

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 1414

SPONSOR: Senator Childers

SUBJECT: Environmental permitting

DATE: March 1, 2000 REVISED: 3/6/00 _____

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

I. Summary:

This bill would accelerate the implementation of the environmental resources permitting program in the Northwest Florida Water Management District from 2003 to 2001.

This bill amends s. 373.4145, F.S.

II. Present Situation:

In 1993, the Legislature enacted ch. 93-213, L.O.F., which combined the Department of Environmental Regulation and the Department of Natural Resources into one department--the Department of Environmental Protection (DEP). In addition, the act sought to streamline governmental services and provide for the delivery of services to the public in a timely, cost-efficient manner. As a result, the act created the "Environmental Resource Permit" (ERP) which was intended to consolidate all permits for activities involving dredging and filling, and management and storage of surface water (MSSW), including stormwater control, into a single type of permit. The water management districts assumed the lead role for the issuance of these permits. Four of the five water management districts have established ERP programs. While the Northwest Florida Water Management District has had the authority to operate a MSSW program pursuant to ch. 373, F.S., the water management district has never fully operated such a program due to funding limitations. The Northwest Florida Water Management District has a constitutional millage cap of .05 mil, with the remaining four water management districts capped at 1.0 mil. Over the years, there have been several attempts to place the issue on the ballot to amend the State Constitution to bring the Northwest Florida Water Management District's constitutional millage rate on a par with the other water management districts, but previous efforts have failed to get the item on the ballot.

Section 373.4145, F.S., was created in 1993 to provide for an interim environmental permitting program for the Northwest Florida Water Management District. Since the Northwest Florida Water Management District was financially unable to implement an ERP program. The DEP

operates a limited permitting program in this water management district with state financial subsidies for the district. Within the Northwest Florida Water Management District, the DEP's permitting authority is limited to wetland permitting rules which were in effect under the Henderson Wetlands Act of 1984. The DEP was, therefore, prohibited from implementing a complete ERP program on behalf of the water management district. Section 373.4145, F.S., provided a 5-year period in which the DEP would implement the old dredge and fill provisions and the stormwater permitting provisions in lieu of the streamlined ERP provisions. The interim provisions were scheduled to expire on July 1, 1999.

The 1999 Legislature extended the interim permitting program in the Northwest Florida Water Management District until 2003. The Department of Environmental Protection and the Northwest Florida Water Management District were directed to begin developing a plan to fully comply with the ERP provisions contained in part IV of ch. 373, F.S., beginning in 2003. The plan is to also address:

- The division of ERP responsibilities between the DEP and the Northwest Florida Water Management District;
- The methodology of delineating wetlands in the Northwest Florida Water Management District;
- The authority of the Northwest Florida Water Management District to implement federal permitting programs related to activities in surface waters and wetlands; and
- The implications of the Bert J. Harris, Jr. Private Property Rights Protection Act (ch. 70, F.S.) on implementing the provisions of part IV of ch. 373, F.S., within the jurisdiction of the Northwest Florida Water Management District. Currently, the other four water management districts' ERP rules are exempt from the Bert Harris Private Property Rights Protection Act since their rules were adopted prior to the May 11, 1995 date specified in the act which prevented a cause of action against such rules.

The DEP and the Northwest Florida Water Management District are to jointly prepare an interim report on their progress to the Governor and the Legislature by March 1, 2001, and a final report on March 1, 2003.

Recently, citizens in the Florida Panhandle and the Northwest Florida Water Management District have expressed concerns that the wetlands are not being protected to the same degree in their area as the rest of the state since the ERP program is not fully implemented in the Northwest Florida Water Management District. As a result, they have urged the Legislature to expedite the implementation of the ERP program in this district.

III. Effect of Proposed Changes:

This bill provides that the Department of Environmental Protection (DEP) and the Northwest Florida Water Management District are to implement the environmental resources permitting program in the Northwest Florida Water Management District in 2001 instead of 2003.

The DEP and the district are to jointly prepare a report on the implementation of a plan to implement the ERP program and present it to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the relevant substantive and fiscal committees by January 1, 2001.

The DEP and the district are authorized to adopt rules implementing all or a portion of the Management and Storage of Surface Water Program (MSSW) under part IV as described in the progress report which are substantially equivalent to those in effect in the rest of the state. The rules must be ready for adoption by October 1, 2001, unless the adoption is challenged.

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:

There will be some increased costs to the private sector associated with permit fees and design and construction costs for projects conducted in isolated wetlands not covered by the existing regulatory program. There may be some project design and construction costs associated with compliance with water quantity requirements (flood control) that are not contained in the existing regulatory program.

Regulation of water quality in isolated wetlands may serve to reduce future costs associated with water quality restoration. Also, water quantity regulation may help to reduce the flooding potential of new construction, which should reduce the infrastructure costs associated with flood control. The Community Rating System of the National Flood Insurance Program provides a significant credit for the existence of a regulatory program that manages new development to prevent the increase in peak water flows. This credit is not currently available in the Northwest Florida Water Management District since the district has not implemented an ERP program. It is only available in those areas in the district where a local government has its own water quantity regulatory program.

C. Government Sector Impact:

Implementation of a complete ERP program in the Northwest Florida Water Management District would probably increase the workload of either the DEP or the Northwest Florida Water Management District depending on the split of responsibilities for the program. This is because the ERP program would extend the permitting program to include isolated wetlands and a flood control program. In recent years, the Northwest Florida Water Management District has experienced a significant increase in development activity which has increased the effects caused by flooding. The cost to implement an ERP program in this area is not known at this time.

Currently, SJR 1200, if passed, would authorize a proposed constitutional amendment for consideration by the electors at the next general election, or at an earlier special election specifically authorized by law for that purpose, to enable the Northwest Florida Water Management District to levy up to 1.0 mill in ad valorem tax millage for water management purposes, which is the same limitation placed on other water management districts in this state. If approved it would take effect January 1, 2001. This could provide the district with needed funds to implement the ERP program.

There will be some costs associated with the adoption of the ERP rules in the Northwest Florida Water Management District, however, those costs cannot be determined at this time.

There may be some increased costs to local governments associated with permit fees and design and construction costs for projects conducted in isolated wetlands not covered by the existing regulatory program.

VI. Technical Deficiencies:

The bill provides in s. 373.4145(7)(a), F.S., that the DEP and the Northwest Florida Water Management District must develop a plan to fully comply with the ERP provision by *July 1, 2001*. This conflicts with the provision in paragraph (c) of that section that requires the rules to be ready for adoption by *October 1, 2001*.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

Technical amendment to correct a date conflict in the bill.