

STORAGE NAME: h2071.wrm

DATE: March 21, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER and RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 2071 (formerly PCB WRM 00-05)

RELATING TO: Water Management Districts/Rulemaking (RAB)

SPONSOR(S): Committee on Water and Resource Management, Representative Alexander, and others

TIED BILL(S): None

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

(1) WATER and RESOURCE MANAGEMENT YEAS 12 NAYS 0

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I. SUMMARY:

Agencies have been directed by s. 120.536, F.S., to identify rules which lack sufficient statutory authority, and to seek that authorization from the Legislature. The statutory authorization, in the form of a "rule authorization bill," or RAB, is to be narrowly drawn to the rule in question.

HB 2071 authorizes existing water management district (WMD) rules allowing the delegation, by rule, of powers and duties relating to the review and issuance of general permits by the governing boards to the executive director. The executive director may execute the delegation authority via designated staff.

HB 2071 does not appear to have a fiscal impact, nor does it appear to raise constitutional or other legal concerns. It would take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedure Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., required that each agency, by October 1, 1999 provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 that exceeded the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeded the rulemaking authority permitted by this section, the agency also had to identify the language of the rule which exceeded this authority. The Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. During the 2000 Regular Session, the Legislature will consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the permitted rulemaking authority. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency

must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

In response to the statutory directive, the water management districts (WMDs) submitted their lists of rules that they identified as exceeding the rulemaking authority permitted by s. 120.536, F.S. One general area identified by all of the WMDs, except for the Northwest Florida Water Management District, was the delegation of powers and duties by the district governing boards to designated staff for the review and issuance of general water use and environmental resource permits. The four districts identified the following rules dealing with the delegation of governing board powers: 40B-1.703, 40B-400.211, 40C-1.1010, F.A.C.; 40C-20.011, F.A.C.; 40C-22.001, F.A.C.; 40C-40.011, F.A.C.; 40C-400.201, F.A.C.; 40D-1.600, F.A.C.; 40D-2.091, F.A.C.; 40D-45, F.A.C.; 40E-40.061, F.A.C.; and 40E-2.091, F.A.C.

General permits are issued for applications that fall below certain thresholds. For example, the St. Johns River WMD issues general consumptive use permits for those withdrawals of less than 500,000 gallons per day on an average annual basis. Individual permits are issued for applications requesting withdrawals greater than this amount. Under current rule, general permit approvals are handled by district staff for South Florida WMD, St. Johns River WMD, Suwannee River WMD, and Southwest Florida WMD. Northwest Florida WMD's governing board handles all approvals and denials. Denials for South Florida WMD and Suwannee River WMD are handled by the governing board. However, denials are issued by staff for Southwest Florida WMD.

One final issue of note is that heads of other state agencies are authorized by s. 20.05, F.S. to execute any of the department's powers, duties, and functions through administrative units and through assistants and deputies designated by the head of the department. Thus, heads of departments, but not WMD governing boards, are authorized by statute to delegate any powers and duties to staff.

C. EFFECT OF PROPOSED CHANGES:

HB 2071 authorizes existing WMD rules allowing the delegation, by rule, of powers and duties relating to the review and issuance of general permits by the governing boards to the executive director. The executive director may execute the delegation authority via designated staff. Thus, the net effect of the bill is statutory authorization of existing rules.

HB 2071 also requires water management district governing boards to provide a process for referring denials of consumptive use or environmental resource general permits, variances, or waivers to the governing board for final action when delegating powers and duties pertaining to general permits to staff.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 373.118, F.S. to authorize the delegation, by rule, of powers and duties relating to the review and issuance of general permits by governing boards to the executive director. The executive director may execute the delegation authority via designated staff. Requires water management district governing boards to provide a process for referring denials of consumptive use or environmental resource general permits, variances, or waivers to the governing board for final action when delegating powers and duties pertaining to general permits to staff.

Section 2: Provides that the act will become effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

No fiscal impact is anticipated as these duties are currently delegated by most of the WMDs, and thus, no changes in current operating procedure should occur.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 2071 does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 2071 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

HB 2071 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 2071 authorizes currently existing WMD rules relating to delegation by the governing boards to staff.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 14, 2000, the Committee on Water and Resource Management adopted one amendment without objection to PCB WRM 00-05. The amendment removes the requirement that governing boards may only delegate powers and duties relating to general permits as they are defined by rule on February 1, 2000. Only the date is removed by the amendment, not the general permit restriction on delegation. In addition, the amendment requires that when delegating powers and duties pertaining to general permits to staff, water management district governing boards must provide a process for referring denials of consumptive use or environmental resource general permits, variances, or waivers to the governing board for final action.

VII. SIGNATURES:

COMMITTEE ON Water and RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

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