

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 670

SPONSOR: Senator Bronson

SUBJECT: Water Management Districts (RAB)

DATE: November 30, 1999 REVISED: 2/7/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes the governing board of a water management district to delegate its powers and duties to a member of the board or to its executive director.

This bill creates subsection (5) of s. 373.083 of the Florida Statutes.

II. Present Situation:

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., requires that each agency, by October 1, 1999 provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency must also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee will combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 2000 Regular Session, consider whether

specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

The St. Johns River Water Management District (SJRWMD) has reported that several provisions of its rules exceed its statutory authority. These provisions relate to the delegation of permitting authority to district staff. The SJRWMD also reports that all of the water management districts except the Northwest Florida Water Management District have adopted rules providing some form of delegation from their governing boards. The rules of the SJRWMD include the following, with language in italics that the district reports exceed statutory authority:

- *Rule 40C-20.011 Policy and Purpose*
 - (1) The rules in this chapter establish a general consumptive use permitting program for certain water uses whose [sic] adverse impact, either singly or cumulatively, on the water resources of the district is determined to be minimal. Consumptive uses of water which are non-exempt, which do not exceed 500,000 gallons per day calculated as an annual average, and which do not qualify for a general permit by rule under section 40C-2.042, F.A.C., or a noticed general permit under chapter 40C-22, F.A.C., require a standard general permit under this chapter. The purpose of this chapter is to set forth the requirements for obtaining a standard general consumptive use permit and the conditions under which the use may be exercised.
 - (2) *For standard general permit applications which are received and reviewed by a permitting office, the Governing Board appoints the Directors and Assistant Directors of the permitting offices as its agents for the purpose of reviewing and issuing these applications. Any individual listed in subsection 40C-20.011(3), F.A.C., may act on behalf of the Directors and Assistant Directors of the permitting office.*
 - (3) *For standard general permit applications which are received and reviewed by the headquarters office, the Governing Board appoints the Executive Director, Assistant Executive Director, Deputy Assistant Executive Director, Director of the Department of Resource Management, Assistant Directors of the Department of Resource Management, and the Director of the Division of Consumptive Use Permitting, Department of Resource Management, as its agents for the purpose of reviewing and issuing these applications.*

(The individuals authorized to act on behalf of the Directors and Assistant Directors of the permitting office pursuant to (2) above are those listed in (3) above.)

Nearly identical delegations of permitting authority are authorized for noticed general consumptive use permits pursuant to Rule 40C-22.001(2) and (3), F.A.C., standard general environmental resource permits for certain specified surface water management systems pursuant to Rule 40C-40.011(2) and (3), and for noticed general environmental resource permits pursuant to Rule 40C-400.201 (2) and (3), F.A.C. In addition, emergency well construction permits are issued by the executive director or his designee. Numerous references to the delegations also appear in the districts' Applicant Handbook.

The district has proposed that s. 373.083, F.S., be amended to specifically authorize the type of delegations currently in effect by rule.

III. Effect of Proposed Changes:

This bill adds a new subsection (5) to s. 373.083, F.S., authorizing the governing board of a water management district to delegate its powers and duties, by order, to a member or members thereof, or to the executive director. The executive director may execute such delegated authority through designated district staff.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The changes should have no impact on the districts, as the delegations are currently in effect.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

Deletes provisions permitting a WMD governing board to delegate its powers and duties to a board member or members, or to the executive director. The amendment limits such a delegation only to general permits, which may be to the executive director or the executive director's designees. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
