

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 649 Water Management Districts

**SPONSOR(S):** Pilon

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 882

| REFERENCE   | ACTION           | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|------------------|----------|--|
| 1) Agriculture & Natural Resources Subcommittee                   | 15 Y, 0 N        | Deslatte | Blalock                                  |
| 2) Rulemaking & Regulation Subcommittee                           | 14 Y, 0 N, As CS | Jensen   | Rubottom                                 |
| 3) Agriculture & Natural Resources Appropriations<br>Subcommittee |                  |          |  |
| 4) State Affairs Committee  |                  |          |  |

### SUMMARY ANALYSIS

Currently, Florida has 52 large watersheds or basins. In order to make environmental management easier, more effective and more uniform across programs, the Department of Environmental Protection (DEP) has grouped these watersheds into 29 groups of basins.

Any areas within a water management district (WMD) may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the St. Johns River Water Management District, which are established in statute by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin.

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. The bill places a Southwest Florida WMD board member on the Manasota Basin board beginning July 1, 2011.

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party.

The bill provides that local governments are authorized to adopt ordinances that implement landscape irrigation restrictions set forth in WMD rules or orders.

The bill amends current law to specify that funds deposited in the Water Protection and Sustainability Program Trust Fund to the credit of the Suwannee River Water Management District may also be used for regional water supply planning, water resource development, and water resource projects.

Beginning in fiscal year 2009-2010, ch. 2009-68, Laws of Florida (L.O.F.), eliminated documentary stamp tax distributions into the Water Protection and Sustainability Program Trust Fund, which was the primary revenue source for this trust fund. Therefore, the only revenue in this trust fund is derived from interest earnings on prior year unexpended fixed appropriations for capital outlay projects. If, and when, funds are provided by the Legislature into this trust fund, the bill will allow greater flexibility in the use of said funds by the Suwannee River WMD.

This bill does not appear to have a direct fiscal impact on state or local governments.

# FULL ANALYSIS

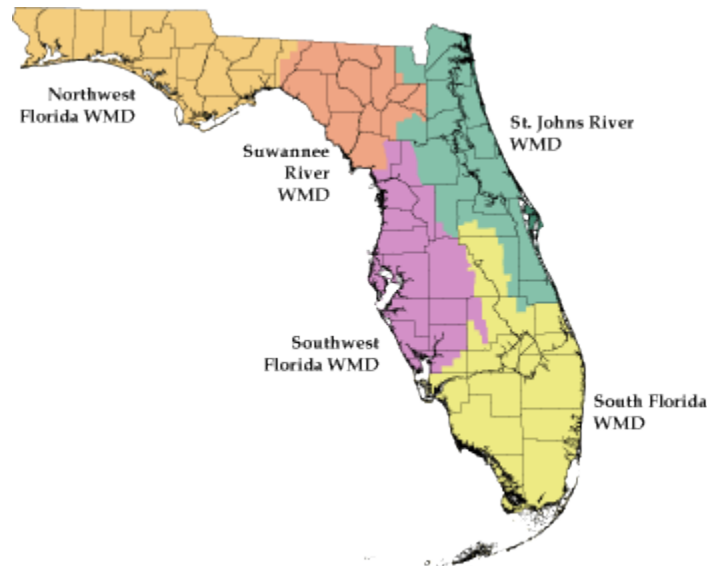
## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### *Water Management Districts*

The DEP manages the quality and quantity of water in Florida through its relationship with the state's WMDs, which are tasked with the preservation and management of Florida's water resources. The WMDs include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and the Southwest Florida Water Management District<sup>1</sup>.



Operating Agreements between the DEP and the WMDs outline specific responsibilities to each agency for any given application. Under those agreements, the DEP generally reviews and takes actions on applications involving:

- Solid waste, hazardous waste, domestic waste, and industrial waste facilities;
- Mining;
- Power plants, transmission and communication cables and lines, natural gas and petroleum exploration, production, and distribution lines and facilities;
- Docking facilities and attendant structures and dredging that are not part of a larger plan of residential or commercial development;
- Navigational dredging conducted by governmental entities, except when part of a larger project that a WMD has the responsibility to permit;
- Systems serving only one single-family dwelling unit or residential unit not part of a larger common plan of development;
- Systems located in whole or in part seaward of the coastal construction control line;
- Seaports; and
- Smaller, separate water-related activities not part of a larger plan of development (such as boat ramps, mooring buoys, and artificial reefs)

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<sup>1</sup> The Water Resources Act of 1972 (Chapter 373, Florida Statutes) mandated that five WMDs be created to manage the water resources of the state. After a process which took several years, the WMDs' boundaries were drawn based on natural, hydrologic basins rather than political or county limits to allow for effective and efficient planning and management. These boundaries are generally as they exist today.

Chapter 373, F.S., charges the WMDs with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the WMDs to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives<sup>2</sup>. By statute, each WMD is overseen by a governing board appointed by the Governor and confirmed by the Senate.

In 1998, the WMDs prepared water supply plans to determine the existing and future water needs and evaluate the adequacy of existing and potential sources to meet the reasonable-beneficial needs for the next 20 years. These plans are updated at least once every 5 years. For those areas where the sources were determined not to be adequate to meet the future needs, the districts were required to prepare regional water supply plans. The Northwest Florida, St. Johns River, South Florida and Southwest Florida Water Management Districts determined that sources were not adequate to meet all these future needs while sustaining the natural resources. By August 2001, these four districts completed regional water supply plans. Each year the districts are required to prepare a Five-Year Water Resource Development Work Program that describes implementation strategies for the water resource development component of regional water supply plans. The Suwannee River Water Management District's (SRWMD) water supply assessment concluded that supplies were adequate to meet the 2020 needs and therefore was not required to prepare a regional water supply plan.

Beginning in fiscal year 2005-2006, the state annually provides a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund (WPSPTF) for the purpose of providing funding assistance for the development of alternative water supplies pursuant to the Water Protection and Sustainability Program. The DEP distributes these revenues into the alternative water supply trust fund accounts created by each district for the purpose of alternative water supply development under the following funding formula:

- Thirty percent to the South Florida Water Management District;
- Twenty-five percent to the Southwest Florida Water Management District;
- Twenty-five percent to the St. Johns River Water Management District;
- Ten percent to the Suwannee River Water Management District; and
- Ten percent to the Northwest Florida Water Management District.

The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing water management district funding for alternative water supply development assistance. The districts are required to include the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects selected for inclusion in the Water Protection and Sustainability Program in their annual tentative and adopted budget submittals. The goal of each district is to match the state funding provided to the district for alternative water supply development. Only the Suwannee River and the Northwest Florida Water Management Districts are not required to meet the match requirements, but they are encouraged to try to achieve the match requirement to the greatest extent practicable.

Section 373.707, F.S., relating to alternative water supply development, mandates cooperative efforts between municipalities, counties, special districts, water management districts, and the DEP in the development of water supplies and to provide for alternative water supply development.

In regards to funding for alternative water resource projects, s. 373.707, F.S., provides that the districts and the state share a percentage of revenues with water providers and users, to be used to

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<sup>2</sup> In 1975, the Legislature proposed a constitutional amendment to authorize WMDs to levy ad valorem property taxes to help fund water resource management efforts. As a result, Article VII, Section 9 of the Florida Constitution authorizes the WMDs to levy ad valorem taxes based on taxable property values within each district's boundaries. The Northwest Florida WMD is limited to a constitutional millage cap of 0.05 mill, while the remaining four WMDs are limited to a maximum of 1.00 mill. In addition to ad valorem, other WMDs revenue sources include the United States Government, the State of Florida, local governments within the district, and other district sources like permit fees and interest earnings on investments.

supplement other funding sources in the development of alternative water supplies. Public and private water users include local governments, water, wastewater, reuse utilities, municipal, special district, industrial and agricultural water users.

Pursuant to this section, if a district has not completed any regional water supply plan, or the regional water supply plan does not identify the need for any alternative water supply projects, funds deposited in that district's trust fund may be used for water resource development projects, including, but not limited to, springs protection. Presently, the Suwannee River Water Management District is the only district to not complete a regional water supply plan, however, the goal is to have one completed this year. As the lesser funded of the five districts, both the Northwest Florida and the Suwannee River Water Management Districts desire more flexibility in the use of funds from the WPSPTF, if and when funding is restored.

### *Basin Boards*

Florida has 52 large watersheds or basins. In order to make environmental management easier, more effective and more uniform across programs, DEP has grouped these watersheds into 29 groups of basins.



Any areas within a WMD may be designated by the WMD governing board as subdistricts or basins by resolution, with the exception of basins within the St. Johns River Water Management District, which are approved by the Legislature. Each basin has a board composed of not less than three members, but must include one representative from each of the counties included in the basin. Members serve for a period of 3 years or until a successor is appointed, but usually not more than 180 days after the end of the term. Each basin board chooses a vice chair and a secretary to serve for a period of 1 year. The basin board chair is typically a member of the WMD governing board of the district residing in the basin.

If no member resides in the basin, a member of the governing board is designated as chair by the chair of the WMD board. Members of basin boards are appointed by the Governor and subject to

confirmation by the Senate. Refusal or failure of the Senate to confirm an appointment creates a vacancy in the office.

Statutory duties of basin boards, pursuant to s. 373.0695, F.S., include:

- The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.
- The development and preparation of an overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control, which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.
- The preparation of the annual budget for the basin and the submission of such budget to the WMD governing board for inclusion in the WMD budget.
- The consideration and prior approval of final construction plans of the WMD for works to be constructed in the basin.
- The administration of the affairs of the basin.
- Planning for and, upon request by a county, municipality, private utility, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, private utilities, or regional water supply authorities within or serving the basin.

### **Effect of Proposed Changes**

#### ***Basin Boards***

The bill amends statutory provisions relating to the make-up of water basin boards. If there are two WMD board members sitting on a water basin board, the pair will rotate the chair/co-chair position on an annual basis. If there is a vacancy on a water basin board, a quorum of total remaining basin board members may transact business until a successor is appointed. The bill places a Southwest Florida WMD board member on the Manasota Basin board beginning July 1, 2011.

#### ***Water Management Districts***

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party.

#### ***Alternative Water Supply***

The bill amends s. 373.707(8)(c), F.S., to clarify that funds deposited in the Water Protection and Sustainability Program Trust Fund to the credit of the Suwannee River Water Management District may also be used for regional water supply planning, water resource development, and water resource projects.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 373.0693, F.S., revising provisions relating to the membership of basin boards; specifying the terms of service for basin board members designated by district governing board chairs; providing that basin board members designated by district governing board chairs are voting members and counted for quorum purposes; providing for designated district governing board members to serve as basin board chairs and co-chairs; providing that a quorum of remaining members may conduct business if there is a vacancy on the board; revising provisions relating to the membership of the Manasota Basin Board; providing for the designation of a member of the district governing board to serve on the basin board.

Section 2. Amends s. 373.171, F.S., exempting cooperative funding programs from certain rulemaking requirements.

Section 3. Amends s. 373.707, F.S., authoring water management districts to use certain moneys in the Water Protection and Sustainability Program Trust Fund for water resource development projects.

Section 4. Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interest of a party. WMDs that establish cooperative funding programs may save time and money associated with the rulemaking process.

Beginning in fiscal year 2009-2010, ch. 2009-68, L.O.F., eliminated documentary stamp tax distributions into the Water Protection and Sustainability Program Trust Fund, which was the primary revenue source for this trust fund. Therefore, the only revenue in this trust fund is derived from interest earnings on prior year unexpended fixed capital outlay projects. If, and when, funds are provided by the Legislature into this trust fund, the bill will allow greater flexibility in the use of said funds by the Suwannee River WMD.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

The bill exempts WMD cooperative funding programs from Chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

The original bill was amended by the Rulemaking & Regulation Subcommittee removing the original Section 3, which expanded the authority of Water Management Districts to restrict landscape irrigation and authorized local governments to adopt WMD restrictions by ordinance.