

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/CS/SB 2502

SPONSOR: Governmental Oversight and Productivity Committee, Environmental Preservation Committee, and Senator Dockery

SUBJECT: Water Management Districts

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute authorizes each water management district to establish a program to encourage small businesses, including those owned by women and minorities, to participate in the procurement and contract activities of the district. The bill also allows a water management district governing board member to continue to serve at the expiration of his or her term until a successor is appointed.

Further, the bill clarifies a date in the grandfathering provision that allows the use of declaratory statements of jurisdiction for wetlands delineation that were issued prior to the adoption of the statewide methodology for wetlands delineation.

This bill amends ss. 373.073 and 373.414, Florida Statutes; and creates s. 373.1135, Florida Statutes.

II. Present Situation:

The water management districts have implemented programs which attempt to provide equal access for all businesses, including minority and women-owned business enterprises, to contracting and procurement opportunities. A recent federal court decision¹ in Miami-Dade County regarding the county's minority business enterprise program has led the South Florida Water Management District to end its similar program. The county's program was successfully challenged on the grounds that the establishment of "participation goals" for minority and women business enterprises in awarding architecture and engineering contracts violated the

¹ *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, Fla.*, 333 F.Supp.2d 1305 (S.D.Fla.,2004)

Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. However, the South Florida Water Management District has indicated that it still emphasizes providing equal access for all businesses for contracting and procurement purposes.

In 1994 when the Legislature created a uniform methodology for delineating wetlands, projects that had already received a declaratory statement of jurisdiction delineating wetlands under previous law were allowed to either use the new methodology or the old methodology for which they had received a declaratory statement of jurisdiction. To use the grandfathering provision, the request to use the existing declaratory statement of jurisdiction had to be submitted to the Department of Environmental Protection or the relevant water management district before June 1, 1994.

III. Effect of Proposed Changes:

The committee substitute authorizes each water management district to establish and administer a program to encourage small businesses that are owned by women and minorities to participate in the procurement and contract activities of the water management district. The specifics of the program are to be provided by rule. The purpose of the program is to spur economic development and support small businesses, including businesses that are owned by women and minorities, to successfully expand in the marketplace. Each water management district shall adopt rules to administer the program.

Section 373.073, F.S., is amended to allow a water management district governing board member to continue to serve at the expiration of his or her term until a successor is appointed.

Section 373.414(13), F.S., is amended to address a glitch in the grandfathering provision that allows the use of jurisdictional declaratory statements for wetlands delineation that was issued prior to the adoption of the statewide methodology for wetlands delineation. Currently, a petition to use such statements must have been made *prior* to June 1, 1994. This bill allows such petitions to be made *on or before* June 1, 1994.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 287.09451, Florida Statutes, *et seq*, which provided overall spending goals for state agency spending with minority business enterprises through the Office of Supplier Diversity within the Department of Management Services, were declared unconstitutional² on grounds similar to the analysis and holding in *Hershell Gill Consulting Engineers*.

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

² *Florida A.G.C. Council, Inc. v. Florida*, 303 F.Supp.2d 1307 (N.D.Fla.,2004).

VIII. Summary of Amendments:

None.

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