

**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	16 Y, 0 N	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 (WMDs); pursuant to the provisions of the Florida Government Accountability Act. The bill repeals language in s. 373.0693, F.S., which creates 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. (See Effects of Proposed Changes Section).

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 authorizes the Legislature to annually review the authorized millage rate for each WMD and annually set the maximum amount of revenue authorized to be raised by each WMD from ad valorem taxes. If the Legislature fails to set the annual maximum amount of revenue before July 1 of each year, each district is authorized to raise the amount of revenue authorized by the Legislature in the preceding fiscal year and adjusted by the percentage change in the Consumer Price Index for the preceding fiscal year. The bill changes the water management districts' fiscal year from October 1 through September 30 to July 1 through June 30. The water management districts are directed to budget and plan for their fiscal management to conform to the provisions of this act for the 2008-2009 and 2009-2010 fiscal years.

The bill provides for Public Service Commission Nominating Council which to nominate members of the water management district governing boards. The Nominating Council is directed to nominate three persons for each vacancy on the governing boards. The Governor must select from the list of nominees provided by the Nominating Council. If the Governor does not make an appointment within 60 consecutive calendar days after the receipt of the recommendations, the Nominating Council must initiate the nominating process within 30 days. Each appointment to the governing board of a water management district must be subject to confirmation by the Senate during the next regular session after the vacancy occurs. If the Senate refuses to confirm or fails to consider the appointment of the Governor, the Nominating Council shall initiate the nominating process in 30 days. Under no circumstances may an appointee serve on the governing board of a water management district until confirmed.

The bill does not appear to have a significant fiscal impact on state government. WMD millage rates are subject to adjustments pursuant to certain provisions in the bill; therefore, WMDs may experience a change in millage rates.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

The bill changes the water management districts' fiscal year from October 1 through September 30 to July 1 through June 30. For the 2008-2009 and 2009-2010 fiscal years, notwithstanding any law to the contrary, the water management districts are directed to budget and plan for their fiscal management to conform to the provisions of this act.

**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.

## Water Management District Governing Boards

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. Members must be selected from candidates who have significant experience in one or more of the following areas, including, but not limited to: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or financial business. Vacancies are to be filled according to residency requirements. 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 1972<sup>1</sup>. 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

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<sup>1</sup> Section 373.016, F.S.

- 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

### Water Management District Millage Rates

Article VII, Section 9(b) of the Florida Constitution provides that ad valorem taxes may be levied for water management purposes in amounts no greater than 0.05 mills for the northwest portion of the state and no greater than 1.0 mill for the remainder of the state.

The legislature has declared that the millage authorized for water management purposes by the state constitution shall only be levied by the five water management districts.<sup>2</sup> The districts may levy ad valorem taxes on property within the district solely for the purposes of water management as set forth by the legislature.<sup>3</sup>

The legislature has authorized millage rates for the districts that are equal to or less than the maximum allowed by the state constitution.<sup>4</sup> The current maximum total millage rate for each district is:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Management District: 0.80 mill.

The water management districts are special taxing districts.<sup>5</sup> A special taxing district may not be created with general taxing authority, and may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.<sup>6</sup>

The legislature has determined that the ad valorem taxes which the water management districts are authorized to levy are in proportion to the benefits to be derived by the real estate within the districts.<sup>7</sup>

### Water Management District Budget Review

#### Background

The process for the adoption of water management district budgets originated in 1949 with the creation of flood control districts under Chapter 378, F.S. Under that process, the fiscal year for the flood control districts was July 1 through June 30. No executive or legislative branch review of the budgets was provided for in statute. In 1972, the Water Resources Act of 1972 created the five water management districts and incorporated the budget review provisions of Chapter 378, F.S., into Part V of Chapter 373, F.S., creating section 373.536, F.S. No change was made to the fiscal year or to the review process.

As part of an omnibus finance and taxation bill in 1974 addressing numerous issues relating to ad valorem taxation, the fiscal year for the water management districts was changed to October 1 through September 30.

<sup>2</sup> Paragraph 373.503(2)(a), F.S.

<sup>3</sup> Paragraph 373.503(3)(a), F.S.

<sup>4</sup> Id.

<sup>5</sup> Paragraph 189.403(6), F.S.

<sup>6</sup> Crowder v. Phillips, 146 Fla. 440, 1 So. 2d 629 (1941); State ex rel. City of Gainesville v. St. Johns River Water Management Dist., 408 So. 2d 1067 (Fla. Dist. Ct. App. 1st Dist. 1982).

<sup>7</sup> Subsection 373.503(4), F.S.

In 1991, subsection (5) was added to s. 373.536, F.S., to require that all water management district “tentative” budgets be submitted to the Department of Environmental Regulation (the predecessor agency to the current Department of Environmental Protection) by August 5 of each year. The DER was to review the budgets and submit comments to the governing board and to the Governor by September 5. Prior to December 15, the DER was to file with the Governor and the legislature a report summarizing “the expenditures of the districts by program area.”

Paragraph 373.536(5)(a), F.S., was amended in 1993 to require that the tentative budgets also be submitted to the Governor’s Office and the chairs of the appropriations committees in the Senate and House by August 5. Paragraph 373.536(5)(b), F.S., was also amended in order to allow the Governor’s Office and the appropriations chairs to submit comments to the district governing boards by September 5.

In 1994, the legislature created the Water Management District Review Commission to perform a comprehensive review of Florida’s water management system including consideration of ways to improve financial and programmatic accountability of districts and potential revision of the districts’ budget development and adoption procedures. The Commission made several recommendations including:

- The Governor should approve or reject the annual budget of each water management district.
- The Executive Office of the Governor should establish permanent position(s) to review the financial and programmatic activities of Florida’s five water management districts.
- The position(s) should further serve as Executive Branch liaison to, and coordinate appropriate review deadlines and notices with, the legislative committees having substantive and appropriation jurisdiction over water management districts.
- Each district should provide a copy of its proposed budget, the past year’s expenditures, and its annual in-house financial audit to the Governor, the President of the Senate, the Speaker of the House, the chairs of all legislative committees and sub-committees with substantive or appropriation jurisdiction over water management districts, the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district (“the entities”).
- The district should [shall] respond in writing to each comment received from any of the entities, and should [shall] furnish copies of those comments and written responses to all entities.

The Commission had a 1996 legislative package to implement its recommendations. While the bulk of the recommendations failed to pass, s. 373.536, F.S., was amended in 1996 to authorize the Governor to “approve or disapprove, in whole or in part, the budget of each water management district.” The Governor was also required to “develop a process to facilitate review and communication regarding water management district budgets.”

The stakeholders involved with the work of the Water Management District Review Commission continued to work on the concepts and language during the 1996-97 interim. This work resulted in legislation in 1997. The 1997 legislation further amended s. 373.536, F.S., to require that the tentative budgets be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees, as well as to the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.

### Current Law

Under current law, the fiscal year for the water management districts is from October 1 through September 30. In this fiscal year cycle, the first step is for the budget officer of each water management district to submit to the governing board of the district by July 15 a tentative budget for the fiscal year beginning October 1.

By August 1, a copy of the tentative budget is to be provided by the district to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees. The House and Senate appropriations chairs may submit comments and objections on the proposed budgets to the districts by September 5. In its adoption of the final budget, the governing board must include a written response to any comments or objections of the appropriation chairs. The record of the governing board meeting adopting the final budget is required to be transmitted to the Governor, and the chairs of the appropriation committees.

Before December 15, the Governor's Office is required to file with the legislature a report that summarizes its review of the tentative budgets.

### 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.

The bill repeals language in s. 373.0693, F.S., which created 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 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 provides authority for the Legislature to annually authorize water management districts to levy of ad valorem taxes. The bill directs the Legislature to annually set the maximum amount of revenue authorized to be raised by each district from the ad valorem taxes authorized by law. If the Legislature fails to set the annual maximum amount of revenue to be raised by each district on or before July 1 of each year, each district is authorized to raise the amount of revenue authorized by the Legislature in the preceding fiscal year and adjusted by the percentage change in the Consumer Price Index for the preceding fiscal year.

The bill changes the water management districts' fiscal year from October 1 through September 30 to July 1 through June 30. For the 2008-2009 and 2009-2010 fiscal years, notwithstanding any law to the contrary, the water management districts are directed to budget and plan for their fiscal management to conform to the provisions of this act.

The bill provides for Public Service Commission Nominating Council to nominate members of the water management district governing boards. The members will be appointed by the Governor, subject to confirmation by the Senate pursuant to the provisions of this bill. The term of office will commence on June 2 of the year in which the appointment is confirmed and terminate on June 1 of the fourth calendar year of the term or may continue until a successor is appointed. The Nominating Council is required to nominate appointees to represent an equitable cross-section of regional interests and technical expertise. Recommendations of the Nominating Council must be nonpartisan. The Nominating Council is directed to nominate to the Governor three persons for each vacancy on the governing boards of any of the five water management districts. The Nominating Council must submit the recommendations to the Governor by December 31 for the seats of those governing board members whose terms are to expire the following calendar year, or within 90 days after a vacancy occurs for any reason other than the expiration of the term. The Governor must select from the list of nominees provided by the Nominating Council. A background investigation must be conducted by the Florida Department of Law Enforcement. If the Governor does not make an appointment within 60 consecutive calendar days after the receipt of the recommendations, the Nominating Council must initiate the nominating process within 30 days. Each appointment to the governing board of a water management district must be subject to confirmation by the Senate during the next regular session after the vacancy occurs. If the Senate refuses to confirm or fails to consider the appointment of the Governor, the Nominating Council shall initiate the nominating process in 30 days. Under no circumstances may an appointee serve on the governing board of a water management district until confirmed.

#### C. SECTION DIRECTORY:

**Section 1:** Reenacts s. 373.069, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act.

**Section 2:** Reenacts and amends s. 373.0693, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act; eliminating the Oklawaha River Basin Advisory Council.

**Section 3:** Reenacts s. 373.0695, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act

**Section 4:** Reenacts and amends s. 373.073, F.S., revising provisions for the nomination and appointment of members to the governing boards of the water management districts; requiring the Florida Public Service Commission Nominating Council to provide nominations to the Governor; revising provisions relating to terms of office for board members; providing requirements and procedures for the nomination of board members; requiring the Department of Law Enforcement to conduct background investigations; providing that water management district governing board appointees are subject to Senate confirmation.

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

**Section 6:** Reenacts s. 373.083, F.S., relating to the creation of the water management districts; pursuant to the provisions of the Florida Government Accountability Act.

**Section 7:** Amends s. 373.323, F.S., revising requirements for water well contractor licensure examinations; requiring applicants to provide specified documentation.

**Section 8:** Amends s. 373.503, F.S., providing that millage rates for water management districts are subject to annual review and authorization by the Legislature; requiring the Legislature to set the maximum amount of revenue water management districts are authorized to raise from ad valorem taxes; providing an amount of authorized revenue under specified conditions.

**Section 9.** Amends s. 373.536, F.S., revising fiscal year dates for water management districts; revising the date by which water management districts must submit tentative budgets to the Governor and the Legislature; eliminating the authorization for the Legislature to comment on such budgets; eliminating requirements for water management districts to respond to such comments; revising the date by which the Executive office of the Governor must file a specified report with the Legislature.

**Section 10.** Directing districts to implement conforming budget and planning measures.

**Section 11:** 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:

See Fiscal Comments

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:

The bill authorizes the Legislature to annually review the authorized millage rate for each WMD and annually set the maximum amount of revenue authorized to be raised by each WMD from ad valorem taxes.

## 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**

On April 11, 2008, the Environment & Natural Resources Council amended and passed PCB ENRC 08-12.

The filed bill includes the following items not included in the original noticed PCB. The filed bill authorizes the Legislature to annually review the authorized millage rate for each WMD and annually set the maximum amount of revenue authorized to be raised by each WMD from ad valorem taxes. If the Legislature fails to set the annual maximum amount of revenue to be raised by each district on or before July 1 of each year, each district is authorized to raise the amount of revenue authorized by the Legislature in the preceding fiscal year and adjusted by the percentage change in the Consumer Price Index for the preceding fiscal year.

The filed bill changes the water management districts' fiscal year from October 1 through September 30 to July 1 through June 30. For the 2008-2009 and 2009-2010 fiscal years, notwithstanding any law to the contrary, the water management districts are directed to budget and plan for their fiscal management to conform to the provisions of this act.

The filed bill provides for Public Service Commission Nominating Council to nominate members of the water management district governing boards. The members will be appointed by the Governor, subject to confirmation by the Senate pursuant to the provisions of this bill. The term of office will commence on June 2 of the year in which the appointment is confirmed and terminate on June 1 of the fourth calendar year of the term or may continue until a successor is appointed. The Nominating Council is required to nominate appointees to represent an equitable cross-section of regional interests and technical expertise. Recommendations of the Nominating Council must be nonpartisan. The Nominating Council is directed to nominate to the Governor three persons for each vacancy on the governing boards of any of the five water management districts. The Nominating Council must submit the recommendations to the Governor by December 31 for the seats of those governing board members whose terms are to expire the following calendar year, or within 90 days after a vacancy occurs for any reason other than the expiration of the term. The Governor must select from the list of nominees provided by the Nominating Council. A background investigation must be conducted by the Florida Department of Law Enforcement. If the Governor does not make an appointment within 60 consecutive calendar days after the receipt of the recommendations, the Nominating Council must initiate the nominating process within 30 days. Each appointment to the governing board of a water management district must be subject to confirmation by the Senate during the next regular session after the vacancy occurs. If the Senate refuses to confirm or fails to consider the appointment of the Governor, the Nominating Council shall initiate the nominating process in 30 days. Under no circumstances may an appointee serve on the governing board of a water management district until confirmed.