

# 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: SB 1138

SPONSOR: Senator Laurent

SUBJECT: Lake Region Lakes Management District

DATE: March 15, 2000

REVISED: 03/27/00 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill exempts the Lake Region Lakes Management District in Polk County from the permitting requirements of ch. 373, part IV, F.S., for certain activities. Those activities relate to the installation of certain pipes for lake-level management purposes and the removal or modification of pipes integral to the flow of water in ditches.

This bill substantially amends the following laws - section 3 of chapter 8378, L.O.F., 1919, as amended by section 1 of chapter 90-499, L.O.F., as amended by section 3 of chapter 97-344, L.O.F.

**II. Present Situation:**

Chapter 373, F.S., establishes a system of five multi-county water management districts to manage water resources on a regional basis. Part IV of that chapter provides for the management and storage of surface water resources. Section 373.413, F.S., authorizes the water management districts and the Department of Environmental Protection to require permits and imposes such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, or works will comply with provision of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the multi-county district. Section 373.414, F.S., provides the following criteria that the Department of Environmental Protection or the appropriate water management district is to consider and balance in determining whether an activity proposed in surface waters or wetlands is not contrary to the public interest or is clearly in the public interest:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activity will adversely affect navigation *or the flow of water* or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061, F.S.; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

Chapter 90-499, L.O.F., amended a 1919 law which created the Lakes Region Lakes Management District. The district has special taxing powers that can be used for the purpose of acquiring, constructing, operating, maintaining and protecting a system of boat canals, dams, locks and other proper and necessary works for the purpose of protecting, maintaining and improving the water quality in the lakes and canals in conjunction with state, county and city agencies, for the purpose of connecting the lakes within or adjacent to the district and for the purpose of promoting access to the lakes. Further changes and clarification was made in the general powers and authority of the special taxing district in 1997.

Over the years, disagreements have arisen between this special taxing district and the Southwest Florida Water Management District relating to requirements and time frames for obtaining permits for construction projects that the Lakes Region Lakes Management District wanted to implement.

**III. Effect of Proposed Changes:**

This local bill will provide permit exemptions from general law permit requirements in part IV of Chapter 373, F.S., for certain construction activities by the Lake Region Lakes Management District in Polk County. Specifically, the Lake Region Lakes Management District would not be required to obtain a permit to:

- (a) Install for lake-level-management purposes up to two 24-inch pipes or their equivalent, which are incorporated with a structure, and are operated based on a water management district's adopted lake-level program.
- (b) Remove pipes or other restrictions if such items are too small or restrict the flow of water in a ditch.
- (c) Add or change the inverts of pipes located in ditch crossovers when existing crossovers restrict the flow of water in an existing ditch.

**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:**

It's not clear if the construction activities that are exempt only apply to property owned or controlled by the Lake Region Lakes Management District or if it would apply to any private properties within the jurisdiction of the Lake Region Lakes Management District. Local law authorizing the general powers of the special district require construction projects for managing lakes to have the concurrence of the governing body having jurisdiction over the area involved.

**C. Government Sector Impact:**

While the Lake Region Lakes Management District would realize some undetermined amount of savings by not having to pay permitting fees to the Southwest Florida Water Management District or wait for the time for permits to be approved, it's not clear that the Lake Region Lakes Management District share the same views as the Southwest Florida Water Management District as to what is required for proper management of regional (multi-county) water resources.

In related legislation, SB 1140 and HB 987 proposed to expand the boundaries of the Lake Region Lakes Management District to include a portion of the St. Johns River Water Management District. If either SB 1140 or HB 987 should pass, this bill (SB 1138) would exempt the Lake Region Lakes Management District from permitting in two water management districts.

**VI. Technical Deficiencies:**

Page 2, line 30 of bill provides an exemption from permitting requirements for the installation “for lake-level-management purposes for two 24-inch pipes or their equivalent, which are incorporated with a structure,...” It is not clear how the word “structure” is meant to be used. Perhaps, it was meant to refer to some type of water control structure, but it’s not clear. Also, it is not clear whether the adopted lake level program referred to is that of a water management district created pursuant to ch. 373, F.S., or whether it applies to a lake levels program established by the Lake Region Lakes Management District.

Page 2, line 30 of the bill does not place any responsibility on the Lake Region Lakes Management District to notify or inform the Southwest Florida Water Management District or the St. Johns River Water Management District about any of the construction activity that is exempt from permits thereby hindering the water management districts from obtaining as-built-construction drawings, engineering details and operating schedules to assess the overall functions and impacts of activities constructed pursuant to exemptions allowed in the bill within the multi-county regional water management system.

Page 3, line 3 of the bill allows the removal of restrictions if such items restrict the flow of water in a ditch. It’s not clear whether this would be interpreted to go beyond routine custodial maintenance of a ditch which is already statutorily exempt. Over extensive activities could have significant adverse impacts on regional water flow patterns.

**VII. Related Issues:**

According to information provided by the Southwest Florida Water Management District, two 24 inch pipes having a discharge head pressure of 1 to 5 feet are estimated to discharge from 35 to 80 cubic feet per second or 22.6 to 51.7 million gallons per day. Unless such pipes are operated strictly in compliance with the adopted lake level program there could be significant impacts on regional water resources.

There are pending litigation cases before the Division of Administrative Hearings involving the Polk County Board of County Commissioners, Southwest Florida Water Management District, St. Johns River Water Management District, Lake County Water Authority, and over one hundred concerned citizens relating to ch. 373, part IV, F.S., permit applications submitted to the Southwest Florida Water Management District by Polk County to relieve flooding in and around Lake Lowery. This bill could potentially affect the pending permit challenge cases under the Southwest Florida Water Management District’s jurisdiction. Since the related SB 1140 and HB 987 expand the boundaries of the Lake Region Lakes Management District into part of the area of the St. Johns River Water Management District affected by the litigation, if either of these related bills pass, SB 1138 could potentially affect the pending permit challenge cases in the St. Johns River Water Management District’s jurisdiction as well.

**VIII. Amendments:**

#1 by Natural Resources:

This amendment provides that the Lake Region Lakes Management District is not required to obtain a permit that is required pursuant to part IV of ch. 373, F.S.:

- To install for lake-level-management purposes up to two 24-inch pipes or their equivalent, which are incorporated with a water control structure, and are operated based on a water management district's adopted lake-levels program which was created pursuant to ch. 373, F.S.
- To remove pipes, crossovers, or other restrictions located within a ditch if such items are too small for or restrict the flow of water in a ditch.
- Add pipes or change the inverts of pipes located in ditch crossovers when existing crossovers restrict the flow of water in an existing ditch.

The Lake Region Lakes Management District shall notify the Southwest Florida Water Management District when it undertakes project activities which qualify for an exemption. The area within the district that falls under the jurisdiction of the St. John's River Water Management District is not subject to the exemption provided by this bill.

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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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