

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 473 Water Management District Security
SPONSOR(S): Poppell & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Domestic Security Committee</u>	<u>8 Y, 0 N</u>	<u>Garner</u>	<u>Newton</u>
2) <u>Water & Natural Resources Committee</u>	<u>11 Y, 0 N</u>	<u>Winker</u>	<u>Lotspeich</u>
3) <u>Agriculture & Environment Appropriations Committee</u>	<u>10 Y, 0 N</u>	<u>Dixon</u>	<u>Dixon</u>
4) <u>State Administration Council</u>	<u>7 Y, 1 N</u>	<u>Garner</u>	<u>Bussey</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 473 authorizes Florida's five water management districts to conduct fingerprint-based criminal history background checks on employees or on contract personnel who have regular access to facilities that are designated as restricted access areas in the districts' security plans for buildings, facilities, and structures. In districts where the Regional Domestic Security Task Force (RDSTF) has identified any facilities or structures as "critical infrastructure," the district is required to conduct the background checks.

Any person who is found to have been convicted of certain enumerated crimes within the preceding seven years, or has a criminal history profile identified as disqualifying by the district's security plan, shall be disqualified from initial employment or from regular access to facilities identified in the district's security plan as restricted access. The bill authorizes districts to provide appeal and waiver procedures.

The cost of a fingerprint-based criminal history background check by the Florida Department of Law Enforcement (FDLE) is approximately \$47, and would be borne by the district for its employees. Where contract personnel are required to be checked, either the contractor or the individual employee would be required to bear the cost.

Currently, the RDSTFs have not identified any facilities of the water management districts as critical infrastructure. However, the Homeland Security Comprehensive Assessment Model process is ongoing, and the final determination of criticality for water management district infrastructure is incomplete. Therefore, the districts would have only permissive authority to conduct the background checks until such time as critical infrastructure is designated. In the event that any facilities are identified as critical infrastructure, the background checks become mandatory for the district where such facilities are located.

The fiscal impact to the water management districts or the state is expected to be minimal. For more details, see the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT section of the analysis. The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill requires water management districts with designated critical infrastructure to perform fingerprint-based criminal history background checks on employees and contract personnel who regularly work around such infrastructure. Where no such infrastructure is designated as critical, the bill authorizes a district to require such checks as a condition to working around facilities designated in the district's security plan as "restricted access." The cost of such background checks for contract personnel would be borne by the contractor or the contractor's employees. Currently, the price per background check charged by FDLE is \$47.

Safeguard Individual Liberty – The bill requires in some circumstances, and authorizes in others, a water management district to require certain employees to undergo fingerprint-based criminal history background checks. Where such checks are required of contractor employees, the employee may be required to pay for the check. Currently, no such requirement exists.

Maintain Public Security – The bill requires water management districts with facilities identified as "critical infrastructure" to perform criminal history background checks on workers, and authorizes other water management districts to require the checks at their discretion, but pursuant to their individual security plans. Any employee or contract worker who has been convicted of an enumerated crime within the last seven years is disqualified from employment or regular access to certain facilities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's Water Management Districts

Florida is divided into five water management districts: the Northwest Florida Water Management District; the Suwannee River Water Management District; the St. John's River Water Management District; the Southwest Florida Water Management District; and the South Florida Water Management District. Each district is a special taxing district with the authority to levy ad valorem taxes on private property. While the largest district, the South Florida Water Management District, has a productive ad valorem revenue base due to the amount of high value property in the district and its high population, and can meet nearly half of its budget with ad valorem revenues,¹ the Northwest Florida Water Management District is much less independent, and must rely primarily on the state for its funding, as ad valorem revenues support only about five percent of that district's budget.²

Critical Infrastructure and Personnel Access

Critical infrastructure includes those facilities that have been identified by law enforcement and emergency management personnel as inhabiting one of 16 key sector areas as defined by the Department of Homeland Security (DHS), and that have been determined, based on a vulnerability assessment and current threat information, to be at risk of a terrorist attack.³ Assessors apply the Homeland Security Comprehensive Assessment Model (HLS-CAM) when assessing vulnerability and

¹ South Florida Water Management District, Budget In Brief, FY 2004-05.

² Northwest Florida Water Management District, Budget Submission, FY 2004-05.

³ Phone interview with Mark Zadra, Florida Department of Law Enforcement, February 14, 2005.

prioritizing critical infrastructure.⁴ Once a critical infrastructure is identified, it is reported to DHS for inclusion with infrastructure from other states.⁵

In Florida, once an initial identification of critical infrastructure is made, local law enforcement and emergency management personnel work with agencies and the Regional Domestic Security Task Forces (RDSTFs) to determine which of the facilities should be deemed the "most critical" of the critical infrastructure.⁶ These facilities are included in the ThreatNet database where current criminal investigative and intelligence information dealing with terrorist activity can be shared.⁷ Because of the ever-changing nature of terrorist threat information, facilities that are included in the database as critical infrastructures are subject to removal, and facilities that have not been included are subject to addition as critical infrastructures.⁸

According to the Florida Department of Law Enforcement (FDLE), no facilities of the water management districts are currently identified as critical infrastructure by the RDSTFs.⁹ However, vulnerability and criticality assessments are ongoing under the HLS-CAM process, and water management districts will continually undergo reassessment in the future.¹⁰ The HLS-CAM process is a methodology for assessing critical infrastructure and was created by the National Domestic Preparedness Coalition for the U.S. Department of Homeland Security Office of Domestic Preparedness.¹¹ Upon completion of their community assessments, the RDSTFs will have a Community Prioritization Plan which will list the districts' critical infrastructures in priority order based on threat and criticality scoring.¹²

The South Florida Water Management District (SFWMD), because of its important role in flood control and water supply to agriculture and to the heavily populated areas of South Florida, has a number of facilities that might be regarded as critical infrastructure.¹³ District facilities in South Florida, for example, include water supply and flood control pumping stations, water supply structures, levys, canals, dikes, locks, flood control gates, wells, the Operations Control Room and Emergency Operations Center, and the headquarters building.¹⁴

Persons working at or around SFWMD facilities may include those who are employed directly by the water management district, or those who are employed by a private-party contractor.

For example, employees of the SFWMD who work at or near sensitive facilities include the Director of Emergency and Security Management, the Emergency Management Coordinator, the Security Manager, security technicians, field operations directors, structure maintenance technicians, pump station operators, engineers, electronic technicians, vegetation management technicians, supervisors, division directors, fleet technicians, and mechanics.¹⁵

The district also awards contracts for activities including construction, records management, equipment, building and facilities maintenance, a variety of services connected to the district's bio-chemical lab, bulk mail processing, canal dredging, a variety of services connected to the district's field operations center, and a multitude of other services and commodities.¹⁶ Many contract employees

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Phone interview with Mark Zadra, Florida Department of Law Enforcement, February 14, 2005.

¹¹ Department of Law Enforcement Analysis for HB 473.

¹² Id.

¹³ South Florida Water Management District response to staff inquiry, February 15, 2005.

¹⁴ Id., and the South Florida Water Management District Website, February 15, 2005.

¹⁵ Id.

¹⁶ Id., and the South Florida Water Management District Website, February 15, 2005.

work daily around facilities that may require a critical infrastructure designation after the HLS-CAM process is complete.

Approximately 550 of the total 1700 employees of the SFWMD, and approximately 200 contract employees, will have access to facilities that could be designated as critical infrastructure by the local RDSTF.¹⁷

Current Background Screening Requirements

Under Florida's general state employment laws,¹⁸ state agencies are required to designate employee positions that, because of the special trust or responsibility or sensitive location of those positions, require the persons occupying them be subject to a security background check, including fingerprinting, as a condition of employment.¹⁹ Any person who is required to undergo a security background investigation, but refuses to cooperate with the investigation or submit fingerprints, must be disqualified from employment, and if already employed, must be dismissed.²⁰ These background investigations are conducted at the expense of the employing agency, and fingerprinting is conducted by the agency or by an authorized law enforcement officer.²¹ Fingerprints are submitted to FDLE for processing, and may be forwarded to the United States Department of Justice for federal processing.²² The agency is required to reimburse FDLE for the costs of processing the fingerprints.²³ Background investigation and fingerprinting requirements under this general state employment law apply to the executive or judicial branch of state government²⁴, and do not appear to be applicable to water management districts, which are not executive agencies, but are special taxing districts.

Whenever a background screening or a background security check is required by law for employment with an agency, unless it is provided otherwise, Florida's employment screening law applies.²⁵ The employment screening law provides two levels of screening and investigation standards: Level 1 is applied to those persons required by law to be screened as a condition of employment; and Level 2 is applied to those persons who would be employed in a position designated by law as a position of trust or responsibility.²⁶

Under Level 1 screening standards, an employee is required to undergo a background screening that includes employment history checks and statewide criminal correspondence checks through FDLE.²⁷ Some Level 1 employees may also be required to undergo criminal record checks through local law enforcement agencies.²⁸ Employees subject to Level 1 screening are disqualified from employment if they have been found guilty of, or have entered a plea other than "not guilty" to, any one of a long list of enumerated violent and sexual crimes.²⁹

Under Level 2 screening standards, an employee in a position designated by law as a position of trust or responsibility must undergo security background investigations as a condition of employment, including fingerprinting for statewide criminal and juvenile record checks through FDLE, and federal criminal record checks through the Federal Bureau of Investigation (FBI).³⁰ Some Level 2 employees

¹⁷ Id.

¹⁸ Chapter 110, F.S., Part I.

¹⁹ s. 110.1127(1), F.S.

²⁰ s. 110.1127(2), F.S.

²¹ s. 110.1127(5), F.S.

²² Id.

²³ Id.

²⁴ s. 110.107(4), F.S.

²⁵ s. 435.01, F.S.

²⁶ See ss. 435.03 and 435.04, F.S.

²⁷ s. 435.03(1), F.S.

²⁸ Id.

²⁹ s. 435.03(2), F.S.

³⁰ s. 435.04(1), F.S.

may also be required to undergo criminal record checks through local law enforcement agencies.³¹ Employees subject to Level 2 screening are disqualified from employment if they have been found guilty of, or have entered a plea other than "not guilty" to, any one of a list of enumerated crimes expanded from the Level 1 list.³²

The background screening requirements of ch. 435, F.S., are only applicable to those agencies that are specifically required by law to conduct background screening of employees and prospective employees.³³ The requirements have been applied mainly to licensing agencies that license the provision of health care or social services, or to personnel who provide care for children or the elderly, or who are advocates for their interests. Currently, employees of water management districts, or their contractors, are not required by law to be screened under the provisions contained in ch. 435, F.S.

Water Management District Security Plan for Buildings, Facilities, and Structures

Pursuant to s. 943.0311, F.S., the Chief of Domestic Security Initiatives (FDLE Executive Director or his designate) has been tasked with communicating to water management districts the importance of conducting security assessments of buildings, facilities, and structures owned or leased by the districts, and the options that should be considered in obtaining the security assessments. Additionally, under the concept of all-hazards planning, the water management districts are required to provide for security and emergency response planning for terrorist threats. Section 252.365, F.S., requires the emergency coordination officer of each district to ensure that comprehensive disaster preparedness plan is developed providing a baseline of preparedness for a full range of potential emergencies.

Effect of Proposed Changes

HB 473 requires a water management district that has facilities identified by the local RDSTF as critical infrastructure to conduct a fingerprint-based criminal history check for any current or prospective employee, or any other person designated by the districts' individual security plan for buildings, facilities, and structures, if those persons are allowed regular access to facilities defined in the district's security plan as a restricted access area. Because the ongoing assessment of district infrastructure is not yet complete, it is uncertain which districts may be required to perform the mandatory background checks. According to FDLE staff, the water management districts will be able to determine whether background checks are required once the Community Prioritization Plan is developed, which lists critical infrastructures in priority order.

If the water management district does not have facilities that have been identified as critical infrastructure, the bill authorizes the district, but does not require it, to conduct the fingerprint-based criminal history checks.

Districts having critical infrastructure are required to conduct the background checks at least once every 5 years, but may conduct them more frequently as provided in the district's security plan for buildings, facilities, and structures. A full set of fingerprints are taken in the manner required by FDLE, and in accordance with the district's security plan, and are submitted to FDLE and the FBI for state and federal processing. The results are reported to the district. All costs for the background checks are paid by the district, by the district's contractor, or by the individual checked.

In addition, the bill requires the security plan for buildings, facilities, and structures, of each water management district to identify criminal convictions or other criminal history factors that disqualify a person from employment or regular access to facilities designated in the plan as restricted access areas. The bill allows a district to establish a procedure for appeal from a denial of employment or

³¹ Id.

³² s. 435.04(2), F.S.

³³ S. 435.01, F.S.

access based on procedural inaccuracies or discrepancies, and to allow temporary waivers to meet special or emergency needs of the district.

The disqualifying factors must include conviction within the past seven years of a number of enumerated offenses, including:

- Forcible felonies;
- Acts of terrorism;
- Planting a hoax bomb;
- Manufacture, possession, sale, delivery, display, use or attempted or threatened use of a weapon of mass destruction or a hoax weapon of mass destruction;
- Dealing in stolen property;
- Drug trafficking;
- Sale, manufacture, delivery, or possession with intent to sell manufacture or deliver a controlled substance;
- Burglary;
- Robbery;
- Theft;
- Felony with a weapon;
- Crimes with an element which includes use or possession of a firearm;
- Conspiracy to commit any of the above.

A person who has completed a sentence after conviction of any of the above may qualify for employment or regular access to restricted access areas if he or she has remained free from a subsequent conviction for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

C. SECTION DIRECTORY:

Section 1. Creates s. 373.6055, F.S., requiring water management districts with designated critical infrastructure to conduct criminal history checks on certain persons; authorizing such checks for districts not having designated critical infrastructure; providing requirements for criminal history checks; requiring submission of fingerprints to FDLE and the FBI; providing for payment of costs; requiring the security plans of water management districts to include criminal history convictions or factors that disqualify persons from employment or access to certain facilities; authorizing the use of such factors to disqualify; authorizing districts to establish appeals procedures; authorizing the use of temporary waivers; providing disqualifying offenses; providing an exception to disqualification.

Section 2. Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

See FISCAL COMMENTS section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

See FISCAL COMMENTS section below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain contractors or individuals employed by those contractors may be required to pay the cost required by FDLE to perform a fingerprint-based criminal history background check. According to the SFWMD, the contract amount charged by FDLE is approximately \$47 per background check. The district estimates that approximately 200 persons employed by contractors would be subject to background checks. Therefore, the total cost to contractors doing business with the district, and their employees could be approximately \$9,400. However, the district maintains that some contractors will already have had the checks performed on their employees prior to contracting with the district. These employees will not need an additional background check, so the impact to the private sector may be lessened accordingly. Figures indicating the potential costs to contractors of other districts and their employees were not available at the time this analysis was published, but because of the smaller size and different roles of those districts, they are expected to be less than the costs for the SFWMD.

D. FISCAL COMMENTS:

According to the SFWMD, approximately 550 of the 1700 employees of the district will have access to facilities that could be identified as critical infrastructure. In the event that some of the district's facilities are identified as such, and that it is required to conduct background checks on these employees, the total expenditure of the district would be approximately \$25,850 assuming the price per check is \$47. Interviews with staff at FDLE and the SFWMD indicate that districts other than the SFWMD are unlikely to have facilities identified by the RDSTFs as critical infrastructure. To date, none of the facilities at any district, including the SFWMD have been identified by the RDSTFs as critical infrastructure. Therefore, the effect of the bill is only permissive, not mandatory, with respect to requiring fingerprint-based criminal history background checks. However, the assessment is ongoing, and could result in mandatory background checks for some districts in the future. Figures indicating the potential costs to the other districts were not available at the time this analysis was published, but because of the smaller size and different roles of those districts, they are expected to be less than the costs for the SFWMD.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES