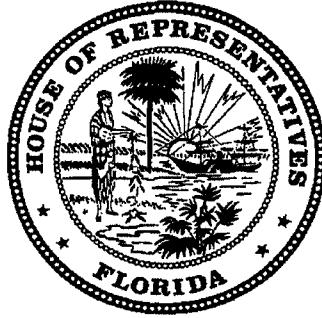




Agriculture & Natural Resources Appropriations Subcommittee

Meeting Packet

**April 8, 2011
8:45 AM – 10:45 AM
Reed Hall**



AGENDA

Agriculture & Natural Resources Appropriations Subcommittee

April 8, 2011

8:45 a.m. – 10:45 a.m.

Reed Hall

- I. Call to Order/Roll Call
- II. CS/HB 649—Water Management Districts by Pilon
- III. CS/CS/HB 949—Pest Control by Smith
- IV. HB 421—Agricultural-related Exemptions to Water Management Requirements by Bemby
- V. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 649 Water Management Districts
SPONSOR(S): Rulemaking & Regulation Subcommittee; Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or 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 Subcommittee		Perkins <i>RMP</i>	Massengale <i>SM</i>
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 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, the Legislature (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. Currently, 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.

FULL ANALYSIS

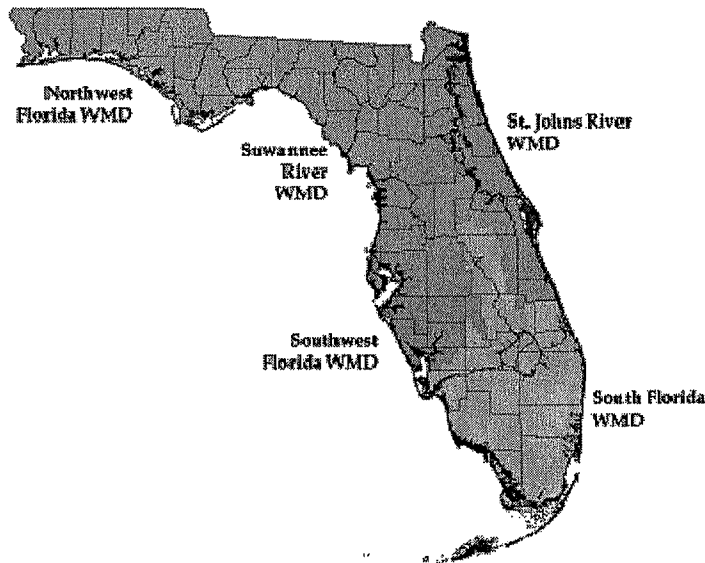
I. SUBSTANTIVE ANALYSIS

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 District¹.



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).

¹ 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 that 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.² 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:

- 30 percent to the South Florida Water Management District;
- 25 percent to the Southwest Florida Water Management District;
- 25 percent to the St. Johns River Water Management District;
- 10 percent to the Suwannee River Water Management District; and
- 10 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 regard 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 supplement other funding sources in the development of alternative water supplies. Public and private

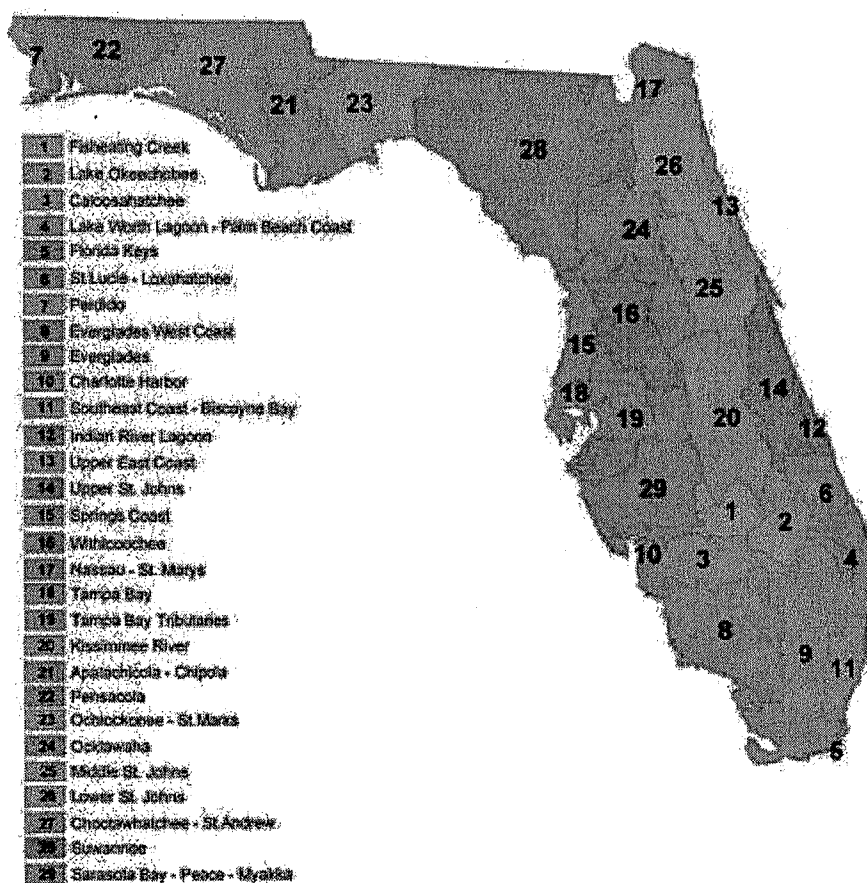
² In 1975, the Legislature proposed a constitutional amendment to authorize WMDs to levy ad valorem property taxes to help fund water resource management efforts. As a result, Florida Constitution, Art. VII, s. 9 authorizes the WMDs to levy ad valorem taxes based on taxable property values within each 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 U.S. Government, the State of Florida, local governments within the district, and other district sources like permit fees and interest earnings on investments.

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. 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 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.

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., authorizing Suwannee River Water Management District to use certain moneys in the Water Protection and Sustainability Program Trust Fund for regional water supply planning and water resource projects in addition to current authorized uses.

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, the Legislature (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. Currently, 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.

1 A bill to be entitled
 2 An act relating to water management districts; amending s.
 3 373.0693, F.S.; revising provisions relating to the
 4 membership of basin boards; specifying the terms of
 5 service for basin board members designated by district
 6 governing board chairs; providing that basin board members
 7 designated by district governing board chairs are voting
 8 members and counted for quorum purposes; providing for
 9 designated district governing board members to serve as
 10 basin board chairs and co-chairs; providing that a quorum
 11 of remaining members may conduct business if there is a
 12 vacancy on the board; revising provisions relating to the
 13 membership of the Manasota Basin Board; providing for the
 14 designation of a member of the district governing board to
 15 serve on the basin board; amending s. 373.171, F.S.;
 16 exempting cooperative funding programs from certain
 17 rulemaking requirements; amending s. 373.707, F.S.;
 18 authorizing water management districts to use certain
 19 moneys in the Water Protection and Sustainability Program
 20 Trust Fund for water resource development projects;
 21 providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Subsections (1) through (7) of section
 26 373.0693, Florida Statutes, are amended to read:
 27 373.0693 Basins; basin boards.—
 28 (1) (a) Any areas within a district may be designated by

29 the district governing board as subdistricts or basins. The
 30 designations ~~of such basins~~ shall be made by resolution of the
 31 district governing board ~~by resolutions thereof~~. The governing
 32 board ~~of the district~~ may change the boundaries of such basins,
 33 or create new basins, by resolution.

34 (b) No subdistrict or basin in the St. Johns River Water
 35 Management District other than established by this act ~~is shall~~
 36 ~~become~~ effective until approved by the Legislature.

37 (2) Each basin shall be under the control of a basin board
 38 ~~which shall be~~ composed of at least ~~not less than~~ three members,
 39 including one or more representatives ~~but shall include one~~
 40 ~~representative~~ from each of the counties included in the basin.

41 (3) Except for a member of the district governing board
 42 serving on a basin board pursuant to subsection (6), each member
 43 of a the various basin board boards shall be appointed ~~serve~~ for
 44 ~~a period of~~ 3 years or until a successor is appointed, but not
 45 more than 180 days after the end of the term, ~~except that~~ The
 46 ~~board~~ membership of each new basin board shall be divided into
 47 three groups as equally as possible, with members in such groups
 48 ~~to be~~ appointed for 1, 2, and 3 years, respectively. Each basin
 49 board shall choose a vice chair and a secretary to serve for ~~a~~
 50 ~~period of~~ 1 year. The term of office of a basin board member
 51 shall ~~be construed to~~ commence on March 2 preceding the date of
 52 appointment and ~~to~~ terminate March 1 of the year of the end of a
 53 term or ~~may continue~~ until a successor is appointed, but not
 54 more than 180 days after the end of the expired term. A member
 55 of the district governing board serving on a basin board
 56 pursuant to subsection (6) shall serve for a period commensurate

57 | with his or her term on the governing board.

58 | (4) Except for a member of the district governing board
 59 | serving on a basin board pursuant to subsection (6), members of
 60 | a basin board ~~boards~~ shall be appointed by the Governor, subject
 61 | to confirmation by the Senate at the next regular session of the
 62 | Legislature. ~~and~~ The refusal or failure of the Senate to
 63 | confirm an appointment shall create a vacancy in the office to
 64 | which the appointment was made.

65 | (5) Basin board members shall serve without ~~receive no~~
 66 | ~~compensation for services as such;~~ but are entitled to
 67 | reimbursement for per diem and travel expenses as provided in s.
 68 | 112.061, ~~while officially on work for the district, they shall~~
 69 | ~~receive their actual travel expenses between their respective~~
 70 | ~~places of residence and the place where official district~~
 71 | ~~business is conducted, subsistence, lodging, and other expenses~~
 72 | ~~in the amount actually incurred. These expenses may not exceed~~
 73 | ~~the statutory amount allowed state officers and employees.~~ This
 74 | subsection applies retroactively to the effective date of the
 75 | creation of each of the five separate water management
 76 | districts.

77 | (6) (a) Notwithstanding any other provision of the
 78 | ~~provisions of any other~~ general or special law ~~to the contrary,~~
 79 | a member of the district governing board ~~of the district~~
 80 | residing in the basin, or, if no member resides in the basin, a
 81 | member of the district governing board designated by the chair
 82 | of the district governing board, shall be a voting member of the
 83 | basin board and counted for purposes of establishing a quorum.

84 | (b) A governing board member shall serve as the chair of

85 the basin board. If more than one governing board member is
 86 designated to a basin board, each shall rotate as co-chair of
 87 the basin board. The chair or co-chair shall preside at all
 88 meetings of the basin board, except that the vice chair may
 89 preside in the his or her absence of the chair and co-chair. The
 90 chair shall be the liaison officer of the district in all
 91 affairs in the basin and shall be kept informed of all such
 92 affairs.

93 (c) If a vacancy occurs on a basin board, a quorum of the
 94 total remaining members may continue to transact official
 95 business until a successor is appointed.

96 (d) (b) Basin boards within the Southwest Florida Water
 97 Management District shall meet regularly as determined by a
 98 majority vote of the basin board members. Subject to the notice
 99 requirements of chapter 120, special meetings, both emergency
 100 and nonemergency, may be called ~~either~~ by the chair or the
 101 elected vice chair ~~of the basin board~~ or upon request of two
 102 basin board members. The district staff shall include on the
 103 agenda of any basin board meeting any item for discussion or
 104 action requested by a member of that basin board. The district
 105 staff shall notify any basin board, as well as their respective
 106 counties, of any vacancies occurring in the district governing
 107 board or their respective basin boards.

108 ~~(7) At 11:59 p.m. on December 31, 1976, the Manasota~~
 109 ~~Watershed Basin of the Ridge and Lower Gulf Coast Water~~
 110 ~~Management District, which is annexed to the Southwest Florida~~
 111 ~~Water Management District by change of its boundaries pursuant~~
 112 ~~to chapter 76-243, Laws of Florida, shall be formed into a~~

113 ~~subdistrict or basin of the Southwest Florida Water Management~~
 114 ~~District, subject to the same provisions as the other basins in~~
 115 ~~such district. Such subdistrict shall be designated initially as~~
 116 ~~the Manasota Basin. The members of the governing board of the~~
 117 ~~Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water~~
 118 ~~Management District shall become members of the governing board~~
 119 ~~of the Manasota Basin of the Southwest Florida Water Management~~
 120 ~~District.~~ Notwithstanding other provisions in this section,
 121 beginning on July 1, 2011 ~~2001~~, the membership of the Manasota
 122 Basin Board shall be comprised of two members from Manatee
 123 County, ~~and~~ two members from Sarasota County, and any members of
 124 the district governing board designated by the chair of the
 125 district governing board pursuant to subsection (6). ~~Matters~~
 126 ~~relating to tie votes shall be resolved pursuant to subsection~~
 127 ~~(6) by the chair designated by the governing board to vote in~~
 128 ~~case of a tie vote.~~

129 Section 2. Subsection (5) is added to section 373.171,
 130 Florida Statutes, to read:

131 373.171 Rules.—

132 (5) Cooperative funding programs are not subject to the
 133 rulemaking requirements of chapter 120. However, any portion of
 134 an approved program which affects the substantial interests of a
 135 party is subject to s. 120.569.

136 Section 3. Paragraph (c) of subsection (8) of section
 137 373.707, Florida Statutes, is amended to read:

138 373.707 Alternative water supply development.—

139 (8)

140 (c) ~~The~~ Financial assistance for alternative water supply

CS/HB 649

2011

141 projects allocated in each district's budget as required in
 142 subsection (6) shall be combined with the state funds and used
 143 to assist in funding the project construction costs of
 144 alternative water supply projects and the project costs of
 145 conservation projects that result in quantifiable water savings
 146 selected by the governing board. ~~If the district has not~~
 147 ~~completed any regional water supply plan, or the regional water~~
 148 ~~supply plan does not identify the need for any alternative water~~
 149 ~~supply projects,~~ Funds deposited in the Water Protection and
 150 Sustainability Program Trust Fund to the credit of the Suwannee
 151 River Water Management District ~~that district's trust fund~~ may
 152 also be used for regional water supply planning, water resource
 153 development, and water resource projects, including, but not
 154 limited to, springs protection.

155 Section 4. This act shall take effect July 1, 2011.


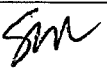
CS/CS/HB 949
Smith

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 949 Pest Control

SPONSOR(S): Rulemaking & Regulation Subcommittee; Agriculture & Natural Resources Subcommittee; Smith

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N, As CS	Miller	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee		Lolley 	Massengale 
4) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (department) regulates pest control businesses in the state.

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers. Florida law currently requires pest control businesses doing business in the state to register and obtain a license to operate, but does not specifically address pest control contact centers. Therefore, a customer contact center must obtain a pest control license, even though they are only receiving phone calls and soliciting business.

The bill authorizes the department to issue a license to operate a customer contact center for the sole purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee,¹ a biennial renewal fee,² and authorizes a late filing fee.³

The bill also establishes a limited certification for a commercial wildlife management personnel category within the department authorizing persons to use nonchemical methods for controlling rodents.⁴ The certification process includes successful completion of an examination, an examination fee, annual recertification, late fees (when appropriate), continuing education classes and proof of a certificate of insurance for minimum financial responsibility.

Lastly, the bill increases the minimum requirements for insurance coverage to conduct pest control businesses, which have not been increased since 1992, and expands the methods by which a pest control licensee may contact the department regarding the location where fumigation will be taking place to include notification by facsimile or other forms of electronic communication.

The bill will generate \$21,000 in FY 2011-12, \$15,000 in FY 2012-13, and \$21,200 in FY 2013-14 from fees generated through the pest control customer contact centers and through the limited certification category for commercial wildlife management personnel. Expenditures associated with these programs are estimated to be \$16,957 in FY 2011-12, \$16,359 in FY 2012-13, and \$17,455 in FY 2013-14. The bill does not appear to have a fiscal impact on local governments.

¹ The biennial license fee must be at least \$600 and not more than \$1,000.

² The renewal fee must be at least \$600 and not more than \$1,000.

³ The late fee is \$150.

⁴ As defined in s. 482.021(23), F.S., rodents include rats, mice, squirrels, or flying squirrels or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure.

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

STORAGE NAME: h0949d.ANRAS.DOCX

DATE: 4/1/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Coverage

Current Situation

The minimum requirements for insurance coverage to conduct pest control businesses have not been increased since 1992. These minimums need to be increased to reflect current levels of insurance offered by liability insurers and to provide better protection to Florida consumers.

Effect of Proposed Changes

The bill increases:

- Bodily injury from \$100,000 to \$250,000 per person; \$300,000 to \$500,000 per occurrence; and
- Property damage from \$50,000 to \$250,000 per occurrence; \$100,000 to \$500,000 in the aggregate.

For wood-destroying organism inspection licenses, the professional liability insurance limits are increased from \$50,000 to \$500,000 in the aggregate, \$25,000 to \$250,000 per occurrence, and the alternative of demonstrating equity or net worth is revised to increase the amount from \$100,000 to \$500,000.

Pest Control Customer Contact Centers

Current Situation

Some pest control companies operate regional customer contact centers that solicit business and receive calls for the appropriate state/area in the region. Pest control contact centers provide licensees with a more efficient means of providing service to customers.

Florida law currently requires pest control businesses to register and obtain an annual license⁵ for each location. In addition to being licensed, a pest control business must have at least one certified operator in charge at each location to provide oversight and training for the identification card holders who perform the actual pesticide application.⁶ Currently, a customer contact center may not solicit business or receive calls from customers located in Florida without the requisite pest control license.⁷

Effect of Proposed Changes

The bill authorizes the Department of Agriculture and Consumer Services (department) to issue a license to operate a customer contact center for the purpose of soliciting pest control business and coordinating services to consumers for one or more business locations. The bill also provides that a person cannot operate a customer contact center for a pest control business that is not licensed by the department, and establishes a licensing fee,⁸ a biennial renewal fee,⁹ and authorizes a late filing fee.¹⁰

The department is authorized to deny or refuse to renew a license if:

- The pest control business licensees for whom it solicits business are not owned in common by a person or business entity recognized by the state.
- The applicant or licensee, or one or more of the applicant's or licensee's directors, officers, owners, or general partners, are or have been directors, officers, owners, or general partners of a pest control business that has gone out of business or sold the business to another party within 5 years immediately preceding the date of application or renewal and failed to reimburse

⁵ The license fee must be at least \$75 and not more than \$300.

⁶ The certification fee for a certified operator is \$150 and the fee for an identification card holder is \$10.

⁷ Under s. 501.604(27), F.S., a licensed operator or cardholder under ch. 482, soliciting within the scope of the chapter, is exempt from the separate license requirements for a commercial telephone seller or telephone salesperson in the Florida Telemarketing Act, ch. 501, Part IV, F.S.

⁸ The license fee must be at least \$600 and not more than \$1,000.

⁹ The renewal fee must be at least \$600 and not more than \$1,000.

¹⁰ The late fee is \$150.

- the prorated value of its customers' remaining contract periods or failed to provide for another licensed pest control operator to assume its existing contract responsibility.
- A person who solicits pest control services or provides customer service in a licensed customer contact center performs pest control services such as: the use or application of a device or application to prevent or control any pest in, on, or under a structure, lawn, or ornamental; the identification of or inspection for infestation in, on, or under a structure, lawn, or ornamental; the use of pesticides, poisons, or devices for preventing or controlling insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental; or performing any phase of fumigation.

The department is given rule-making authority for implementing provisions related to the recordkeeping and monitoring of pest control customer contact centers. The bill also provides criteria for disciplinary action against a pest control customer contact center or a pest control business licensee of the contact center.

Certification for Commercial Wildlife Management Personnel

Current Situation

For several years, the Florida Fish and Wildlife Conservation Commission issued permits for persons engaged in the control of nuisance wildlife. Interest in the permitting system dwindled over the years and the permitting was discontinued in 2008. Several persons still engaged in the control of nuisance wildlife have contacted the department asking to have a certification process reinstated to assure that the nuisance animals are being handled humanely and the public is protected.

Under current law, pest control is defined as the use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental. Pest is defined as an arthropod, wood-destroying organism, rodent (defined in statute to include: rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, including bats, which may become a pest in, on, or under a structure), or other obnoxious or undesirable living plant or animal organism. Persons practicing pest control are required to be licensed under chapter 482, F.S.

Effect of Proposed Changes

The bill creates a limited certificate authorizing individual commercial wildlife trapper personnel to use nonchemical methods to control commensal¹¹ "rodents," including rats, mice, squirrels, flying squirrels, or other animals of the order Rodentia, and bats, which may become a pest in, on, or under a structure. The bill does not require individuals who trap these animals by nonchemical means to obtain any license or certificate. The bill specifies those who are licensed by the department under chapter 482, F.S., and who practice accepted pest control methods are immune from liability under the animal cruelty provisions. The bill does not conflict with or create an exemption from any Fish and Wildlife Conservation Commission rule, regulation, or order.

—Certification does not allow the use of pesticides or chemicals to control rodents; operation of a pest control business; or supervision of an uncertified person using nonchemical methods to control rodents.

The bill authorizes the department to set fees for the program through the rule-making process.

Fumigation Notice

Current Situation

Currently, to protect the health, safety and welfare of the public, a pest control licensee must give the department an advance notice of at least 24 hours of the location where general fumigation will be taking place. In emergency cases, when a 24-hour notice is not possible, a licensee may provide

¹¹ "Commensal" pests are species of wildlife that have adapted to and become partially dependent on the human-built environment for food, water, and sometimes shelter. Examples are Norwegian rats and field mice. "Commensal Rodents-Biology, Population Dynamics & IPM," p. 3, Curriculum for Pest Management Professionals; March, 2005, at <http://www.birc.org/Rodent%20Curriculum.pdf>.

notice by means of a telephone call and then follow up with a written confirmation providing the required information.

Effect of Proposed Changes

The bill allows a licensee to contact the department regarding the location where fumigation will be taking place by facsimile or another form of electronic communication, as well as by telephone.

B. SECTION DIRECTORY:

Section 1: Amends s. 482.051, F.S.; allows pest control operators to provide certain emergency notice to the Department of Agriculture and Consumer Services (department) by facsimile or other electronic means.

Section 2: Amends s. 482.071, F.S.; increases financial responsibility requirements on certificates of insurance for licensees.

Section 3: Creates s. 482.072, F.S.; authorizes the department to license pest control customer contact centers ; requires biennial renewal of license; establishes a license/renewal fee for pest control customer contact centers; establishes a grace period for renewal of license; establishes a late renewal charge; provides for expiration of license at time certain; provides for relicensure; provides for license expiration upon address change; establishes fee for relicensure; provides criteria for issuing pest control customer contact center license; provides criteria for denying and refusing to renew license; clarifies need for employee identification card; authorizes rule-making authority; and provides criteria for discipline of pest control customer contact center licensee and/or pest control business licensee for misactions of employees.

Section 4: Creates s. 482.157, F.S.; establishes certification for individual commercial wildlife management personnel; prescribes methods of removal of wildlife; requires examination and fee for certification; requires proof of insurance by employer of person applying for certification; provides for annual recertification with fee; authorizes rule-making authority; provides for grace period for recertification; provides for late fee; and provides criteria on certification.

Section 5: Amends s. 482.226, F.S.; increases limits for financial responsibility insurance coverage for persons with wood-destroying organism inspection licenses.

Section 6: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	2011-12	2012-13	2013-14
<u>Customer Contact Center</u>			
License*	\$ 6,000	-	\$ 6,000
<u>Limited Certification Wildlife</u>			
Limited Certification Exam**	15,000	7,500	7,500
Limited Certification Renewal***	-	<u>7,500</u>	<u>7,500</u>
	<u>\$ 21,000</u>	<u>\$15,000</u>	<u>\$ 21,000</u>

*Based on 10 licenses issued per year at \$600 each, renewing biennially.

**Based on 100 exams the first year, 50 the second and third years, at \$150 each.

***Based on 100 renewals at \$75 each.

Service Charge to General Revenue 4%	(<u>\$ 840</u>)	(<u>\$ 600</u>)	(<u>\$ 840</u>)
Net Revenue to General Inspection Trust Fund	\$20,160	\$14,400	\$20,160

2. Expenditures:

Inspections*	\$ 15,860	\$ 15,860	\$ 15,860
License Issuance**	<u>1,097</u>	<u>499</u>	<u>1,595</u>
	\$ 16,957	\$ 16,359	\$ 17,455

*FY 09-10 unit cost per inspection - \$793; 20 inspections.

**FY 09-10 unit cost per license - \$9.97; 110 inspections the first year, 50 inspections the second year, and 160 inspections the third year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

3. Revenues:

None

4. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Pest control businesses that choose to obtain the pest control customer contact center license or the limited certification for commercial wildlife management personnel license will incur fees associated with these licenses. Also, pest control businesses that do not currently have the proposed minimum insurance requirements will need to meet these requirements, resulting in additional costs.

D. FISCAL COMMENTS:

None

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 spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Audubon of Florida has raised concerns regarding the legislation and, in particular, the current statutory definition of "rodents." The statutory definition of "rodents" includes bats, which are not members of the order Rodentia. Because many species of bats in Florida are on the endangered and/or protected list, the Fish and Wildlife Conservation Commission's (FWC) nuisance wildlife rule¹² does not allow the intentional taking of bats. The bill was amended in the Rulemaking & Regulation Subcommittee to specify that nothing in chapter 482, F.S., could be construed as an exemption from the rules of the FWC.

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is authorized to adopt rules relating to the requirements and procedures for recordkeeping and monitoring pest control customer contact center

¹² Rule 68A-9.010 F.A.C.

operations. The grant of rule-making authority appears to provide sufficient substantive guidance for the department to implement the statute.¹³

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Agriculture and Natural Resources Subcommittee adopted three technical amendments to HB 949. **Amendment 1** amended line 100 to read "business licensees for whom it solicits business is owned in common by a". **Amendment 2** amended line 169 to read "(c) Supervision of an uncertified person using non-chemical methods to control rodents." **Amendment 3** amended line 181 to read "no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000".

On March 23, 2011, the Rulemaking and Regulation Subcommittee adopted three technical amendments to CS/HB 949. **Amendment 1**, added subsection (6) to s.482.157, clarifying Chapter 482, F.S., does not create any exemption from the rules, orders or regulations of the Florida Fish and Wildlife Conservation Commission. This amendment resolved an inconsistency noted in the original bill. **Amendment 2** removed glue boards as one of the approved nonchemical methods of controlling wildlife. **Amendment 3** clarified the limited certification for wildlife management authorized certificate holders to control commensal rodents.

The foregoing analysis of CS/CS/HB 949 incorporates the changes made by all amendments.

¹³ S. 120.536(1), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

1 A bill to be entitled
 2 An act relating to pest control; amending s. 482.051,
 3 F.S.; providing rule changes that allow operators to
 4 provide certain emergency notice to the Department of
 5 Agriculture and Consumer Services by facsimile or
 6 electronic means; amending s. 482.071, F.S.; increasing
 7 the minimum bodily injury and property damage insurance
 8 coverage required for pest control businesses; creating s.
 9 482.072, F.S.; providing for licensure by the department
 10 of pest control customer contact centers; providing
 11 application requirements; providing for fees, licensure
 12 renewal, penalties, and licensure expiration; creating s.
 13 482.157, F.S.; providing for the certification of
 14 commercial wildlife trappers; providing certification
 15 requirements, examination requirements, and fees; limiting
 16 the scope of work permitted by certificateholders;
 17 clarifying that licensees and certificateholders who
 18 practice accepted pest control methods are immune from
 19 liability for violating laws prohibiting cruelty to
 20 animals; providing construction; amending s. 482.226,
 21 F.S.; increasing the minimum financial responsibility
 22 requirements for licensees that perform certain
 23 inspections; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Subsection (4) of section 482.051, Florida
 28 Statutes, is amended to read:

29 482.051 Rules.—The department has authority to adopt rules
 30 pursuant to ss. 120.536(1) and 120.54 to implement the
 31 provisions of this chapter. Prior to proposing the adoption of a
 32 rule, the department shall counsel with members of the pest
 33 control industry concerning the proposed rule. The department
 34 shall adopt rules for the protection of the health, safety, and
 35 welfare of pest control employees and the general public which
 36 require:

37 (4) That a licensee, before performing general fumigation,
 38 notify in writing the department inspector having jurisdiction
 39 over the location where the fumigation is to be performed, which
 40 notice must be received by the department inspector at least 24
 41 hours in advance of the fumigation and must contain such
 42 information as the department requires. However, in an authentic
 43 and verifiable emergency, when 24 hours' advance notification is
 44 not possible, advance telephone, facsimile, or any other form of
 45 acceptable electronic communication ~~or telegraph~~ notice may be
 46 given, ~~+~~ but such notice must be immediately followed by written
 47 confirmation providing the required information.

48 Section 2. Subsection (4) of section 482.071, Florida
 49 Statutes, is amended to read:

50 482.071 Licenses.—

51 (4) A licensee may not operate a pest control business
 52 without carrying the required insurance coverage. Each person
 53 making application for a pest control business license or
 54 renewal thereof must furnish to the department a certificate of
 55 insurance that meets the requirements for minimum financial
 56 responsibility for bodily injury and property damage consisting

57 of:

58 (a) Bodily injury: \$250,000 per ~~\$100,000 each~~ person and
 59 \$500,000 per ~~\$300,000 each~~ occurrence; and property damage:
 60 \$250,000 per ~~\$50,000 each~~ occurrence and \$500,000 ~~\$100,000~~ in
 61 the aggregate; or

62 (b) Combined single-limit coverage: \$400,000 in the
 63 aggregate.

64 Section 3. Section 482.072, Florida Statutes, is created
 65 to read:

66 482.072 Pest control customer contact centers.-

67 (1) The department may issue a license to operate a
 68 customer contact center from which to solicit pest control
 69 business or provide services to customers for one or more
 70 business locations licensed under s. 482.071. A person may not
 71 operate a customer contact center for a pest control business if
 72 the customer contact center is not licensed by the department.

73 (2)(a) Before operating a customer contact center, and
 74 biennially thereafter, on or before a renewal date set by the
 75 department, a pest control business must apply to the department
 76 for a license or license renewal for each customer contact
 77 center location it operates. An application must be submitted in
 78 the format prescribed by the department.

79 (b) The department shall establish a licensure fee of at
 80 least \$600 but not more than \$1,000, and a renewal fee of at
 81 least \$600 but not more than \$1,000, for a customer contact
 82 center license. However, until renewal fee rules are adopted,
 83 the initial license and renewal fees are each \$600. The
 84 department shall establish a grace period not to exceed 30 days

85 after the renewal date and shall assess a late fee of \$150, in
 86 addition to the renewal fee, for a license that is renewed after
 87 the grace period.

88 (c) A license automatically expires if it is not renewed
 89 within 60 days after the renewal date and may be reinstated only
 90 upon reapplication and payment of the license renewal fee and
 91 late fee.

92 (d) A license automatically expires if a licensee changes
 93 its customer contact center business location. The department
 94 shall issue a new license upon payment of a \$250 fee, which must
 95 be renewed by the renewal date for the former location's
 96 license. A new license that is not renewed within 60 days after
 97 the renewal date of the license for the former business location
 98 automatically expires.

99 (e) The department may not issue or renew a license to
 100 operate a customer contact center unless the pest control
 101 business licensees for which the customer contact center
 102 solicits business are owned in common by a person or business
 103 entity recognized by this state.

104 (f) The department may deny a license or refuse to renew a
 105 license if the applicant or licensee, or one or more of the
 106 applicant's or licensee's directors, officers, owners, or
 107 general partners, are or have been directors, officers, owners,
 108 or general partners of a pest control business that meets the
 109 conditions in s. 482.071(2)(g).

110 (g) Sections 482.091 and 482.152 do not apply to a person
 111 who solicits pest control services or provides customer service
 112 in a licensed customer contact center unless the person performs

113 | the pest control work as defined in s. 482.021(22) (a)-(d),
 114 | executes a pest control contract, or accepts remuneration for
 115 | such work.

116 | (h) Section 482.071(2) (e) does not apply to a license
 117 | issued under this section.

118 | (3) (a) The department shall adopt rules establishing
 119 | requirements and procedures for recordkeeping and monitoring
 120 | customer contact center operations to ensure compliance with
 121 | this chapter and rules adopted under this chapter.

122 | (b) Notwithstanding any other provision of this chapter:

123 | 1. A customer contact center licensee is subject to
 124 | disciplinary action under s. 482.161 for a violation of this
 125 | chapter or rules adopted under this chapter committed by a
 126 | person who solicits pest control services or provides customer
 127 | service in a customer contact center.

128 | 2. A pest control business licensee may be subject to
 129 | disciplinary action under s. 482.161 for a violation of this
 130 | chapter or rules adopted under this chapter committed by a
 131 | person who solicits pest control services or provides customer
 132 | service in a customer contact center operated by the licensee if
 133 | the licensee participates in the violation.

134 | Section 4. Section 482.157, Florida Statutes, is created
 135 | to read:

136 | 482.157 Limited certification for commercial wildlife
 137 | management personnel.-

138 | (1) The department shall establish a limited certificate
 139 | authorizing individual commercial wildlife trapper personnel to
 140 | use nonchemical methods, including traps, mechanical or

141 | electronic devices, and exclusionary techniques, to control
142 | commensal rodents.

143 | (2) The department shall issue a limited certificate to an
144 | applicant who:

145 | (a) Submits an application and examination fee, set by
146 | departmental rule, of not more than \$300 or less than \$150. The
147 | department shall provide examination reference materials and
148 | offer the examination at least quarterly or as necessary in each
149 | county;

150 | (b) Passes the departmental examination; and

151 | (c) Provides proof, including a certificate of insurance,
152 | that the applicant has met the minimum financial bodily injury
153 | and property damage requirements in s. 482.071(4).

154 | (3) An application for recertification must be made
155 | annually and be accompanied by a recertification fee of not more
156 | than \$150 or less than \$75, as established by rule. The
157 | application also must be accompanied by proof of completion of
158 | the required 4 classroom hours of acceptable continuing
159 | education and the required proof of insurance. After a grace
160 | period not exceeding 30 days after the recertification renewal
161 | date, a late fee of \$50 shall be assessed in addition to the
162 | renewal fee. A certificate automatically expires 180 days after
163 | the recertification date if the renewal fee has not been paid.
164 | After expiration, a new certificate shall be issued only upon
165 | successful reexamination and payment of the examination and late
166 | fees.

167 | (4) Certification under this section does not authorize:

168 | (a) The use of pesticides or chemical substances, other

169 than adhesive materials, to control rodents or other nuisance
 170 wildlife in, on, or under structures;

171 (b) Operation of a pest control business; or

172 (c) Supervision of an uncertified person using nonchemical
 173 methods to control rodents.

174 (5) A person licensed under this chapter who practices
 175 accepted pest control methods is immune from liability under s.
 176 828.12.

177 (6) This chapter does not exempt a person from the rules,
 178 regulations, or orders of the Fish and Wildlife Conservation
 179 Commission.

180 Section 5. Subsection (6) of section 482.226, Florida
 181 Statutes, is amended to read:

182 482.226 Wood-destroying organism inspection report; notice
 183 of inspection or treatment; financial responsibility.-

184 (6) Any licensee that performs wood-destroying organism
 185 inspections in accordance with subsection (1) must meet minimum
 186 financial responsibility in the form of errors and omissions
 187 (professional liability) insurance coverage or bond in an amount
 188 no less than \$500,000 ~~\$50,000~~ in the aggregate and \$250,000
 189 ~~\$25,000~~ per occurrence, or demonstrate that the licensee has
 190 equity or net worth of no less than \$500,000 ~~\$100,000~~ as
 191 determined by generally accepted accounting principles
 192 substantiated by a certified public accountant's review or
 193 certified audit. The licensee must show proof of meeting this
 194 requirement at the time of license application or renewal
 195 thereof.

196 Section 6. This act shall take effect July 1, 2011.


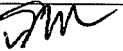
HB 421
Bembry

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 421 Agricultural-related Exemptions to Water Management Requirements

SPONSOR(S): Bemby and others

TIED BILLS: IDEN./SIM. BILLS: SB 1174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 1 N	Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee	12 Y, 0 N	Jensen	Rubottom
3) Agriculture & Natural Resources Appropriations Subcommittee		Lolley 	Massengale 
4) State Affairs Committee			

SUMMARY ANALYSIS

Florida law has afforded an agricultural exemption to bona fide farm operators since the mid-1980s in regard to obtaining a permit from the water management districts (WMDs) for altering the topography of any tract of land as long as the alteration is not for the sole or predominant purpose of impounding or obstructing surface waters. The bill revises the current agricultural exemption to specify that certain agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, as long as it is not the sole or predominant purpose of the agricultural activity or alteration. The bill also provides retroactive application of the exemption to July 1, 1984.¹

The bill allows the WMD or a landowner to request a determination from the Department of Agriculture and Consumer Services (department) when a dispute regarding an exemption occurs. The bill further states that the determination by the department is binding. The bill authorizes the department and the WMDs to enter into a new memorandum of understanding (MOU), or amend an existing MOU, to propose procedures by which the department will undertake the review and determination process. The department is given rule-making authority to implement these processes.

The bill provides that mitigation to offset any adverse effects of lands converted to a nonagricultural use is not necessary if the damage occurred in at least 4 of the last 7 years preceding the conversion.

And lastly, the bill amends the definition of agricultural activities to include: cultivating, fallowing, and leveling, and provides that such activities constitute "agricultural activities" provided the activities are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Based on the provisions that allow landowners, as well as the WMDs, to request a determination; and that change the nonbinding determination to a binding determination, there is a potential for a significant increase in workload for the department. According to the department, however, the increased workload can be absorbed within the existing resources. The bill does not appear to have a fiscal impact on local governments. The fiscal impact is potentially positive for agriculture, as some agricultural operations that have been required to apply for and obtain a surface water permit (e.g., citrus, row crops) in the past may now be exempt from this requirement.

¹ The effective date of the Warren S. Henderson Wetlands Protection Act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1

Present Situation

In 1984, the Legislature passed the Warren S. Henderson Wetlands Protection Act² (act), which was the first concerted effort at protecting and managing wetlands in the state. Among other things, the legislation established a permitting system for dredge and fill permits. The act also provided an exemption from the permitting process for “normal and necessary” agriculture and forestry operations. The act placed agricultural operations under the control of the water management districts (WMDs) rather than under the jurisdiction of the then-Department of Natural Resources (DNR).

In 1993, during the reorganization of the DNR to the Department of Environmental Protection (DEP), the Wetlands Protection Act was repealed, with the exception of s. 403.927, F.S. Section 403.927, F.S., provides that “agricultural activities”³ are not subject to specific discharge permits, except that DEP may require a stormwater permit or discharge permit at the point of discharge from an agricultural water management system.

Current law⁴ also allows persons engaged in certain agriculture occupations⁵ to alter the topography of any tract of land without obtaining an environmental resource permit from a WMD. The current exemption states that the alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

In 2009, a large agricultural company filed suit⁶ against one of the WMDs in regard to the agricultural exemption in s. 373.406(2), F.S. The WMD alleged the defendant had constructed numerous drainage ditches on its property without first obtaining required permits from the district. The defendant claimed the construction fell under the exemption afforded through s. 373.406 (2), F.S., since the ditches were consistent with the practice of agricultural activities and not for the “...sole or predominant purpose of impounding or obstructing surface waters...” The court ruled in favor of the WMD, stating that the provisions in s. 403.927, F.S., virtually eliminate the agricultural exemption in s. 373.406(2), F.S., as it applies to alterations impacting wetlands.

Effect of Proposed Changes

The bill revises the agricultural exemption in current law to specify that certain agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, as long as it is not the sole or predominant purpose of the said activity or alteration. The bill also provides retroactive application of the exemption to July 1, 1984.⁷

² s. 1, ch. 84-79, L.O.F.

³ “Agricultural activities” includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, construction of access roads, and placement of bridges and culverts, provided such operations do not impede or divert the flow of surface waters.

⁴ Section 373.406(2), F.S.

⁵ Agriculture, silviculture, floriculture and horticulture.

⁶ *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) (Duda I) and 22 So.3d 622 (Fla. 5th DCA 2009) (Duda II)

⁷ The effective date of the Warren S. Henderson Wetlands Protection Act.

Section 2

Present Situation

In 2006, the Legislature enacted legislation⁸ that required the Department of Agriculture and Consumer Services (department) and the WMDs to enter into a memorandum of understanding (MOU) authorizing the department to assist the WMDs, at their request, in determining whether an existing or proposed activity qualifies for the agricultural exemption in s. 373.406(2), F.S. Currently, the determination issued by the department is nonbinding, meaning the WMDs are not required to comply with the department's determination.

The department states that, on average, one or two requests for a determination are received per year. The department conducts a site visit, technical support materials are reviewed and a written non-binding conclusion is sent back to the appropriate WMD.

Effect of Proposed Legislation

The bill allows the WMD or a landowner to request a determination from the department when a dispute regarding the agricultural exemption in s. 373.406(2), F.S., occurs. The bill further states that the department has exclusive authority to make a binding determination.

The bill authorizes the department and the WMDs to enter into a new MOU, or amend an existing MOU, to propose procedures by which the department will undertake the review and determination process. The department is given rule-making authority to implement these processes.

Section 3

Present Situation

Current law states that when land transfers from an agricultural use to a use other than agriculture, the non-agricultural land is no longer entitled to the agricultural exemption.

Effect of Proposed Legislation

The bill provides that mitigation to offset any adverse effects of lands converted to a non-agricultural use is not necessary if the damage occurred in at least 4 of the last 7 years preceding the conversion.

The bill amends the definition of agricultural activities in s. 403.927, F.S., to include: cultivating, fallowing, and leveling, and provides that such activities constitute "agricultural activities" provided that the activities are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Section 4

The bill takes effect on July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amending s. 373.406, F.S.; revising the exemption to include impacts to surface waters and wetlands; and, providing for retroactive application.

Section 2: Amending s. 373.407, F.S.; providing the Department of Agriculture and Consumer Services (department) with the exclusive authority to determine whether agricultural exemptions apply under certain conditions; authorizing the department to enter into a memorandum of agreement with the water management districts; and, allowing the department to adopt rules necessary for implementation.

Section 3: Amending s. 403.927, F.S.; providing an exemption from mitigation requirements for converted agricultural lands under certain conditions; and, amending the definition of "agricultural activities."

Section 4: Providing an effective date of July 1, 2011.

⁸ ch. 2006-255, L.O.F.

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:

The fiscal impact is potentially positive for agriculture, as some agricultural operations that have been required to apply for and obtain a surface water permit (e.g., citrus, row crops) in the past may now be exempt from this requirement.

D. FISCAL COMMENTS:

Based on the provisions that allow landowners, as well as the WMDs, to request a determination; and that change the nonbinding determination to a binding determination, there is a potential for a significant increase in workload for the department. According to the department, however, the increased workload can be absorbed within the existing resources.

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 spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority regarding the determination of qualification for an agricultural-related exemption.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The water management districts (WMDs) expressed various concerns with the legislation as written. Some of the concerns are:

- The bill empowers the Department of Agriculture and Consumer Services (department) as the sole regulator of wetlands on agricultural lands. The concern is whether the department has the expertise and/or manpower to carry out this requirement.

- The exemption allows the impediment of water up and downstream, which may result in a potential impact to other entities up or downstream, as well as state waters.
- The provision for negating the mitigation of adverse effects occurring before the conversion of the land appears to provide a "loophole" for flipping land from agricultural to development without obtaining a permit.
- Amending the current language to ".....may not be for the sole effect of...." would make the exemption easier to identify.

Various industry representatives expressed positions contradicting some WMD concerns, principally that the bill restores the status quo prior to the 2009 5th DCA opinion.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁹ Cited in footnote 6.

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29 occupation of agriculture, silviculture, floriculture, or
 30 horticulture to alter the topography of any tract of land,
 31 including, but not limited to, activities that may impede or
 32 divert the flow of surface waters or adversely impact wetlands,
 33 for purposes consistent with the practice of such occupation.
 34 However, such alteration or activity may not be for the sole or
 35 predominant purpose of impeding ~~impounding~~ or diverting the flow
 36 of ~~obstructing~~ surface waters or adversely impacting wetlands.
 37 This exemption has retroactive application to July 1, 1984.

38 Section 2. Section 373.407, Florida Statutes, is amended
 39 to read:

40 373.407 Determination of qualification ~~Memorandum of~~
 41 ~~agreement~~ for an agricultural-related exemption. In the event of
 42 a dispute as to the applicability of an exemption, No later than
 43 ~~July 1, 2007, the Department of Agriculture and Consumer~~
 44 ~~Services and each water management district shall enter into a~~
 45 ~~memorandum of agreement under which the Department of~~
 46 ~~Agriculture and Consumer Services shall assist in a~~
 47 ~~determination by a water management district~~ or landowner may ~~as~~
 48 ~~to whether an existing or proposed activity qualifies for the~~
 49 ~~exemption in s. 373.406(2). The memorandum of agreement shall~~
 50 ~~provide a process by which, upon the request of a water~~
 51 ~~management district,~~ the Department of Agriculture and Consumer
 52 Services to make a binding determination ~~shall conduct a~~
 53 ~~nonbinding review~~ as to whether an existing or proposed activity
 54 qualifies for an agricultural-related exemption under ~~in~~ s.
 55 373.406(2). The Department of Agriculture and Consumer Services
 56 and each water management district shall enter into a memorandum

57 of agreement or amend an existing memorandum of agreement which
 58 sets forth ~~shall provide~~ processes and procedures by which the
 59 Department of Agriculture and Consumer Services shall undertake
 60 its this review, make a determination effectively and
 61 efficiently, and provide notice of its determination to the
 62 applicable water management district or landowner. The
 63 Department of Agriculture and Consumer Services has exclusive
 64 authority to make the determination under this section and may
 65 adopt rules to implement this section and s. 373.406(2) issue a
 66 ~~recommendation.~~

67 Section 3. Subsection (3) and paragraph (a) of subsection
 68 (4) of section 403.927, Florida Statutes, are amended to read:

69 403.927 Use of water in farming and forestry activities.—

70 (3) If land served by a water management system is
 71 converted to a use other than an agricultural use, the water
 72 management system, or the portion of the system which serves
 73 that land, will be subject to the provisions of this chapter.
 74 However, mitigation under chapter 373 or this chapter to offset
 75 any adverse effects caused by agricultural activities that
 76 occurred before the conversion of the land is not required if
 77 the activities occurred on the land in at least 4 of the last 7
 78 years preceding the conversion.

79 (4) As used in this section, the term:

80 (a) "Agricultural activities" includes all necessary
 81 farming and forestry operations which are normal and customary
 82 for the area, such as site preparation, clearing, fencing,
 83 contouring to prevent soil erosion, soil preparation, plowing,
 84 planting, cultivating, harvesting, fallowing, leveling,

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85 | construction of access roads, and placement of bridges and
86 | culverts, provided such operations are not for the sole or
87 | predominant purpose of impeding ~~do not impede~~ or diverting
88 | ~~divert~~ the flow of surface waters or adversely impacting
89 | wetlands.

90 | Section 4. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 421 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Agriculture & Natural
2 Resources Appropriations Subcommittee
3 Representative Bemby offered the following:

4

5 **Amendment**

6 Remove line 77 and insert:

7 the activities occurred on the land in the last 4

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER

1 Committee/Subcommittee hearing bill: Agriculture & Natural
 2 Resources Appropriations Subcommittee
 3 Representative Bemby offered the following:
 4

Amendment (with title amendment)

Remove line 37 and insert:

7 This exemption applies to lands classified as agricultural
 8 pursuant to s. 193.461 and to activities requiring an
 9 environmental resource permit pursuant to this part. This
 10 exemption does not apply to any activities previously authorized
 11 by an environmental resource permit or a management and storage
 12 of surface water permit issued pursuant to this part or a dredge
 13 and fill permit issued pursuant to chapter 403.

14
 15
 16 -----
 17 **T I T L E A M E N D M E N T**

18 Remove line 6 and insert:

19 limiting applicability of the exemption;