

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 142

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Baker

SUBJECT: Water Management Districts

DATE: April 14, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	Favorable
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill removes a provision that directed the water management district’s governing boards to delegate to the executive director their authority to take final action on consumptive use permits or environmental resource permits.

The bill removes a provision that prohibited governing board members from interfering during the permit review process if that permit would require final agency action by the governing board.

The bill creates a provision that will allow governing boards to delegate permitting decisions to the executive director and that would allow the executive director to delegate to designated staff. The provision also directs the governing board to provide a process for the appeal, to the governing board, of any permits denied under a delegation to the executive director or staff.

The bill also authorizes the use of public private partnerships for materials acquisition when consistent with district or state procurement procedures and creates a civil and criminal penalty, respectively, for obstruction or willful obstruction of public canals or other watercourses.

The bill also makes a series of technical and drafting corrections.

The bill would take effect July 1, 2010.

This bill substantially amends s. 373.079, 373.083, and 373.118, Florida Statutes.

II. Present Situation:

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

Direct oversight for each district's activities is provided by a Governing Board whose members are appointed by the Governor and subject to confirmation by the Florida Senate.¹ Each Governing Board in turn hires an Executive Director who must also be confirmed by the Florida Senate. In addition, pursuant to s. 373.026(7), F.S., the Department of Environmental Protection (department) is authorized to "exercise general supervisory authority over all water management districts."

In order to accomplish their missions the districts assume their responsibilities as authorized in Chapter 373, F.S., and other chapters of the Florida Statutes by directing a wide range of programs, initiatives and actions. These include, but are not limited to, flood protection, water use (consumptive use permitting), well construction, environmental resource permitting, water conservation, education, land acquisition, water resource and supply development, and supportive data collection and analysis efforts.

The Florida Environmental Reorganization Act of 1993 (ch. 93-204, Laws of Florida) created the environmental resource permitting program (ERP). Operationally the ERP program is now jointly implemented by the DEP through its district offices and the districts. Most of the ERP permits are issued by the districts; however large projects with statewide implications are issued by the department.

The Consumptive Use Permitting (CUP) program includes permitting, compliance and enforcement, and water shortage plan support and enforcement. Any entity or person that wants to use large amounts of water, except those exempted by statute or rule, are required to obtain a CUP. These permits are issued for a finite duration and, upon expiration, must be renewed.

In 2009 the Legislature passed CS/CS/SB 2080 (ch. 2009-243, Laws of Florida) which contained provisions concerning the delegation of permit decisions from the governing boards to the executive directors. Specific provisions of the legislation mandated that the governing boards

¹ Section 373.073(1)(a), F.S.

where to delegate to the executive directors the authority to take final agency action concerning permit applications for CUPs and ERPs. These changes were based on recommendations contained in a 2008 Senate interim report² that found almost 100% of all governing board decisions relating to the issuance of permits for CUPs and ERPs adopted the staff recommendation.

Upon the 2009 Legislation becoming law some interest groups expressed concern that the mandated delegation eliminated a critical portion of the review process and would have the effect of reducing public input.

III. Effect of Proposed Changes:

Section 1. Amends s. 298.66, F.S., to provide civil and criminal penalties, respectively, for the obstruction of a public canal or other watercourse.

Section 2. Amends s. 373.079, F.S., to strike a provision that directed the governing boards to delegate to the executive directors the authority to take final agency action on permit applications for CUPs and ERPs.

Section 3. Amends s. 373.083, F.S., to strike provisions that permit the governing board to delegate permit decisions to the executive director and which allow the executive director to delegated those decisions to district staff. Additionally, a provision is removed that expressly prohibits any member of a governing board from intervening in any matter related to the review permit applications if such permit application will be referred to the governing board for final action.

Section 4. Amends s. 373.085, F.S., to encourage the use of public-private partnerships for the procurement of materials for infrastructure and restoration works when they are consistent with district and state procurement procedures.

Section 5. Amends s. 373.118, F.S., to allow governing boards to delegate by rule the ability for executive directors to take final agency action on permit applications. This provision also grants authority for the executive director to further delegate this authority to staff of the district.

Section 6. Provides that the bill shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Interim Report 2008-212, Agency Sunset Review of the Water Management Districts, by the Senate Committee on Environmental Preservation and Conservation

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because governing boards only meet on a monthly basis any entities seeking a permit that could potentially need review by the boards can anticipate it taking an additional 30 to 45 days before a final agency action.

There are forty references to the term “public-private partnerships” in the Florida Statutes. The term is used with specificity in s. 334.30, F.S., to describe joint state/private road projects. It is used elsewhere with less precision but it essentially implies a contract vendor relationship which may be designated by law or by a public agency award of a competitively procured contract.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 14, 2010:

Amends s. 298.66, F.S., to provide a civil and criminal penalty, respectively, for the obstruction or willful obstruction of a public canal or other named watercourse. Amends s. 373.085, F.S., to encourage the use of public-private partnerships when procuring materials for infrastructure and restoration works when consistent with state or water management district procurement practices.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
