

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 882

INTRODUCER: Senator Detert

SUBJECT: Water Management Districts

DATE: March 24, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Favorable
2.	Naf	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes technical revisions and clarifications to basin boards related to board constitution and voting conditions for basin board chairs. The bill exempts water management district cooperative funding programs from chapter 120, F.S., rulemaking requirements unless any portion of an approved program affects the substantial interests of a party.

Additionally, the bill clarifies that local governments can continue to implement water management district (WMD) landscape irrigation restrictions by adopting ordinances that implement restrictions. It also allows local governments to adopt ordinances for landscape irrigation restrictions that are set forth in WMD rules or orders.

Lastly, the bill allows the Suwannee River Water Management District (SRWMD) to use funds from the Water Protection and Sustainability Program Trust Fund for regional water supply planning and other water resource projects.

This bill substantially amends ss. 373.0693, 373.171, 373.228 and 373.707, Florida Statutes.

II. Present Situation:

Water Management Districts

WMD basin boards ensure that local concerns within the districts are addressed effectively. Each board has half of the districts' millage capacity to fund projects that address water supply, flood protection, water quality and natural systems issues in its watershed. Basin board members are appointed by the Governor and must be confirmed by the Senate.

Only two WMDs have basin boards in addition to their regular governing boards – the Southwest Florida Water Management District (SWFWMD) and the South Florida Water Management District (SFWMD). The SWFWMD maintains seven basin boards, the SFWMD, one. These boards provide guidance for local programs and projects that are specific to their watershed basins. Each basin is guided by a basin board, which is composed of not less than three members and must include one member from each of the basin's counties.¹ The WMDs interpret this to mean that, in the absence of at least one member from each county, the basin board is not properly constituted. When this occurs, a basin board is unable to transact official business until the Governor appoints an individual to fill the vacancy. While vacancies of this kind occur from time to time, if one were to coincide with the budget and tax levy processes, it is possible that a basin board would not be able to establish its annual budget or request its annual tax levy.

SWFWMD Governing Board Policy 110-8 provides that the Governing Board Chair may appoint more than one governing board member to serve as chair of a basin board on a rotating basis. This is inconsistent with subsection 373.0693(6), F.S. Further, nothing in s. 373.0693, F.S., indicates the actual status of the basin chairs with respect to voting or the establishment of a quorum.

Cooperative Funding

SB 2080, signed into law by then Governor Crist in 2009, addressed cooperative funding programs. However, its statutory placement limits its application instead of applying generally to all cooperative funding programs, as was intended. Cooperative funding is not considered a regulatory program. It is a cost-share program for local governments for projects that develop sustainable water resources, provide flood protection and enhance conservation efforts. Therefore, if a district needed to adopt rules for all of the procedures and policies in a cooperative funding program, it would be unable to adapt or modify the program as necessary.

Landscape Irrigation

Section 373.609, F.S., requires state, city, and county officials, upon request, to assist the governing board of any WMD in enforcing chapter 373, F.S., and the rules and regulations adopted to implement the provisions of the chapter. It is unclear whether the provisions allow local government adoption of ordinances to enforce WMD rules or if no such authority exists.

With limited exceptions, s. 373.217, F.S., states that Part II of chapter 373, F.S., preempts the regulation of consumptive use of water. Water use for landscape irrigation is a consumptive use of water. This provision may be construed to prohibit other government entities from adopting rules or ordinances to regulate consumptive uses of water, such as for landscape irrigation.

Alternative Water Supply Development

Section 373.707, F.S., allocates revenues deposited into the Water Protection and Sustainability Trust Fund Program to each WMD for assisting in the development of alternative water supply

¹ Section 373.0693(2), F.S. (2010)

and conservation projects. However, if a district does not have a regional water supply plan, or the plan does not identify the need for any alternative water supply projects, funds deposited in the district's trust fund may be used for water resource development projects. Four of the WMDs have one or more regional water supply plans, and most are assisting with the development of alternative supplies. The SRWMD recently completed its Water Supply Assessment Report and is in the process of developing regional water supply plans.

III. Effect of Proposed Changes:

Section 1 amends s. 373.0693, F.S., to provide that a member of the governing board serving as chair of a basin board be a regular, voting member of the basin board and be counted for purposes of establishing a quorum. In the event a vacancy occurs and a successor is not appointed within 180 days, the remaining members of the basin board will be able to continue to transact official business provided a quorum of the whole authorized number of members of the board is present. This will provide continuity in basin board operations, particularly during budget and tax levy times. The bill also provides for the appointment of more than one basin board chair from among the members of the governing board, to be consistent with governing board practice and policy. This section also contains technical and conforming changes.

Section 2 amends s. 373.171, F.S., to exempt cooperative funding programs from rulemaking requirements of chapter 120, F.S. Parties whose substantial interests are affected may still challenge these programs under s. 120.569, F.S.

Section 3 amends s. 373.228, F.S., to clarify that local governments can continue to implement WMD landscape irrigation restrictions for conservation purposes. Additionally, it authorizes local governments to adopt ordinances that implement landscape irrigation restrictions set forth in WMD rules or orders. This section also contains technical changes.

Section 4 amends s. 373.707, F.S., to allow the SRWMD to use funds deposited in the Water Protection and Sustainability Program Trust Fund to its credit for regional water supply planning and water resource projects. This section also contains technical changes.

Section 5 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There may be some costs associated with complying with ordinances that enact WMD landscape irrigation restrictions. However, those costs are unknown. Private landscaping businesses and service providers may have reduced sales during watering restrictions. However, these businesses may also see an increase in sales of Florida-Friendly plants to offset any negative impacts. Landscape irrigation restrictions should lead to reduced water bills for the public during those times the restrictions are being enforced.

C. Government Sector Impact:

WMDs that establish cooperative funding programs may save time and money associated with the rulemaking process outside of chapter 120, F.S., review.

Additional efficiencies and continuity in the operation of the basin boards will be realized; however, the fiscal impact is indeterminate.

There may be some costs associated with ordinance development and adoption by local governments for landscape irrigation restrictions. However, local governments are not required to exercise the authority granted in this bill to implement such restrictions.

The SRWMD may access funds in the Water Protection and Sustainability Program Trust Fund dedicated for alternative water supply projects for other programs. This will maintain the SRWMD's flexibility to use these funds even though its need for alternative water supply projects may be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
