name change.

Section 5: Amends section 86 of chapter 93-213, Laws of Florida, to delete requirement that DEP repay NPDES loan.

Section 6: Directs DEP and the water management districts to pay PILT for 10 years to eligible governmental entities.

Section 7: Amends s. 373.136, F.S., to specify that courts may award reasonable attorney's fees and court costs to the prevailing party or parties in court actions and appellate proceedings resulting from the provisions of chapter 373, F.S.

Section 8: Amends s. 57.111, F.S., to clarify that for the purposes of the "Florida Equal Access to Justice Act," a state agency shall be as defined in s. 120.52(1), F.S. , and shall include water management districts.

Section 9: Amends s. 403.031, F.S., to define "total maximum daily load."

Section 10: Creates s. 403.067, F.S., to express legislative findings and intent, and to establish process by which "total maximum daily loads" shall be established and implemented in Florida. Specifies rulemaking authority.

Section 11: Amends s. 403.805, F.S., to give the DEP secretary, rather than the Environmental Regulation Commission, the authority to approve final agency action regarding TMDL calculations and allocations.

Section 12: Directs DEP, in coordination with the WMDs and DACS, to evaluate the effectiveness of the implementation of TMDL for a period of five years from the effective date of this act. Directs DEP to document those findings, plus any recommendations for statutory changes, in a report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by Jan. 1, 2005.

Section 13: Specifies that notwithstanding s. 20.255(2), F.S., the DEP secretary is authorized to restructure and reorganize the agency in compliance with s. 216.292, F.S., 1998 Supplement, and s. 216.177, F.S. Directs the DEP secretary to submit to the Legislature and the Governor monthly status reports on the reorganization through December 1999.

Section 14: Amends s. 372.57, F.S., to delete the \$3, five-day nonresident freshwater fishing license.

Section 15: Creates s. 372.5711, F.S., to direct the Legislature to review the fees for permits and licenses authorized in Chapter 372, F.S., beginning in the year 2000, and every five years thereafter.

Section 16: Provides that this act shall take effect upon becoming a law.

#### IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

##### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

For much of the bill, the recurring fiscal impact is indeterminate.

For example, over the next two or three fiscal years, DEP will incur minimal costs in developing the ERP implementation plan. And, since the PILT provisions attempt to ensure that the law is implemented by DEP and the water management districts as the Legislature intended, there should be no unexpected recurring costs to the state.

The game commission is hoping that repealing the \$5, three-day fishing nonresident recreational freshwater fishing license will encourage people to buy the \$15, seven-day license instead, with a net revenue gain of \$500,000 to \$600,000.

3. Long Run Effects Other Than Normal Growth:

Over the next 10 to 15 years a full implementation of a TMDLs program in Florida, where impaired waterbodies are restored to a higher water quality will be expensive -- an expense likely to be shared by taxpayers at all levels of government.

Also, the "prevailing parties" provision may result in DEP having to pay reasonable attorney's fees and other court costs when it loses cases related to chapter 373, F.S., permits or regulations.

4. Total Revenues and Expenditures:

Indeterminate, but minimal at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. For the next two or three fiscal years, the NFWFMD will incur minimal costs in developing the implementation plan.

Continuing the 10-year PILT payments to eligible counties and local governments is not an unexpected cost to the WMDs.

3. Long Run Effects Other Than Normal Growth:

As mentioned above, full implementation of the TMDLs program will affect taxpayers at the local level, as well as other levels of government.

Also, the "prevailing parties" provision may result in the WMDs or local governments with delegated chapter 373, F.S., powers having to pay reasonable attorney's fees and other court costs when they lose cases.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate at this time. Eventually, implementation costs of the TMDLs program likely will be shared by consumers and businesses.

2. Direct Private Sector Benefits:

Indeterminate at this time. It is possible that individuals and small businesses will benefit financially from the "prevailing parties" provision, if they win cases against the state or the WMDs related to chapter 373, F.S., permits or regulations.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. **FISCAL COMMENTS:**

CS/HB 2067's provisions related to prevailing parties in a chapter 373, F.S., case being able to seek reasonable attorney's fees and court costs are, in effect, restatements of the general principle already in statute and case law allowing the winners in court cases to receive reimbursement for their legal expenses. Thus, there should be no unexpected financial burden on a water management district, DEP or a local government which files an enforcement action against a small business or private citizen, and then loses that case.

Also, the game commission staff's assertion that repealing the \$5, three-day nonresident recreational freshwater fishing license will generate an additional \$500,000 to \$600,000 in revenue as tourists buy more expensive licenses is problematic. There are no guarantees that a person who is vacationing over a weekend and wants to go fishing will buy a seven-day license.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

CS/HB 2067 does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

CS/HB 2067 does not reduce the authority that municipalities or counties have to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

CS/HB 2067 does not reduce the percentage of state tax revenues shared with counties and municipalities.

VI. COMMENTS:

Section 13 of CS/HB 2067 presumably supersedes Section 56 of CS/CS/SB 864, which passed the Legislature a day earlier. Both sections give the DEP Secretary the ability to reorganize the agency, with the understanding that the Legislature must approve any changes that require amending statutes. Both sections require a December 1999 report to the Governor, the President of the Senate and the Speaker of the House of Representatives. However, the provision in CS/HB 2067 also requires monthly reports to those same persons, beginning 30 days after the bill becomes law.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 22, 1999, the Committee unanimously adopted one amendment to PCB WRM 99-02 that replaced a reference to "s. 373.414, F.S.," with the broader reference to "part IV, chapter 373," to incorporate stormwater management into consideration of a wetlands and surface water permitting program for Northwest Florida. A second amendment, which would have required a report and

implementation of environmental resource permitting rules by earlier dates than the PCB, was defeated by a voice vote. The committee then voted 12-0 to report the PCB as favorable.

PCB WRM 99-02 was later assigned the bill number HB 2067.

The House General Government Appropriations Committee adopted four amendments on April 19, 1999. One made technical name changes to a DEP division; another dealt with the PILT issue; a third repealed the NPDES loan requirement; and the fourth extended the wetlands jurisdictional declaratory statements for eligible projects in the NFWFMD to January 1, 2001. The bill was reported out as a committee substitute.

On the House floor on April 23, 1999, one amendment was added. It was an early version of the language giving the courts discretion to award reasonable attorney's fees and court costs to prevailing parties in chapter 373, F.S., cases. A second amendment, which would have reduced the time-frames in the bill for DEP and the Northwest Florida WMD to develop an ERP plan and report, was withdrawn by its sponsor.

On third reading on April 26, 1999, three amendments were added: the TMDLs language, the provision giving the DEP secretary authority to reorganize the agency (with eventual legislative approval) and a technical amendment. A fourth amendment, nearly identical to the DEP reorganization provision, was withdrawn. The House then passed the bill by a vote of 108-10. However, the bill had to be reconsidered because the wrong DEP reorganization amendment had been adopted. Eventually, CS/HB 2067 passed the House by a vote of 112-6.

On April 29, 1999, the Senate took up CS/HB 2067 in lieu of CS/SB 1250, and added two amendments. One was consensus "prevailing parties" language replacing the provisions already in the bill, and the other was the text of HB 467, repealing the \$5, 3-day nonresident recreational freshwater fishing license and calling for legislative review of all hunting and fishing licenses. The bill passed the Senate by a vote of 40-0.

In returning messages on April 30, 1999, the House took up CS/HB 2067 and concurred in the two Senate amendments before passing the bill by a vote of 112-1..

VIII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Joyce Pugh

Staff Director:

Joyce Pugh

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Cynthia P. Kelly

Staff Director:

Cynthia P. Kelly

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON WATER & RESOURCE MANAGEMENT:**

Prepared by:

Joyce Pugh

Staff Director:

Joyce Pugh