

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCSMB for HB 1407, HB 1367 & HB 1605

Water Management

SPONSOR(S): Hays, Holder, Mayfield

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner	Reese
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable water management district (WMD), to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

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. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin Board beginning July 1, 2010.

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 requires a WMD board to acquire specific Legislative authority for acquisition costs in excess of \$50 million and for professional service procurement costs in excess of \$5 million. The bill restricts the issuance of certificates of participation by a WMD for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll of the county in which such land is located.

The bill creates a water management district governing board nominating commission consisting of 9 members, three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner is considered a "state officer" for purposes of financial disclosure requirements, may not be a current or former WMD governing board member, may hold public office, is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations, may be suspended for cause by the person who appointed him or her, and must submit to the Governor three recommended nominees for each district governing board position. Under the bill, a nominee must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments, and must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. The Governor shall select appointees from the list of recommended nominees for any vacant WMD board position.

The bill appears to have no negative fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking and administrative duties by the Executive Office of the Governor. The bill has an effective date of July 1, 2010.

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

STORAGE NAME: pcsmb1407.ANR.doc
DATE: 3/23/2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Management of Surface and Ground Waters

State and District

The Florida Department of Environmental Protection (DEP) regulates activities that affect natural systems primarily through the Environmental Resource Permit (ERP) program, implemented jointly by the DEP and the water management districts (WMDs). The ERP program regulates most land (upland, wetland, and other surface water) alterations throughout the state. In addition to the Federal State Programmatic General Permit, the regulatory program also includes implementation of a statewide National Pollutant Discharge Elimination System (NPDES) program. In addition, activities located on or using state-owned sovereign submerged lands also require applicable proprietary authorizations (including Consents of Use, Leases, and Easements).

The comprehensive nature of the state program is broader than the federal regulatory program in that it also regulates alterations of uplands that may affect surface water flows, addresses issues of flooding and stormwater treatment, and protects isolated wetlands¹. The Clean Water Act does not give the federal government regulatory jurisdiction over isolated wetlands, except when such wetlands are adjacent to navigable waters of the United States². The state program is in addition to, not in place of or superseded by, the federal permit programs. Applicants must get all applicable permits and authorizations from both the state and the federal government before beginning work³.

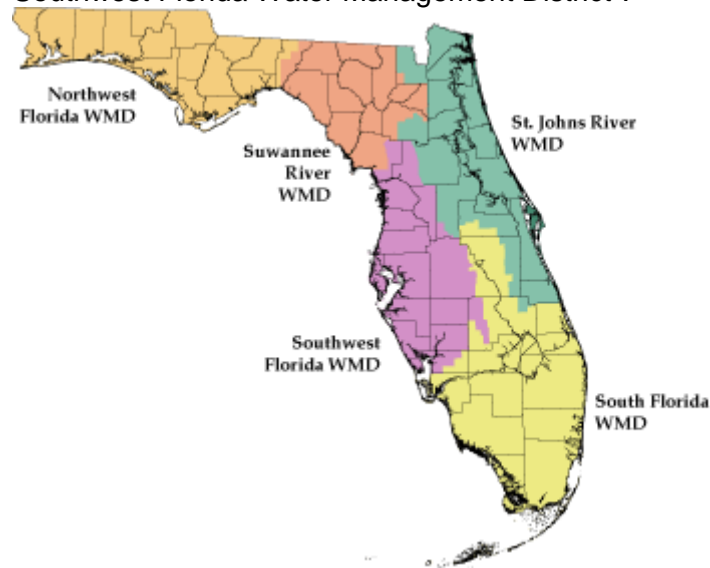
The DEP manages the quality and quantity of water in Florida through its relationship with the state's WMDs which are tasked with the preservation and management of Florida's water resources. The

¹ Section 373.414(2), F.S., allows the DEP and/or the WMDs to establish size thresholds of isolated wetlands below which "impacts on fish and wildlife and their habitats will not be considered...and shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal." In addition, paragraph (a) of that subsection provides that the DEP and the WMDs must establish criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

² On January 9, 2001, the United States Supreme Court held that the U.S. Army Corps of Engineers (ACOE) does not have regulatory jurisdiction under the Clean Water Act over isolated, non-navigable, intrastate, wetlands, except when such wetlands are adjacent to navigable waters of the United States. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178, 531 U.S. 159 (January 9, 2001).

³An applicant for a federal dredge and fill permit will apply directly to either the DEP or the applicable WMD using the same form that is used for the state ERP or wetland resource permit. The DEP and the WMD will forward the application to the ACOE for concurrent federal permit processing (which can only be issued after issuance of the applicable state permit that grants or waives water quality certification).

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 Southwest Florida Water Management District⁴.



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)

Chapter 373, Florida Statutes, 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 objectives⁵. By statute, each WMD is overseen by a governing board which is appointed by the Governor and confirmed by the Senate⁶.

⁴ 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 which 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.

⁵ 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, Article VII, Section 9 of the Florida Constitution 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 United States Government, the State of Florida, local governments within the district, and other district sources like permit fees and interest earnings on investments.

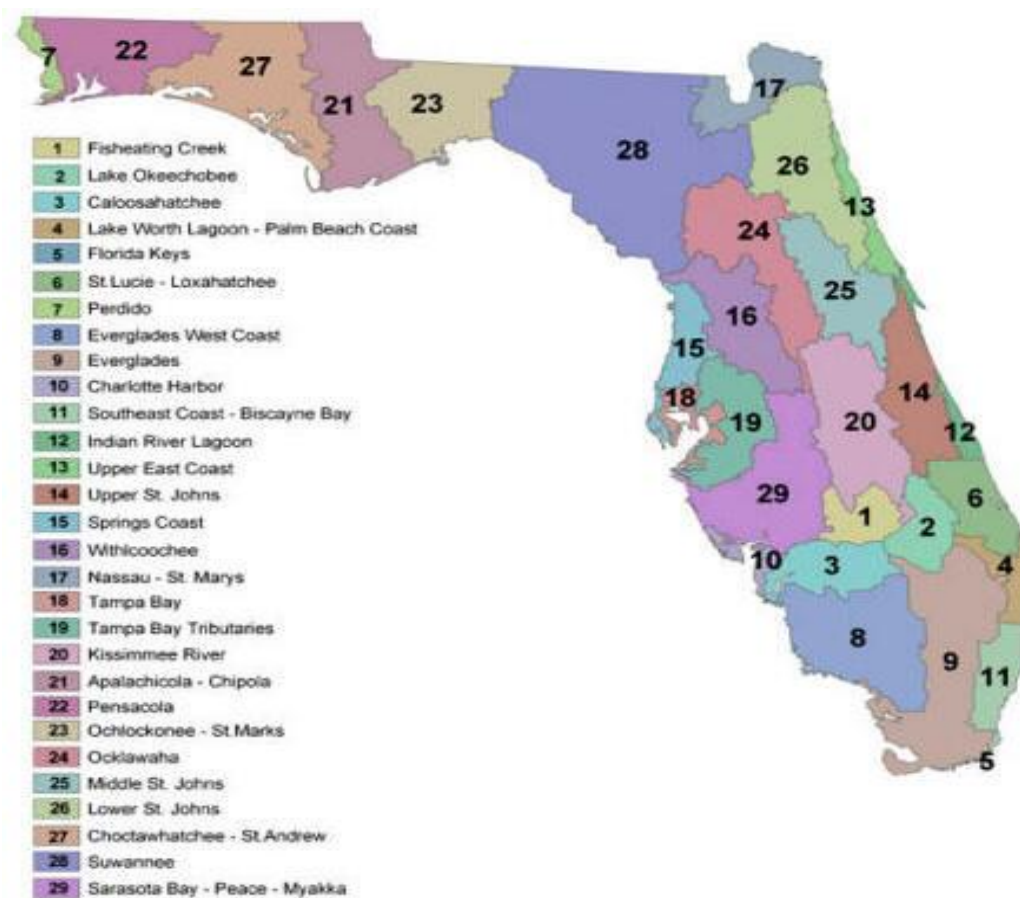
⁶ Each of the WMDs has nine board members, with the exception of the Southwest Florida WMD, which has eleven members.

WMDs have the authority to levy ad valorem (property) taxes to support water management activities. In addition to the authority to issue general obligation bonds, pursuant to s. 373.563, F.S., the WMDs are authorized to issue revenue bonds in accordance with guidelines provided in s. 373.584, F.S.⁷

The DEP and WMDs use a watershed approach in the regulation of natural systems. A watershed is the geographic area through which water flows across the land and drains into a common body of water, whether a stream, river, lake, or ocean. Much of the water comes from rainfall and the stormwater runoff. The quality and quantity of stormwater is affected by all the alterations to the land including agriculture, roadways, urban development, and the activities of people within a watershed. Because the surface water features and stormwater runoff within a watershed ultimately drain to other bodies of water, it is essential to consider these downstream impacts when developing and implementing water quality protection and restoration actions.

Basin Boards

Florida has 52 large watersheds or basins. In order 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.

⁷ Pursuant to s. 373.584(4)(a), F.S., “bonds” means bonds, debentures, notes, certificates of indebtedness, certificates of participation, mortgage certificates, or other obligations or evidences of indebtedness of any type or character.

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 district 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.

Local Governments

In addition to complying with state and WMD ordinances, county and city governments manage natural systems through compliance with Chapter 163, Part II, F.S. (The Local Government Comprehensive Planning and Land Development Regulation Act (or the Growth Management Act, or Act). The Growth Management Act requires cities and counties to adopt comprehensive plans and authorizes the Department of Community Affairs (DCA), Division of Community Planning, to review comprehensive plans and plan amendments for compliance with the Act and related administrative rules. Other review agencies, including the regional planning councils, WMDs, the Departments of State, Transportation, Environmental Protection, and Agriculture and Consumer Services, and the Florida Fish and Wildlife Conservation Commission also review comprehensive plans and amendments and issue recommended objections to the DCA. With limited exceptions, local governments may amend their comprehensive plans twice per year⁸.

Regarding policy objectives, a comprehensive plan must include a conservation element for “the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources⁹.” The broadly drafted statute and rule afford local government latitude to tailor protection for wetlands in addition to the regulations provided by state environmental laws. The Florida Administrative Rule authorized by the statutory conservation requirement provides very general considerations for wetland protection and conservation¹⁰:

(3) Policies Addressing the Protection and Conservation of Wetlands.

- (a) Wetlands and the natural functions of wetlands shall be protected and conserved. The adequate and appropriate protection and conservation of wetlands shall be accomplished through a comprehensive planning process which includes consideration

⁸ For instance, small-scale amendments, as defined by section 163.3187(1)(c), F.S., are not reviewed by the DCA. Small-scale amendments take effect within 31 days unless challenged by an affected party. An affected party has 30 days following the local government’s adoption at a public hearing to challenge the small- scale amendment.

⁹ Section 163.3177(6)(d), F.S. See also: <http://www.dca.state.fl.us/fdcp/dcp/complanning/>.

¹⁰ Rule 9J-5.013(3), F.A.C. Conservation Element (Submission Procedures, revised April 17, 2006)

of the types, values, functions, sizes, conditions and locations of wetlands, and which is based on supporting data and analysis.

(b) Future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands. The type, intensity or density, extent, distribution and location of allowable land uses and the types, values, functions, sizes, conditions and locations of wetlands are land use factors which shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other goals, objectives and policies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

Using its comprehensive plan, a local government creates a future land use map that identifies environmentally sensitive areas, such as wetland systems, and uses policy objectives within the comprehensive plan to restrict wetland impingement or direct incompatible land uses away from sensitive areas. Local governments may direct incompatible land uses away from wetlands by imposing buffers or setbacks either through a component of their land use plan or through land development regulations. In addition, a local government may pass ordinances requiring no net loss of wetlands, prohibiting impacts altogether, restricting single family home density, prohibiting development, requiring on-site mitigation or mitigation in-county, or requiring specific mitigation ratios for wetland restorative efforts.

Florida Statutes and Administrative Code sections authorize and provide procedures and considerations for the DEP to delegate the ERP program to local governments. (FN Section 373.441, F.S., and its implementing rule chapter 62-344, F.A.C., provides delegation authority.) Delegation allows the local government to review and approve or deny the state permits at the same time the local authorizations are granted or denied. The statute directs that rules shall “seek to increase governmental efficiency” and “maintain environmental standards.” Delegations can be granted only where:

- The local government can demonstrate that delegation would further the goal of providing an efficient, effective, and streamlined permitting program; and
- The local government can demonstrate that it has the financial, technical, and administrative capabilities and desire to effectively and efficiently implement and enforce the program, and protection of environmental resources will be maintained.

According to the statute, delegation includes the applicability of Chapter 120, F. S., to local government programs when the ERP program is delegated to counties, municipalities, or local pollution control programs. Since its implementation in 1993, only Broward County has a comprehensive ERP delegation that is subject to certain limits, for instance, issues relating to Sovereignty Submerged Lands¹¹.

Effect of Proposed Change

The bill directs county and municipal governments that use state water resources for water supply purposes, in cooperation with the applicable WMD, to conduct an evaluation of water resources that might reasonably be considered to be a primary source of water and determine if the water resources are adequately protected from sources of pollution and from land uses incompatible with their protection.

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

¹¹ Six local governments have delegation for mangrove trimming ([Mangrove Coordination](#)), and other local jurisdictions have some limited delegated authority ([Local Program Delegation](#)).

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. Finally, the bill places a Southwest Florida WMD board member on the Manasota Basin board beginning July 1, 2010.

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 requires a WMD board to acquire specific Legislative authority for land acquisition costs in excess of \$50 million and for professional service procurement costs in excess of \$5 million. The bill restricts a WMD from issuing certificates of participation for the purchase of land. The bill directs WMD governing boards to conduct reviews for lands for which title is vested in the WMD. The purpose of the review is to determine which lands are no longer needed for conservation and restoration, or are no longer considered environmentally critical or sensitive. Such lands will be made available for purchase so the property can be reentered onto the county ad valorem tax roll.

The bill creates a Water Management District Nominating Commission consisting of 9 members:

- Three shall be appointed by the Governor to serve terms ending July 1, 2014.
- Three shall be appointed by the President of the Senate to serve terms ending July 1, 2013.
- Three shall be appointed by the Speaker of the House of Representatives to serve terms ending July 1, 2012. Thereafter, appointed commissioners shall serve four year terms.

In making appointments, the Governor, the President of the Senate, and the Speaker of the House of Representatives shall seek to ensure that, to the extent possible, the membership of the governing board nominating commission reflects the racial, ethnic, and gender diversity of the state and shall also consider the adequacy of representation of each geographic region within the state. The Executive Office of the Governor will provide all administrative support for the governing board nominating commission and shall adopt rules necessary to administer this section.

Under the bill, a commissioner:

- Is considered a "state officer" for purposes of financial disclosure requirements;
- May not be a current or former WMD governing board member;
- May hold public office;
- Is not eligible during his or her term of office and for a period of 2 years thereafter for appointment to any board for which the commission has the authority to make nominations;
- May be suspended for cause by the person who appointed him or her; and,
- Shall submit to the Governor three recommended nominees for each district governing board position.

Under the bill, a nominee:

- Must reside in the territorial jurisdiction of the governing board to which the commission will recommend appointments; and,
- Must have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately-owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance.

The Governor shall select appointees from the list of recommended nominees for a vacant WMD board position.

B. SECTION DIRECTORY:

Section 1 creates s. 153.112, F.S., directing county commissions, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 2 creates s. 180.133, F.S., directing municipalities, in cooperation with WMDs, to conduct an evaluation of primary water resources.

Section 3 amends s. 373.0693, F.S.; revising provisions relating to the membership, terms of service, and quorum requirements, of basin boards; revising provisions relating to the membership of the Manasota Basin board; providing for the designation of a member of the Southwest Florida WMD governing board to serve on the basin board.

Section 4 amends s. 373.171, F.S., exempting WMD cooperative funding programs from certain rulemaking requirements.

Section 5 creates s. 373.0725, F.S., establishing a water management district governing board nominating commission, establishing selection and eligibility criteria for nominees and commissioners, providing for terms and duties of commission members, requiring the Executive Office of the Governor to provide administrative support to the commission and to adopt rules.

Section 6 amends s. 373.086, F.S., requiring WMD governing boards to obtain legislative authorization for acquisition costs and professional service procurement costs in excess of specified amounts.

Section 7 amends s. 373.089, F.S.; requiring WMD governing boards to review inventory of and make available for purchase specified lands.

Section 8 amends s. 373.584, F.S., restricting a WMD from issuing certificates of participation for the purchase of land.

Section 9 amends s. 112.3145, F.S., providing that members of the WMD governing board nominating commission are state officers for purposes of financial disclosure requirements

Section 10 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See, FISCAL COMMENTS.

2. Expenditures:

See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See, FISCAL COMMENTS.

2. Expenditures:

See, FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Lands titled to WMDs may become open for sale to the public if the governing boards determine that certain lands are not needed for conservation and restoration, or are no longer considered environmentally critical or sensitive.

D. FISCAL COMMENTS:

WMD boards that sell certain lands in their inventories will no longer need to expend funds for the management of said lands. If the land was purchased with state funds, proceeds from said sales will be returned to a trust fund. Lands purchased with WMD ad valorem will be returned to the WMD operating budget. Local governments may experience an increase in ad valorem revenue if WMDs sell certain lands that are subsequently returned to the county tax roll.

There will be expenses for the Executive Office of the Governor associated with rulemaking and with providing administrative duties for the Water Management District Nominating Commission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided to the Executive Office of the Governor relating to the administration of the Water Management District Nominating Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill section creating the Water Management District Nominating Commission provides a very broad grant of rulemaking authority to the Executive Office of the Governor. In addition, that section does not authorize compensation, per diem, or travel expenses that may be incurred by Commissioners in the execution of their duties.

Commission nominees are required to have significant experience in one or more of the following areas: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or finance. Staff notes that tourism and activities that are water dependent (e.g., boating, fishing) also add significantly to state revenues.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES