

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENRC 08-12 Water Management District Governance
SPONSOR(S): Environment and Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Deslatte / Perkins	Dixon / Hamby
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill reenacts ss. 373.069, 373.0693, 373.0695, 373.073, and 373.083, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act.

The bill repeals language in s. 373.0693, F.S., which create the Oklawaha River Basin Advisory Council.

The bill creates new requirements for individuals to meet prior to being able to take the water well contractor licensure examination. These requirements include:

- Evidence of the length of time the applicant has been engaged in the business of the construction, abandonment, and repair of water wells as a major activity, as attested to by three letters from any of the following persons: water well contractors; water well drillers; water well parts and equipment vendors; or water well inspectors employed by a governmental agency.
- A list of at least 10 water wells that the applicant has constructed, repaired, or abandoned, which includes the following information: the name and address of the owner or owners of each well; the location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned; the approximate date the construction, repair, or abandonment of each well was completed.
- All listed wells must have been constructed, repaired, or abandoned within 5 years immediately preceding the filing of the license application. At least 7 of the 10 water wells must have been constructed by the applicant, as defined in s. 373.303(2), F.S.

The bill provides that the appropriate substantive legislative committee chairs may provide comments and objections to the proposed budgets of the water management districts.

The bill allows the governing board, a basin board, a committee, or an advisory board to conduct meetings by means of communications media technology as provided in the uniform rules of procedure adopted pursuant to s. 120.54, F.S.

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

The bill takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb12.ENRC.doc
DATE: 4/6/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill abolishes the Oklawaha River Basin Advisory Council.

Safeguard Individual Liberty—The bill creates new requirements for individuals to meet prior to taking the water well contractor licensure examination.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Under the Florida Government Accountability Act, sections 11.901-11.920, F.S., most state agencies and their respective advisory committees are subject to a “sunset” review process to determine whether the agency should be retained, modified, or abolished.

Reviews are accomplished in three steps. First, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S. Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Based on the agency submission, the OPAGGA studies, and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within the state agencies not under review when the programs duplicate functions performed in agencies under review.
- Also, the House and Senate sunset review committees must propose legislation necessary to carry out the committee’s recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of the review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

The institutional arrangement for managing water in Florida is unique in the United States. Emerging from a series of legislative actions in 1972, five water management districts (districts) were created. They are the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, Southwest Florida Water Management District, and the South Florida Water Management District. The geographical boundaries for the districts were set up largely on hydrologic boundaries.

Direct oversight for each district’s activities is provided by a Governing Board whose members are appointed by the Governor and subject to confirmation by the Florida Senate. Each Governing Board in turn hires an Executive Director who must also be confirmed by the Florida Senate. In addition, pursuant to s. 373.026(7), F.S., the Department of Environmental Protection (DEP) is authorized to “exercise general supervisory authority over all water management districts.”

The mission of the districts is to implement the provisions of Chapter 373, Florida Statutes, also known as the Florida Water Resources Act of 1972¹. In implementing the act, the districts are to seek to manage water and related natural resources to ensure their continued availability while maximizing environmental, economic and recreational benefits.

Central to the mission is maintaining the balance between the water needs of current and future users while protecting and maintaining water and related natural resources which provide the districts with their existing and future water supply. In order to accomplish their missions the districts assume their responsibilities as authorized in Chapter 373, F.S., and other chapters of the Florida Statutes by directing a wide range of programs, initiatives and actions. These include, but are not limited to, flood protection, water use, well construction, environmental resource permitting, water conservation, education, land acquisition, water resource and supply development, and supportive data collection and analysis efforts. As an outgrowth of this the districts have identified what are referred to as the "Areas of Responsibility," these are:

- Water Supply
- Flood Protection
- Water Quality
- Natural Systems

Many provisions in Chapter 373, F.S., confer power to the Governing Boards either directly or indirectly through shared responsibility with the DEP. However, s. 373.083, F.S., provides for their general powers and duties. These are:

- Enter into contracts with public agencies, private corporations, or other persons.
- To appoint and remove agents and employees.
- Issue orders to implement or enforce any of the provisions or regulations of Chapter 373, F.S.
- Make surveys and investigations of the water supply and water resources of their respective districts.
- Solicit and accept donations or grants from both public and private sources for any district activity.
- Exercise any delegation and to sub-delegate to district staff.

Specific delegation of the consumptive use permitting or the environmental resource permitting programs must include a process by which permit denials may be taken to the Governing Board for final action.

As an outgrowth of these general powers and duties, along with delegation agreements with the DEP, district responsibilities have grown over the years. Though the original mission of flood control remains central to their operations, districts now have responsibilities in many environmental arenas. These include:

- Consumptive Use Permitting
- Environmental Resource Permitting
- Surface Water Improvement and Management
- Uses of district lands, canals, streams or aquifers
- Drainage system construction or operation
- Well construction and well contractor licensing
- Land acquisition and management
- Public education

The districts are funded from many different sources; however, they are unique in that they are granted specific authority to levy ad valorem taxes. Section 9(b), Article VII, of the Florida Constitution provides authority for four of the water management districts to levy up to 1.0 mills for water management

¹ Section 373.016, F.S.

purposes. The Northwest Florida Water Management District is capped at 0.05 mills² Subsequent to these constitutional caps the Legislature has placed statutory caps³ on the districts ad valorem millage rates as follows:

- 0.05 Northwest Florida
- 0.75 Suwannee River
- 0.6 St. Johns River
- 1.0 Southwest Florida⁴
- 0.8 South Florida⁵

In addition to the uniqueness of having ad valorem taxing authority, the districts operate on a Federal fiscal year which begins on October 1 and ends on September 30 unlike the State fiscal year which begins on July 1 and ends of June 30. Each district's annual work plan and budget development process is specifically governed by s. 373.536, F.S.

A significant milestone for the districts in the development of their annual budgets is the submission of their tentative budget on August 1st of each year. The tentative budget is submitted to the Executive Office of the Governor, the President of the Senate, the Speaker of the House, the chairs of specific legislative committees, the Secretary of DEP, and each county commission within the districts' boundaries.

Pursuant to s. 373.536, F.S., the Executive Office of the Governor upon receipt of the tentative budget has the authority to "approve or disapprove, in whole or in part, the budget of each water management district..." The Governor must submit his recommendations to the districts 5 days prior to their final adoption hearing which is usually held in the final 10 days of September. If the Governor has disapproved a specific budget item, it shall not be in the final approved budget.

Concurrent to the review by the Governor's Office, the statute also provides that, by September 5th, the House and Senate appropriations chairs may comment and raise objections to the provisions in the tentative budgets. In response to these comments, the Governing Boards are required to make them part of the public record at the meeting in which the final budget is adopted.

While each district has many specific activities, s. 373.536, F.S., requires them to be rolled into one of six defined program areas. These six program areas are:

- Water Resources Planning and Monitoring
- Acquisition, Restoration, and Public Works
- Operation and Maintenance of Lands and Works
- Regulation
- Outreach
- District Management and Administration

The Florida Statutes contain a number of provisions that provide for the creation of various advisory bodies or councils designed to assist the districts in carrying out some of their various duties and responsibilities. One such advisory council is the Oklawaha River Basin Advisory Council created pursuant to s. 373.0693(8)(a), F.S. The Council was created in 1988 to replace the then existing Oklawaha River Basin Board, which had been created as a separate taxing entity within the St. Johns River Water Management District. The Council was established to advise the district governing board on water management issues affecting the Oklawaha River Basin. The Council has been inactive and not met in over 10 years.

² 1.00 mill equals \$1.00 per \$1,000 of assessed value. 0.05 mills equals \$0.05 per \$1,000 of assessed value.

³ Section 373.509(3)(a), F.S.

⁴ This taxing authority is divided evenly between the district and the district's eight basin boards.

⁵ This taxing authority is shared with the Big Cypress Basin, the Okeechobee Basin, and the 0.01 of a mill tied to the Everglades Forever Act.

Part III, Chapter 373, F.S., establishes the authority for the state to regulate water wells. Originally placed with the DEP and then delegated to the districts in 1984, the statutes direct that established construction standards and reporting requirements be implemented by rule in order to ensure that newly constructed water wells do not cause uncontrolled water flow or degrade water quality. The districts also issue licenses to water well contractors to ensure their understanding of state and district water well rules and regulations. During the past year, the districts sought to update their licensing requirements to add additional specificity for water well contractors to meet prior to being able to sit for their licensure examination. The Joint Administrative Procedures Committee raised an objection that the proposed changes were outside the rule making provisions currently in law.

Section 120.54, F.S., provides for uniform rules of procedures that are to be utilized by state agencies in conducting their business. As a part of these, the agencies are authorized to utilize communications media technology to allow for remote participation by certain officials. Because the districts are not state agencies they cannot avail themselves of this option. During times of natural disasters and given that many governing board members may live some distance from the districts' headquarters there have been problems with being able to physically assemble the governing board members in order to allow the districts to conduct the necessary business.

Effects of Proposed Changes

The bill reenacts ss. 373.069, 373.0693, 373.0695, 373.073, and 373.083, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act.

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C. SECTION DIRECTORY:

Section 1: Reenacts ss. 373.069, 373.0693, 373.0695, 373.073, and 373.083, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act.

Section 2: Amends s. 373.0693, F.S., eliminating the Oklawaha River Basin Advisory Council.

Section 3: Amends s. 373.323, F.S., providing for applicants who meet certain conditions to be certified as a licensed water well contractor.

Section 4: Amends s. 373.536, F.S., authorizing certain chairs of committees of the Senate and the House of Representatives to submit comments and objections to proposed budgets.

Section 5: Amends s. 373.079, F.S., revising meeting requirements for members of the governing boards of the water management districts.

Section 6: This act shall take effect upon becoming a law.

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:

By adding specific requirements for those seeking to sit for the water well contractors licensing exam, a new cost will be realized in having to obtain certain pieces of documentation. The cost is expected to be minimal.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A