

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Criminal Justice Committee

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BILL: SB 1612

SPONSOR: Senator Atwater

SUBJECT: Water Management District Security

DATE: April 15, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<b>Favorable</b>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill authorizes water management districts to conduct fingerprint based criminal history checks of current or prospective employees and others with regular access to restricted access areas. Water management districts with structures or facilities identified as critical infrastructure by the Regional Domestic Security Task Force will be required to conduct the criminal history checks while water management districts without such infrastructures will be authorized to conduct the checks.

Water management district security plans for buildings, facilities, and structures will be required to identify criminal convictions or other criminal history factors that disqualify a person from either initial employment or restricted area access. Any person who has within the past 7 years been convicted of certain offenses will not qualify for employment or access to a restricted area. A person must remain conviction-free for a period of 7 years after release from incarceration before he or she may be able to qualify for employment or restricted area access.

This bill creates section 373.6055 of the Florida Statutes.

## II. Present Situation:

### Chapter 110, F.S.

Section 110.1127, F.S., requires each employing agency to designate employee positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment. For purposes of the chapter, an employing agency

is defined as any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of ch. 20, F.S., or other statutory authority.<sup>1</sup>

### **Chapter 435, F.S.**

Section 435.03, F.S., provides for Level 1 screening standards for employees required by law to be screened as a condition of employment. Level 1 screenings include, but are not limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement (FDLE). A list of disqualifying offenses is established for persons applying for Level 1 positions. For example, these persons may not have been found guilty of offenses such as aggravated assault, vehicular homicide, elder abuse or neglect, aggravated battery, and kidnapping.

Section 435.04, F.S., provides for Level 2 screening standards for employment, which include fingerprinting as well as employment history checks and statewide criminal correspondence checks. An employment disqualification list is also established for Level 2 positions and includes, for example, additional offenses such as negligent treatment of children, resisting arrest with violence, aiding in an escape, and depriving a law enforcement officer of means of protection.

### **Chapter 943, F.S.**

Under ch. 943, F.S., the FDLE is the state's central repository for criminal record information and has the third largest computerized criminal history file in the nation which contains criminal history records on more than four million offenders. The FDLE maintains and provides access to criminal history information which is commonly used for security and background screening of individuals.

In addition, regional domestic security task forces are created within this chapter and are tasked by the Chief of Domestic Security Initiatives with assisting in the identification of critical infrastructure. According to the FDLE, no facilities of the water management districts are currently identified as critical infrastructure by the task forces.

### **The USA Patriot Act Provides a Definition of Critical Infrastructure**

The Patriot Act defines critical infrastructure as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters."<sup>2</sup>

Other terms related to critical infrastructure are "key resources" and "key assets." Key resources are "publicly or privately controlled resources essential to the minimal operations of the economy and government."<sup>3</sup> Key assets are a subset of key resources and are defined as "individual targets whose destruction could cause large-scale injury, death, or destruction of property, and/or profoundly damage our national prestige and confidence."<sup>4</sup>

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<sup>1</sup> Section 110.107, F.S.

<sup>2</sup> USA PATRIOT Act of 2001, 42 U.S.C. s. 5195c(e).

<sup>3</sup> Homeland Security Act of 2002, 6 U.S.C. s. 2(9).

<sup>4</sup> *National Strategy for the Physical Protection of Critical Infrastructures and Key Assets* (February 2003), page 7.

According to *The National Strategy for the Physical Protection of Critical Infrastructure and Key Assets*, “states should identify and secure the critical infrastructures and key assets under their control. With the support of federal lead departments and agencies, states should also promote the coordination of protective and emergency response activities and resource support among local jurisdictions and between regional partners. States should further facilitate coordinated planning and preparedness by applying unified criteria for determining criticality, prioritizing protection investments, and exercising preparedness within their jurisdictions.”<sup>5</sup>

Domestic security in Florida is coordinated at the local level through seven Regional Domestic Security Task Forces. The task forces conduct, among other duties, security assessments of critical infrastructure using the Homeland Security Comprehensive Assessment Model (HLS-CAM). HLS-CAM is an assessment tool that evaluates 16 critical infrastructure sectors ranging from energy, including nuclear power to research and educational networks. According to the FDLE, the product of the HLS-CAM assessment generally reflects the Patriot Act’s definition of critical infrastructure.

### **Protection of Water Supplies and Water Facilities**

The protection of water supplies and water supply facilities has gained significance since September, 2001. Because of water’s importance to the public health and safety, increased security measures at water system components and infrastructure may be deemed to be necessary to ensure water quantity, water quality, and water delivery, and to prevent disruption of essential water services.

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

**Section 1** creates s. 373.6055, F.S., to provide that a water management district that has structures or facilities identified as critical infrastructure by the Regional Domestic Security Task Force is required to conduct fingerprint based criminal history checks of current or prospective employees and others with regular access to restricted access areas. Water management districts without such infrastructures are authorized to conduct the checks.

This bill does not provide for a definition of critical infrastructure. A current list of Florida sites designated critical infrastructure under the Patriot Act definition does not include any water management district facilities or structures. Until such time as critical infrastructure buildings, facilities, or structures are designated for water management districts by appropriate state or federal authority, no fingerprint-based criminal history checks are required; however, they are authorized as provided for by the bill.

Water management district security plans for buildings, facilities, and structures must identify criminal convictions or other criminal history factors that disqualify a person from either initial employment or restricted area access. Any person who has been convicted within the past 7 years of certain offenses does not qualify for employment or access to a restricted area. A person must remain conviction-free for a period of 7 years after release from incarceration before he or she may qualify for employment or restricted area access.

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<sup>5</sup> Id., page 19.

**Section 2** provides that the act takes effect upon becoming a law.

**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:

According to the water management districts, the private sector will bear the costs of screening or fingerprinting private contractors, employees of private contractors, vendors, repair persons, or delivery persons with access to facilities that the districts have designated as critical or secure facilities. Many of the private sector contractors doing business with the district also do business with local governments and have already been fingerprinted.

C. Government Sector Impact:

To date, the South Florida Water Management District is the only district indicating a need to request that facilities be designated as critical infrastructure. The Regional Domestic Security Task Force, using the HLS-CAM model as an assessment tool, would be responsible for assessing the district's facilities for designation as critical infrastructure. The designation of a facility as critical infrastructure is the basic qualifying condition that would require fingerprint background checks as provided for by this bill.

According to the district, approximately 550 of 1700 employees will have access to facilities that could be identified as critical infrastructure. The Department of Law Enforcement indicates that current fees for both a state and a federal fingerprint check together total \$47. Thus the initial cost to the district for screening 550 employees would be \$25,850. The recurring annual cost to the district would be \$1,034 based on an estimated annual employee turnover of four percent.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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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## **VIII. Summary of Amendments:**

None.

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