

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 Committee on Governmental Oversight and Accountability

BILL: SB 244

INTRODUCER: Senator Dean

SUBJECT: Water Management Districts

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 244 provides the water management districts (WMDs, districts) with guidance concerning minimum flows and levels (MFLs), water reservations, recovery or prevention strategies, and multi-district projects by:

- requiring proposed water reservations and water bodies that may be affected by water withdrawals in an adjacent water management district to be identified on a district’s annual MFL priority list and schedule;
- directing the WMDs to provide technical information and staff support to the Department of Environmental Protection (DEP, department) when the department proposes adoption of a reservation, MFL, or recovery or prevention strategy by rule;
- requiring the WMDs to apply any reservation, MFL, or recovery or prevention strategy adopted by the DEP to the applicable water body without having to adopt its own district rules;
- authorizing WMDs to enter into interagency agreements designating a single district to conduct or fund non-regulatory water management activities or projects that cross district boundaries;
- providing for joint regional water supply planning between WMDs and affected regional water supply authorities; and
- excluding WMD cooperative funding programs from rulemaking requirements.

This bill substantially amends the following sections of the Florida Statutes: 373.042, 373.046, 373.171, and 373.709.

II. Present Situation:

MFL Priority Lists and Rules

The WMDs were established along surface hydrological boundaries. As Florida's population has grown and groundwater pumping increased, withdrawals along the boundary of one WMD can cause significant harm to the resources in an adjoining WMD. Such effects are becoming more common as technological advances have provided better data on groundwater resources. While a WMD has the authority to protect all water resources, including water bodies in an adjacent WMD, it cannot use the adopted reservation, MFL, and recovery and prevention strategies adopted by a neighboring WMD without separately going through its own rulemaking process. The current statutory authority may result in duplication of effort and rulemaking activity when a withdrawal affects water bodies in adjoining WMDs. It can also create inconsistent and inequitable treatment of water use permit applicants.

The goal of establishing MFLs is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource. By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating a new consumptive use permit (CUP) application.

Section 373.042, F.S., requires the DEP or WMDs to establish MFLs for priority water bodies to prevent significant harm from water withdrawals. While the DEP has the authority to adopt MFLs under ch. 373, F.S., the WMDs have the primary responsibility for MFL adoption and all MFL adoption to date has been by the WMDs. The WMDs submit annual MFL priority lists and schedules to the DEP for review and approval. MFLs are considered rules by the WMDs and are subject to ch. 120, F.S., challenges. MFLs are established using the best available data and are subject to independent scientific peer review at the election of the WMD, or, if requested, by a third party.

Interagency Agreements

Section 373.046(6), F.S., currently provides that when the geographic area of a project or local government crosses WMD boundaries, the affected districts may enter into an interagency agreement that designates a single district to implement the regulatory responsibilities under ch. 373, F.S. However, no similar authority explicitly exists for designating a single district to implement non-regulatory water management activities or responsibilities that cross district boundaries. In addition, a WMD may not fund resource management activities in another WMD even if some benefits inure to it from the activities.

Cooperative Funding Programs

Section 373.171, F.S., authorizes WMD governing boards to adopt rules affecting the use of water.¹ The WMDs currently operate cooperative funding programs including programs related

¹ The state Administrative Procedure Act (ch. 120, F.S.) requires any agency statement of general applicability that interprets, implements, or prescribes law or policy to be adopted by rule (ss. 120.52(16) and 120.54(1)(a), F.S.). Section 120.52(1), F.S.,

to water supply development. The districts generally do not have rules relating to the operation of these programs.

Regional Water Supply Planning

The WMDs are required to conduct water supply needs assessments. A WMD that determines existing resources will not be sufficient to meet reasonable-beneficial uses² for the planning period must prepare a regional water supply plan³. The plans must contain:

- a water supply development component;
- a water resource development component;
- a recovery and prevention strategy;
- a funding strategy;
- the impacts on the public interest, costs, natural resources, etc.;
- technical data and information;
- any MFLs established for the planning area;
- the water resources for which future MFLs must be developed; and
- an analysis of where variances may be used to create water supply development or water resource development projects.⁴

Currently, only the Southwest Florida Water Management District (SWFWMD) is required to jointly develop the water supply development component with a regional water supply authority.⁵ A regional water supply authority is created by interlocal agreement between the counties, cities, and special districts for the purpose of developing, recovering, storing, and

defines “agency” to mean the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

- the Governor;
- each state officers and state department, and each departmental unit described in s. 20.04, F.S.;
- the Board of Governors of the State University System;
- the Commission on Ethics;
- the Fish and Wildlife Conservation Commission;
- a regional water supply authority;
- a regional planning agency;
- a multi-county special district, but only when a majority of its governing board is comprised of nonelected persons;
- educational units;
- each entity described in chapters 163 (intergovernmental programs), 373 (water resources), 380 (land and water management), and 582 (soil and water conservation), F.S.;
- each entity described in s. 186.504, F.S. (regional planning councils);
- each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; or
- each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

An agency may not adopt a rule without a grant of rulemaking authority by the Legislature (s. 120.536(1), F.S.).

² Section 373.019(16), F.S., defines “reasonable-beneficial use” to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

³ See s. 373.709, F.S.

⁴ Section 373.709(2), F.S.

⁵ Section 373.709(3), F.S.

supplying water for county or municipal purposes.⁶ The authority has the power to levy ad valorem taxes up to 0.5 million if the tax is approved by a majority vote of the electors residing in the county or city.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 373.042(2), F.S., to require the WMDs to include proposed water reservations and water bodies that may be affected by water withdrawals in an adjacent district in their annual MFL priority lists and schedules. The bill also adds a new subsection requiring a WMD to provide technical information and staff support to the DEP when the department proposes adoption by rule of a reservation, MFL, or recovery or prevention strategy. In addition, the bill requires a WMD to apply any reservation, MFL, or recovery or prevention strategy adopted by the DEP to the applicable water body without having to adopt its own rules concerning that water body.

Section 2 amends s. 373.046 F.S., to provide clear legislative authority for the WMDs to enter into interagency agreements to share funding and resource management responsibilities for activities, studies, or projects for resources that affect multiple WMDs in a geographic area. This section does not apply to shared regulatory responsibilities already provided for in s. 373.046(6), F.S. In addition, this section allows a WMD to provide funding assistance to another WMD for resource management activities, studies, or projects if the funding WMD receives some or all of the benefits of the resource management activities. The bill also clarifies that it does not impair any interagency agreement in effect on July 1, 2013.

Section 3 amends s. 373.171, F.S., to clarify that a WMD's cooperative funding programs are not subject to ch. 120, F.S., rulemaking requirements. However, parties may challenge the program pursuant to s. 120.569, F.S.,⁸ if any part of the program affects their substantial interests. The bill is not expected to change the existing situation.

Section 4 amends s. 373.709, F.S., to broaden the existing provision that requires joint water supply planning between the SWFWMD and affected regional water supply authorities to apply statewide. Since the two active regional water supply authorities in the state are located within the SWFWMD, and all the WMDs currently closely coordinate with affected utilities in the development of their regional water supply plans, this section is not expected to substantially change the existing situation.

Section 5 provides an effective date of July 1, 2013.

⁶ Section 373.713(1), F.S.

⁷ Section 373.713 (2), F.S.

⁸ Section 120.569, F.S., governs proceedings in which a party challenges an agency action that affects the party's substantial interests. A party asserting entitlement to an administrative hearing pursuant to s. 120.569, F.S., must demonstrate that:

- it will suffer an injury in fact which is of sufficient immediacy to entitle it to a s. 120.569, F.S., hearing; and
- its substantial injury is of a type or nature which the proceeding is designed to protect. *See Washington County v. Northwest Florida Water Management Dist.*, 85 So.3d 1127 (Fla. 1st DCA 2012).

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:

None.

C. Government Sector Impact:

When a district provides staff support to the DEP for the department's adoption of a reservation, MFL, or recovery or prevention strategy, the district will pay the salaries of the employees who provide assistance. This may reduce the amount of salary dollars available for other planned projects within the district. Because the rule adopted by the department can be used by all affected WMDs without additional rulemaking, there will be an indeterminate savings of rulemaking costs.

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.
