

1989

## Session Law 89-279

Florida Senate & House of Representatives

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**S 484 GENERAL BILL/CS/2ND ENG by Natural Resources and Conservation; Natural Resources and Conservation (Similar CS/CS/CS/H 1304, S 1365, Compare CS/1ST ENG/H 599, CS/CS/H 637, H 874, CS/1ST ENG/H 990, CS/H 1789, CS/CS/S 566, CS/S 1039, S 1069)**

Water Resources; (SUNDOWN) saves provisions re governing & basin boards of water management districts from their scheduled repeal on 10/01/89; provides for future review & repeal; authorizes TIITF to spend certain revenue to assist clean-up & protection of certain areas; revises Fla. Water Resources Act of 1972, etc. Revives/readopts 373.0693, .0695, .073-.087, .089-.103; repeals 373.088 on 10/01/90; amends Chs. 253, 187, 373, 403. Effective Date: 08/02/89.

03/10/89 SENATE Prefiled

03/24/89 SENATE Referred to Natural Resources and Conservation; Finance, Taxation and Claims; Appropriations

04/04/89 SENATE Introduced, referred to Natural Resources and Conservation; Finance, Taxation and Claims; Appropriations -SJ 47

04/07/89 SENATE On Committee agenda—Natural Resources and Conservation. 04/11/89, 2:00 pm, Room-2C-(301)—Temporarily postponed

04/14/89 SENATE Extension of time granted Committee Natural Resources and Conservation

04/28/89 SENATE Extension of time granted Committee Natural Resources and Conservation

05/12/89 SENATE Extension of time granted Committee Natural Resources and Conservation

05/15/89 SENATE On Committee agenda—Natural Resources and Conservation, 05/17/89, 1:00 pm, Room-2C-(301)

05/17/89 SENATE Comm. Report: CS by Natural Resources and Conservation -SJ 403

05/22/89 SENATE CS read first time -SJ 406; Now in Finance, Taxation and Claims -SJ 403

05/26/89 SENATE Withdrawn from Finance, Taxation and Claims -SJ 492; Now in Appropriations

05/29/89 SENATE Withdrawn from Appropriations -SJ 557; Placed on Calendar

05/30/89 SENATE Placed on Special Order Calendar -SJ 560

05/31/89 SENATE Placed on Special Order Calendar -SJ 618; Was taken up -SJ 655; Amendments adopted -SJ 656; CS passed as amended; YEAS 35 NAYS 0 -SJ 662

05/31/89 HOUSE In Messages

06/02/89 HOUSE Received, placed on Calendar -HJ 1279; Read second time; Amendments adopted; Read third time; CS passed as amended; YEAS 110 NAYS 0 -HJ 1287

06/02/89 SENATE In Messages; Was taken up -SJ 1261; Concurred; CS passed as amended; YEAS 36 NAYS 1 -SJ 1269

06/02/89 Ordered engrossed, then enrolled -SJ 1269

06/20/89 Signed by Officers and presented to Governor

07/05/89 Approved by Governor; Chapter No. 89-279; See also: CS/HB 990 (Ch. 89-324) & CS/HB 599 (Ch. 89-169)

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: \_\_\_\_\_

BILL NO. CS/SB 484

DATE: May 17, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	Gee <u>JS</u>	Voigt <u>WV</u>	1. NRC _____	Fav./CS _____
2.	_____	_____	2. FTC _____	_____
3.	_____	_____	3. AP _____	_____
4.	_____	_____	4. _____	_____

SUBJECT:

Water Management District  
Sundown

BILL NO. AND SPONSOR:

CS/SB 484 by  
Natural Resources and Conserva-  
tion Committee

I. SUMMARY:

A. Present Situation:

During the 1987-88 interim the Senate Natural Resources & Conservation Committee conducted a review of selected functions of the water management districts. A Sundown Review pursuant to s. 11.611, F.S., was conducted for provisions of ss. 373.0693 and 373.0695, F.S., relating to water management district basin boards, and for provisions of ss. 373.073 - 373.103, F.S., relating to water management district governing boards.

Staff's findings indicated that governing and basin boards furnished a definite public benefit which could not otherwise be provided, and that abolishment of the boards would result in a detriment to the public. Due to these findings, contained in a report entitled "A Review of Selected Functions of Water Management Districts Scheduled for Repeal on October 1, 1988", staff recommended the reenactment of the provisions related to governing and basin boards, thus saving them from the scheduled repeal on October 1, 1988, pursuant to the Sundown Act.

The 1988 Legislature, however, elected to continue both governing and basin boards, but only until October 1, 1989, on which date they will be abolished, unless reenacted by the 1989 Legislature, and directed staff to further review the provisions, pursuant to s. 11.611, F.S., the Sundown Act. In response to the Legislature's mandate for another review of these provisions, staff prepared a questionnaire which was sent to each water management district and the Department of Environmental Regulation. Information obtained from the questionnaire is described in the report, "A Review of Water Management Districts and Recommendations of the Environmental Study Commission," published in February 1989, which includes recommended changes to the Florida Statutes. Several of these recommendations are contained in CS/SB 484. Among them are:

1. The district's staff should be authorized to inspect, at any reasonable time, permitted facilities or activities, to ascertain compliance with the law or district rules. (Such authorization is granted to DER staff in s. 403.091, F.S.)
2. The governing boards should be authorized to delegate the authority to issue or deny certain permits to the executive directors. The issuance of all permits by governing boards is considered to be needlessly time-consuming, both for the boards and for applicants, who must delay projects until a governing board's next regularly scheduled meeting to obtain final approval or denial of a permit. Staff believes the delegation of authority, by rule, to issue routine noncontroversial permits would promote efficiency and expedite the permitting process.

3. Water reuse should be encouraged. There are numerous industrial, agricultural, and other uses in which treated wastewater can be safely substituted for water of drinking quality. As Florida's rapid growth already threatens to outstrip existing water supplies in some areas, it is increasingly important to maximize the uses of the state's water resources.

4. The districts should be granted immunity from liability for public use of district lands. Much of the lands owned by water management districts are suitable for use for outdoor recreational purposes. Existing provisions of the Outdoor Recreation and Conservation Act of 1963 (Chapter 375.251, F.S.) shield persons making property available to the public from liability to those using such lands for recreational purposes, so long as no fee is charged for the use. Enactment of similar provisions for water management district property would encourage the districts to make their lands available to the public for fishing, hunting, boating, hiking, and other recreational uses.

5. The districts should be authorized to require professional certification for certain permit applications. Existing law (s.373.117, F.S.) provides DER and the districts the authority to require certification by a professional engineer that an activity has been completed in substantial compliance with the plans and specifications approved by DER or a district. This authority, however, is insufficient to require that permit applications be certified by a professional as meeting the requirements of applicable rules, for purposes of evaluating a permit request. Amending s.373.117, F.S., to authorize DER and the districts to adopt rules requiring professional certification whenever necessary to protect the district's water resources would provide the needed flexibility.

6. The statutory authorization for the Green Swamp Basin within the Southwest Florida Water Management District should be removed from the Florida Statutes, as it appears that basin activities are minimal. This basin has no basin board, being directed by the district governing board. It has not recently levied taxes, met as a separate entity, and has no budget. It therefore seems evident that the basin serves no vital purpose and that necessary activities can continue to be accomplished by the district governing board.

In addition to the changes listed above, staff also recommended that certain provisions of Chapter 88-242, L.O.F., be repealed. Section 1 of Chapter 88-242, L.O.F. expanded the governing board of the Southwest Florida Water Management District from nine to eleven members. All other districts continue to have nine member governing boards and staff saw no reason for retaining this inconsistency.

Section 2 of Chapter 88-242, L.O.F. provides that the terms of all members of the governing board of the Southwest Florida Water Management District shall expire on June 30, 1990. The Governor is then directed to appoint eleven board members by July 1, 1990. Section 2 further provides that these eleven new members shall draw lots to determine the length of their terms, which shall vary. Three members shall have 4-year terms, three shall have 3-year terms, and two shall have 1-year terms. Thereafter, board members' terms shall be 4 years and shall be staggered. It is unclear why the Legislature elected to enact these complicated provisions for assignment of board members' terms. Generally, if an appointment to a board or commission is made without specifying the length of the appointee's term of office at the time of appointment, the appointee serves at the pleasure of the Governor. It is therefore conceivable that all members of the board could be determined to be serving at the Governor's pleasure regardless

of which lots are drawn, and thus be subject to replacement at any time.

Because staff could not find any documentation or justification for requiring this apparently unnecessary complication in the appointment of the Southwest Florida Water Management District governing board, it recommended that Section 2 be repealed and provisions enacted to insure consistency among all governing boards regarding the number of members and determination of their terms of office.

Another issue which has been apparent for a number of years and needs to be recognized is the lack of ad valorem taxing capability of the Northwest Florida Water Management District. The Northwest Florida Water Management District governing board is levying taxes at its maximum capability, yet this source of revenue only contributes approximately 7 percent to the district's total annual budget. This district is incapable of implementing the programs the Legislature has mandated unless adequate taxing authority is given. Staff recommended that the Northwest Florida Water Management District millage cap be raised to be consistent with millage caps in the other districts. This will require both a constitutional change and a statutory change.

Staff therefore recommended the enactment of a constitutional amendment to change provisions of Article VII, section 9(b), of the Florida Constitution restricting the Northwest Florida Water Management District to an ad valorem levy of 0.05 mill to 1.0 mill, which would be consistent with the millage cap of all other districts. Section 373.503, F.S., should also be amended to permit an increased ad valorem levy for the Northwest Florida Water Management district. Although districts are constitutionally authorized to levy up to 1.0 mill (excepting the Northwest Florida Water Management District), s. 373.503, F.S., imposes the following statutory caps for district ad valorem taxation:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.60 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Water Management District: 0.80 mill.

In order to properly fund water management activities in the Northwest Florida Water Management District, staff recommended that the district's statutory cap be increased to 0.50 mill, contingent upon approval of the necessary Constitutional amendment.

Section 2 of Chapter 85-211, L.O.F., provides for the October 1, 1990 repeal of a .225 millage assessment within the St. Johns River Water Management District. This levy, intended to fund land acquisition was repealed by Ch. 87-97, L.O.F. As no authorization now exists for the levy, repeal of s. 2 of Ch. 85-211, L.O.F., was recommended as a technical change.

Finally, staff recommended the reenactment of Sections 373.0693, 373.0695, 373.073, 376.076, 373.079, 373.083, 373.084, 373.085, 373.086, 373.087, 373.088 373.089, 373.093, 373.096, 373.099, and 373.103, F.S. These sections of law relate to the powers, duties, and authority of governing boards and basin boards of water management districts. These provisions were scheduled for repeal pursuant to the Sundown Act on October 1, 1988, and were extensively reviewed prior to that date by Committee staff. Staff's findings are contained in "A Review of Selected Functions of Water Management

Districts Scheduled for Repeal on October 1, 1988", which recommended the reenactment of the provisions listed above.

During the 1988-89 interim, staff also conducted a Sundown Review of the Groundwater Protection Task Force, authorized by s. 403.1659, F.S., scheduled for repeal pursuant to s. 11.611, F.S., on October 1, 1989. The task force is assigned the responsibility of providing potable water to residents whose drinking water is contaminated, providing public information relative to contamination, ensuring that an inventory of groundwater contamination research activity is developed and maintained, making recommendations on groundwater contamination problems, and reporting to the Governor and Legislature annually.

Staff's recommendation that extensive changes be made to create interagency cooperation among the Departments of Environmental Regulation (DER), Health and Rehabilitative Services (HRS), Agriculture and Consumer Affairs (DACS), and others as needed is contained in the report, "A Review of the Groundwater Protection Task Force," published in February 1989.

The "Water Resources Atlas of Florida" describes stormwater as, "water flowing over land during and immediately after rainfall is stormwater runoff." More than half of all the pollutants entering Florida's surface waters are carried by stormwater runoff. Land use has a great impact on water quality, and associated nonpoint sources can generally be classified as rural or urban. Other factors related to runoff and its effects on water quality include soil type, climate, topography, vegetative cover, and land management practices.

Florida implemented strict state rules in 1982 to improve stormwater management practices. These state rules have been referred to by DER officials as making Florida a national pioneer, far ahead of the rest of the country. Since 1982, Florida has required that 80 percent of the pollutants in stormwater that drains from new developments settle out before it discharges downstream. Most developments meet the state requirements with retention ponds.

The Federal Environmental Protection Agency is required by amendments to the Clean Water Act to undertake a program to regulate stormwater. A proposal released by EPA last fall identifies entities that will be subject to their permitting requirements. Their proposal is aimed at controlling discharges from certain industrial activities, construction sites and from municipal storm sewer systems in cities with a population exceeding 100,000. Permits must be in place by October 2, 1992 and compliance must be achieved within three years after that, according to requirements in the amendments to the federal Clean Water Act.

Pursuant to the Surface Water Improvement and Management Act (SWIM), water management districts, in cooperation with DER, the Game and Fresh Water Fish Commission (GFWFC), and the Department of Natural Resources (DNR) have designated certain water bodies as having priority needs for restoration and protection from pollution. Each water management district is responsible for planning, implementing, and coordinating restoration strategies for the approved priority water bodies within the district. Annually, the districts and DER cooperate in developing a funding proposal for the next fiscal year's restoration activities.

**B. Effect of Proposed Changes:**

Section 1. Amends provisions in The State Comprehensive Plan in chapter 187, F.S., to specify that policies to eliminate the discharge of inadequately treated wastewater and stormwater runoff must also be consistent with state water policy and

approved plans under the SWIM Act. Under Agricultural Policies, a new policy is added to eliminate the discharge of inadequately treated wastewater and stormwater runoff and be consistent with state water policy and approved plans under the SWIM Act.

Section 2. Section 200.065, F.S., is amended to provide for revised TRIM notices for water management districts which indicate the actual amount of a proposed ad valorem levy rather than the percent of a proposed increase. The notice will provide a calculation of the actual proposed increase, based on the value of a representative home.

Section 3. Section 373.016, F.S., is amended to add the policy statement, "To minimize degradation of water resources caused by the discharge of stormwater."

Section 4. Section 373.0391, F.S., is created to provide for water management districts to assist local governments in the development and future revision of local government comprehensive plan elements related to water resource issues.

Section 5. Section 373.046, F.S., is amended; water management districts are authorized to enter into interagency agreements with DNR relative to permitting requirements for mine reclamation activities of the two agencies. The interagency agreement shall provide for the review and comment by the water management district upon matters within their jurisdiction that are addressed by reclamation activities subject to certain DNR requirements and the agreement shall include criteria consistent with the requirements in s. 373.414, and certain public notice requirements. To the extent that any dam, dike, or levee remains after completion of all reclamation activities, such facilities shall be subject to requirements of Part IV of ch. 373, pertaining to operation, maintenance, and abandonment.

Section 6. Provides for the transfer of portions of Alachua County from the St. Johns River Water Management District to the Suwannee River Water Management District, effective December 31, 1989.

Section 7. Provides for the administration of permit applications during the period of the transfer pursuant to Section 3. Permits issued prior to the transfer will be transferred without the need for reapplication. Pending applications will be transferred with the property, unless the applicant requests the transferring district to complete action on the application. For water use permits under Part II of ch. 373, F.S., the 2-year compliance period for existing uses not permitted by a district shall begin the effective date of the transfer.

Section 8. Contingent upon approval of an amendment to the State Constitution increasing the ad valorem levy in Northwest Florida for water management purposes, the Northwest Florida and Suwannee River Water Management Districts shall be merged January 1, 1991. The governing boards of both districts shall be dissolved on the date of the merger. A study will be conducted to assess the impacts of the merger.

Section 9.

Section 373.073, F.S., is amended to provide for each county comprising the Southwest Florida Water Management District to have a member on the district's governing board.

Section 10.

Section 373.0736, F.S., is created to provide procedures for the appointment of a 16 member governing board for the

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Southwest Florida Water Management District and the length of member's terms of office.

Section 11.

Section 373.079, F.S., is amended to permit a water management district governing board to delegate, by rule, all or part of its permitting authority to its executive director. The board shall prescribe the criteria, thresholds, and types of permits for which the authority is delegated.

Section 12.

Section 373.103, F.S., is amended to provide local governments the authority to enforce any programs which the water management districts have delegated to them pertaining to stormwater permitting or surface water management.

Section 13.

Section 373.109, F.S., is amended to authorize water management districts to establish a schedule for permit fees which shall not exceed the cost of processing, monitoring, and enforcing the permit.

Currently, such fees cannot exceed the cost of processing the application.

Section 14.

Section 373.117, F.S., is amended to authorize the DER or a water management district to require certification by professional engineers, landscape architects, geologists, and surveyors regulated by the Department of Professional Regulation of certain permit applications and other submittals as may be appropriate. Existing authority only allows the districts to require certification from a professional engineer that an activity has been completed in substantial compliance with the plans and specifications approved by the Department of Environmental Regulation or district. The bill clarifies that such certifications may only be required for those permit activities which are within the definition or scope of practice of the regulated profession. The cost of such certifications will be borne by the applicant.

Section 15.

Section 373.122, F.S., is created to provide the water management districts the authority to inspect any property at any time for the purpose of ascertaining compliance with Chapter 373 or rules of the district. A water management district must have consent of the owner or obtain a court order for such inspection. The bill provides procedures for obtaining the court order. DER currently is authorized to conduct inspections pursuant to s. 403.091, F.S.

Section 16.

Section 373.129, F.S., is amended to authorize a local government delegated stormwater permitting or surface water management responsibilities to maintain court actions to enforce its programs. The local government may deposit any civil penalties received into a local water pollution control program trust fund. Penalties for water quality violations must be used to restore water quality in the area of violation; penalties from water quality violations may be used for surface water management purposes.

Section 17.



Section 373.1395, F.S., is created to provide that a water management district which provides the public with land for outdoor recreational activities or leases land or water areas to the state for recreational use owes no duty of care to the public using such land, and has no responsibility to warn of hazardous conditions, so long as no fee is charged or profit derived from the use of the property by the public. This limitation on liability does not relieve any person of liability which would otherwise exist for deliberate, willful, or malicious injury to persons or property.

Section 18.

The Green Swamp Basin within the Southwest Florida WMD is abolished, but not its recognition as a basin or hydrologic basin for regulatory purposes. The water management district governing board is authorized to establish a Green Swamp Basin Advisory Council to receive public input and advise the governing board on water management issues affecting the Green Swamp Basin.

Section 19.

Section 373.403, F.S., is amended to add certain stormwater related definitions to ch. 373, F.S., including drainage basin, stormwater, stormwater management, stormwater management systems, state water quality standards and watershed.

Section 20.

Section 373.406, F.S., is amended to specify that the DER or the water management district governing board may by rule establish exemptions or general permits for stormwater management systems with minimal environmental impact.

Section 21.

Section 373.413, F.S., is amended to clarify that DER or water management districts may require certain permits for surface water alterations including stormwater management systems. Notice requirements for permit applications are specified for DER and water management districts.

Section 22.

Section 373.416, F.S., is amended to authorize DER or water management districts to issue permits for operation or maintenance of certain surface water alterations including stormwater management systems.

Section 23.

Section 373.417, F.S., is amended to authorize DER or water management districts to adopt rules to implement provisions in this part, including rules or performance criteria for groundwater discharge of stormwater. Upon adoption of performance criteria, DER shall not require a separate groundwater permit for permitted stormwater facilities.

By November 1, 1990, water management districts shall establish requirements for the monitoring and maintenance of stormwater management systems. These requirements may be permit conditions on stormwater management systems operated or maintained by entities other than local governments.

Section 24.

Section 373.418, F.S., is created; DER and water management districts are required to replace, amend or readopt Rule 17-25.090, F.A.C., due to the incorporation of stormwater into Part IV of ch. 373. DER is authorized to process permits and

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otherwise implement this part in accordance with procedures in ch. 403.

Section 25.

Section 373.419, F.S., is amended to require the filing of a completion notice by the permittee upon completion of construction or alteration of stormwater management system.

Section 26.

Section 373.423, FS., is amended to specify that DER or the governing board shall make periodic inspections of stormwater management systems during their construction or alteration.

Section 27.

Section 373.426, F.S., is amended to specify procedures for abandonment of certain surface water alteration facilities including stormwater management systems.

Section 28.

Section 373.429, F.S., is amended to specify procedures for DER or water management districts for revocation and modification of permits for certain surface water alteration facilities including stormwater management systems.

Section 29.

Section 373.433, F.S., is amended to specify procedures for abatement of a nuisance created by certain surface water alterations facilities including stormwater management systems.

Section 30.

Section 373.436, F.S., is amended to specify procedures for remedial measures that can be required of stormwater management systems by DER or water management districts.

Section 31.

Section 373.439, F.S., is amended to specify emergency measures that may be required by DER or water management districts for certain surface water alteration facilities including stormwater management systems where it is determined dangerous to safety of life or property.

Section 32.

Section 373.443, is amended to extend the immunity from liability against the state or district for damages caused by failure of stormwater management systems and other surface water alteration facilities under prescribed conditions.

Section 33.

Section 373.451, F.S., is amended to specify legislative intent for water management districts to develop plans and programs for the improvement and management of surface water, and for DER to coordinate such programs.

Section 34.

Section 373.453, F.S., is amended to require The Department of Agriculture and Consumer Services (DACS), the Department of Community Affairs (DCA), and local governments to participate in SWIM plan development and to provide for DER review and approval of SWIM plans.

Section 35.

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Section 373.455, F.S., is amended to provide for review of and comment regarding district SWIM plans by the Department of Community Affairs in addition to other agencies and local governments already specified.

Section 36.

Section 373.456, F.S., is created to provide for DER to have exclusive authority to review SWIM plans for consistency with the state water use policy.

Section 37.

Section 373.457, F.S., is amended to require water management districts to coordinate the implementation of approved SWIM plans.

Section 38.

Section 373.459, F.S., is amended to provide that the SWIM Trust Fund is not subject to the provisions of s. 216.301, F.S., and that no district shall receive more than 40 percent of the SWIM Trust Fund moneys in a fiscal year. Each district shall receive the amount requested pursuant to s. 373.453, F.S., or 15 percent of the appropriated funds, whichever is less. Any funds remaining shall be allocated by DER.

Section 39.

Section 373.503, F.S., is amended to increase the statutory maximum millage that may be levied by the Northwest Florida Water Management District from .05 mill to .5 mill. The apportionment of millage for district purposes within the Southwest Florida Water Management District is changed from a maximum of .40 mills to .60 mills, while the maximum millage for basin purposes is changed from .60 mills to .40 mills.

Section 40.

Section 403.031, F.S., is amended to add certain stormwater related definitions to ch. 403, including State Water Policy, stormwater, stormwater management, stormwater management program, stormwater management system, stormwater utility, and watershed.

Section 41.

Section 403.061, F.S., is amended to specify that DER is to coordinate the state's stormwater program and adopt by rule a state water policy for guidance and review of such programs.

Section 42.

Section 403.064, F.S., is created to declare water conservation and the reuse of reclaimed water to be state objectives. After January 1, 1992, the evaluation of water reuse is required of applicants to construct or operate a domestic wastewater treatment facility in a critical water supply area. A local government implementing a water reuse program may allocate the costs of the program. The full cost of water reuse facilities may be recovered through rate structures.

Section 43.

Section 403.1659, F.S., providing for the Groundwater Protection Task Force, is repealed.

Section 44.

Section 403.1657, F.S., is created to provide for the interdepartmental coordination of groundwater protection. DER,

HRS, DACS, and other agencies as needed shall coordinate in a memorandum of understanding, including measures intended to:

1. Provide temporary potable water to citizens whose drinking water is unsafe.
2. Provide public information in areas where drinking water is unsafe.
3. Make recommendations regarding groundwater contamination affecting wells.
4. Ensure that a current inventory of all groundwater contamination research activities is developed and maintained.

Section 45.

Section 403.812, F.S., is amended to specify conditions where stormwater management systems shall not be considered waters of the state; however, if a system provides other incidental uses and is accessible to the public then DER may require reasonable assurance that water quality will not adversely impact public health or adjacent waters.

Section 46.

The state, through the Department of General Services, the Department of Transportation, and other agencies are required to construct, operate and maintain their facilities in compliance with approved state, water management district, and local government stormwater management programs.

Section 47.

Section 2 of ch. 85.211, L.O.F., which contains outdated language regarding a past millage assessment within the St. Johns River Water Management District is repealed. Sections 1 and 2 of ch. 88-242, L.O.F., relating to the number of members on the Southwest Florida Water Management District governing board and the length of their terms, are repealed, as is s. 25 of ch. 88-242, L.O.F., which schedules governing and basin boards of water management districts for repeal October 1, 1989.

Section 48.

Governing and basin boards of water management districts are saved from Sundown repeal and reauthorized.

Section 49.

Certain powers and duties of governing and basin boards are repealed October 1, 1994, and shall be reviewed by the Legislature prior to that date.

Section 50.

The act takes effect July 1, 1989, or upon becoming a law, whichever occurs later. However, s. 9 shall take effect February 28, 1990, and s. 14 takes effect on the effective date of an amendment to the State Constitution, proposed by Senate Joint Resolution No. 270, which is to be submitted to the voters in November 1990.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Delegation of permit approval to executive directors could benefit some applicants by decreasing the time needed to gain permit approval.

Any increased requirements for professional engineer or other regulated professional certifications of permit applications will require additional expenditures by permit applicants for professional fees.

If the Northwest Florida Water Management District were to levy the full .5 mill authorized, district taxpayers would pay approximately \$8,214,519 in new taxes.

B. Government:

The limitation on liability from the recreational use of district-owned property could benefit the districts by shielding them from lawsuits.

If the Northwest Florida Water Management District levied taxes at its proposed cap, it would receive approximately \$8,214,519 in increased revenues.

Provisions requiring water management districts to provide technical assistance to local governments regarding water resource elements in their local government comprehensive plans could require increased water management district funding in the future.

Local governments electing to enforce delegated stormwater and surface water management programs could benefit by depositing any civil penalties recovered into local water pollution control trust funds for use in the affected localities.

Individual water management districts could be affected by provisions allowing up to 40 percent of available SWIM funds to be allocated to a single district in a fiscal year. At a minimum, districts would be allocated 15 percent of such funds, or the amount recommended pursuant to s. 373.453, F.S., whichever is less.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: hb1304f.er

DATE: June 15, 1989

HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENVIRONMENTAL REGULATION  
as revised by the Committee on  
FINANCE & TAXATION  
as revised by the Committee on  
APPROPRIATIONS  
as revised by the Committee on  
RULES AND CALENDAR  
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/CS/HB 1304

RELATING TO: Stormwater Management

SPONSOR(S): Committees on Rules, Finance & Taxation, Environmental Regulation, Reps. Drage & Sansom

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 1365 (Grizzle)

OTHER COMMITTEES OF REFERENCE: (1) Finance and Tax  
(2) Appropriations

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I. SUMMARY:

Stormwater (the flow of water during and immediately after a rainfall event) is the last frontier in environmental degradation to Florida's surface and groundwaters. It has been shown that the greatest potential for pollution to receiving waters from stormwater is contained in the first one inch of runoff, hence a methodology to retain stormwater for a sufficient time to allow pollutants to settle out has been devised. Currently, the water management districts address pollution (water quality) as well as potential flooding from stormwater (water quantity) through district stormwater rules and the issuance of management and storage of surface water permits (Part IV, chapter 373, F.S.).

The 1987 Legislature recognized that stormwater (a non-point source of pollution) was a leader among polluting discharges to Florida's waters and adopted the Surface Water Improvement and Management Act, chapter 87-97, Laws of Florida).

The Secretary of the Department of Environmental Regulation and the Governor have proclaimed that a stormwater management program be initiated statewide during 1989. HB 1304 by Representative Drage (SB 1365 by Senator Grizzle) has been filed proposing the following scenario to address pollution from stormwater runoff:

- o Consolidate stormwater management programs statewide under the leadership of the Department of Environmental Regulation.

- o Implement, through a cooperative effort between the water management districts and local governments, land use and watershed planning to prevent stormwater pollutants from entering the state's water bodies.
- o Link the current Surface Water Improvement and Management Program with the local governments comprehensive plan stormwater element to comprehensively address stormwater.
- o Develop a state, regional, and local government planning partnership to address stormwater and surface water improvement.
- o Expand the existing Sewage Treatment Revolving Loan Program to fund future stormwater management facilities through the use of a revolving loan program that would include stormwater management systems.
- o Administratively transfer the department's stormwater management program to the water management districts.
- o Provide water quality exemptions within stormwater management systems.
- o Reduce the number of regulatory permits from two to one for the construction of a stormwater management system.

A. PRESENT SITUATION:

Section 403.812, F.S., authorizes the Department of Environmental Regulation (department) to delegate powers and duties pertaining to the administration of it's "Regulation of Stormwater Rule", chapter 17-25, F.A.C., to water management districts found to be financially and technically capable of implementing this rule.

To date, four of the state's five water management districts (Northwest Florida Water Management District being the exception) have requested and received stormwater permitting delegation from the department (chapter 17-25.090, F. A. C.) and are actively permitting stormwater management systems.

The affected districts, in concert with their Management and Storage of Surface Waters Program (Part IV, chapter 373, F.S.) have adopted rules to implement stormwater permitting, thereby jointly addressing the quality and quantity aspect of stormwater.

Local governments currently have the authority to create stormwater utilities pursuant to chapter 170, F.S.. Such utilities may be funded through non ad valorem taxes.

The Department of Environmental Regulation cannot estimate the percent of existing stormwater management systems that meet state water quality standards at the point of discharge, hence the need for a comprehensive assessment.

B. EFFECT OF PROPOSED CHANGES:

This bill, if passed, would accomplish the following provided through a section-by-section analysis:

Section 1: State Comprehensive Plan.--

Adds the phrase, "Eliminate the discharge of inadequately treated wastewater and stormwater runoff into waters of the state", to the policy statement of the Agriculture element. The State Comprehensive Plan is intended to be a direction setting document. Its policies may be implemented only to the extent that financial resources are provided. The State Comprehensive Plan does not create regulatory authority or authorize the adoption of standards, rules, or law. Therefore, the codification of this goal statement into the statutes is intended to provide long-range policy guidance for the orderly growth of the state.

Section 2: Declaration of Policy.--

Legislative intent is expanded by adding to its existing water policies, the goal of minimization of degradation to water resources from stormwater.

Section 3: Definitions.--

The definition of "state water policy" is created and added to the definition section of chapter 373, F.S.

Section 4: General Powers and Duties of the Department of Environmental Regulation.--

This section mandates that the department, adopt by rule, a state water policy. The state water policy will be used by the department for its guidance of programs, rules, and plans relating to water resources and be consistent with the State Comprehensive Plan.

Section 5: Technical Assistance to Local Governments.--

Requires water management districts to provide technical assistance to local governments relative to the development and revision of their local government comprehensive plan's water resources element. This section enumerates seven technical informational areas to be provided to local governments by July 1, 1991. Purportedly, the reasoning behind this mandate is ultimately to develop a state water management plan (currently no such plan exists). Such a plan, according to Community Affairs Committee staff, is envisioned to contain information on a state-wide basis, to facilitate the management of surface waters or groundwaters. This plan would be consulted if interbasin division of water becomes a necessity in the future.

Section 6: Powers Vested in District Governing Boards by the Department.--



This section mandates that governing boards of water management districts shall administer and enforce the provisions outlined in: Part II, Permitting of Consumptive Uses of Water; Part III, Regulation of Wells; and Part IV, the Management and Storage of Surface Waters, such provisions must be consistent with state water policy, when such a policy is adopted and ratified.

Section 7: Permit Application Fees.--

Water management districts may charge permit applicants the cost of processing applications. Permit applications received from any governmental entity are exempt from the application processing fees. This section amends the districts' permit application fee section to include the cost of monitoring and inspecting, in addition to the cost of processing permit applications. Governmental entities will have to pay fees for the application, monitoring, and inspection of permits required pursuant to chapter 373, F.S.

Section 8: Definitions.--

Six definitions are added to chapter 373, F.S., relating to the administration of stormwater management.

Section 9: Exemptions.--

Authorizes the department or a water management district to establish exemptions or general permits, by rule, for stormwater management systems which have discharges of a minimal environmental impact.

Section 10: Permits for construction or alteration of dams, impoundments, reservoirs, or appurtenant works.--

The water management districts intend to permit stormwater management systems using criteria set forth in Part IV of chapter 373, F.S, and their current rules. This section adds "stormwater management systems" to those enumerated water control facilities already listed in part IV, Management Storage of Surface Waters (MSSW), thus authorizing their permitting and regulation under this section. Additional criteria is added requiring permit applications be noticed to the affected public in a newspaper of general circulation within the affected area.

Section 11: Permits for maintenance of operation of dams, impoundments, reservoirs, or appurtenant works.--

The water management districts require MSSW permits for the maintenance or operation of enumerated water control facilities. This section adds stormwater management systems to those facilities requiring an MSSW permit. Requires governing boards to establish rules for monitoring and maintenance of stormwater management systems.

Section 12: Existing rules preserved.--

Presently, the Department of Environmental Regulation (department) regulates stormwater activities through their "Regulation of Stormwater Rule", chapter 17-25, F.A.C. Four of the state's five water management districts (districts) have requested and received stormwater management delegation pursuant to s. 403.812, F.S.

Two of the four water management districts who have accepted delegation of stormwater regulation from the Department of Environmental Regulation (department) have concurrently adopted their own stormwater rules, in conjunction with the department's delegated rule, chapter 17-25, F.A.C.

The department presently regulates stormwater activities within the Northwest Florida Water Management District due to the district's limited funding base and uses chapter 17-25, F.A.C., "Regulation of Stormwater Rules". With the administrative transfer of stormwater permitting and management activities to the four water management districts, the department must retain their stormwater rule to continue assisting the Northwest Florida Water Management District, hence the need to preserve existing rules. The exception cited in this section refers to Florida Administrative Code 17-25.090, which lists entities to which stormwater permitting has been delegated. It is necessary to delete this subsection so as not to cause conflicting stormwater delegation authority. The elimination of s. 17-25.090, F.A.C., would completely remove the department from all aspects of stormwater management and stormwater permitting in those water management districts who have accepted such delegation. Additionally, this section creates s. 373.418, F.S., which intends to preserve existing requirements and rules of the department or governing boards existing on the effective date of this act applicable to stormwater management systems. Requires water management districts to adopt performance criteria for stormwater management systems by rule.

Section 13: Completion Report.--

Currently, a completion report must be submitted to the governing board or department within 30 days after the completion of dams, impoundments, reservoirs, or works. This section adds "stormwater management systems" to the enumerated water control facilities.

Section 14: Inspection of dams, impoundments, reservoirs, or works.--

"Stormwater management system" is added to the list of water control facilities requiring inspection during construction and upon completion.

Section 15: Abandonment.--

"Stormwater management systems" is added to the criteria for abandonment of dams, impoundments, reservoirs, or works.

Section 16: Revocation and modification of MSSW permits.--

Management and storage of surface water permits may be revoked or modified by the Department of Environmental Regulation or the governing board of a water management district if determined that a dam, impoundment, reservoir, or works has become a danger to the public. This section adds "stormwater management system" to the list of water control facilities enumerated.

Section 17: Abatement.--

"Stormwater management systems" is added to the list of water control facilities that may be declared a public nuisance if such facilities violate state law.

Section 18: Remedial Measures.--

The executive director of a water management district has the authority to determine what alterations or repairs are necessary to dams, impoundments, reservoirs, and other works to insure their compliance with district standards. This section adds the Department of Environmental Regulation to the decision making process on alterations and adds the term "stormwater management systems" to those works already enumerated.

Section 19: Emergency Measures.--

This section provides that the executive director of a water management district, with concurrence of the Department of Environmental Regulation, may employ any remedial means to protect life and property from emergencies relative to the maintenance or operation of dams, impoundments, reservoirs, or works. The term "stormwater management system" is added to those facilities enumerated.

Section 20: Immunity from Liability:--

This section relieves the state or water management districts from liability from the failure of enumerated water facilities. The term "stormwater management system" is added to those facilities enumerated.

Section 21: Legislative Findings and Intent.--

This section adds legislative intent that the Department of Environmental Regulation, water management districts, and local governments cooperatively develop, design, and implement Surface Water Improvement and Management (SWIM) plans. The SWIM program is designed to identify and prioritize surface water bodies of regional significance and in need of restoration. Local

governments would become an integral component in all aspects of future SWIM program planning.

Section 22: Surface water improvement and management programs.--

Local governments, the Department of Agriculture and Consumer Services, and the Department of Community Affairs are added to the list of entities encouraged to assist water management districts in the prioritization of water bodies of regional or statewide significance. Priority lists must be reviewed and updated every three years. The list of criteria governing the identification and improvement of designated water bodies is expanded to encompass the drainage basin within the approved surface water management plan area, and protection of the resources is added to the existing goals. The balance of the new language is designed to make it clear that the Department of Environmental Regulation must approve all future SWIM priority lists submitted by the districts and must consider water management district proposals as part of the district budget request.

Section 23: Review of surface water improvement and management plans.--

This section changes the criteria and the limitations for the preparation and review of water management district surface water improvement and management plans. The Department of Community Affairs and local governments are added to the list for review and comment on Surface Water Improvement and Management plans.

Section 24: Approval of surface water improvement and management plans.--

Establishes approval criteria by the department for surface water improvement and management plans. This section also provides that the Department of Environmental Regulation may ultimately determine if plans are consistent with state water policy and the State Comprehensive Plan and may recommend changes for consideration by the appropriate governing board, if found to be otherwise.

Section 25: Implementation of surface water improvement and management plans.--

To facilitate appropriate and timely implementation, each district is required to coordinate implementation of approved plans.

Section 26: Surface Water Improvement and Management Trust Fund.--

This section exempts the current Surface Water Improvement and Management Trust Fund from statutory provisions requiring

unexpended balances to revert at the end of each fiscal year and from certifying forward requirements.

Presently, the moneys within the Surface Water Improvement and Management Trust Fund are allocated on an 80/20 match, with no more than 30 percent of the total going to any water management district, unless otherwise provided by law. Beginning in fiscal year 1990-1991 each district may request, through the Department of Environmental Regulation, up to 10 percent of the total funds available in the trust fund. A cap has been established to limit a water management district from receiving more than 50 percent of that year's total funds available. The 50 percent cap includes the district's original 10 percent allocation. This increase in the cap is intended to allow the Department of Environmental Regulation to allocate the remaining money to programs of highest priority.

Section 27: Definitions.--

Seven definitions are added relating to stormwater and stormwater management to the Department of Environmental Regulation's definition section.

Section 28: Department powers and duties.--

This section provides that the Department of Environmental Regulation must adopt a state water policy by rule and coordinate the state's stormwater program.

Section 29: State, regional, and local stormwater management plans and programs.--

Currently, the department is required, in cooperation with water management districts and local governments, to perform an assessment of the impact of existing stormwater facilities on water quality. This section would provide additional criteria for these entities to develop a mutually-compatible stormwater management program.

The Department of Transportation would be required to inventory and map their primary stormwater management systems and turn available engineering and design information over to the respective water management district prior to July 1, 1991.

Additional criteria is proposed for the districts and department to provide a continuing review of costs of stormwater systems and their effect on water quality as well as their effect on water quality and fish and wildlife values. All such information collected will be shared with concerned local governments.

Section 30: Stormwater funding; dedicated funds for stormwater management.--

This section authorizes a county or municipality to create a stormwater utility and adopt stormwater utility fees; to

establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program; or create, alone or in cooperation with special districts, pursuant to the Interlocal Cooperation Act, one or more stormwater management system benefit areas and impose fees calculated so as to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems called for in the local program.

Section 31: Training and assistance for stormwater management system personnel.--

This section creates a training program, within the Stormwater Management Assistance Consortium of the State University System, for stormwater management personnel. Such training will encompass such areas as the design, construction, inspection, and operation of stormwater management systems.

Section 32: Definitions.--

"Stormwater" is added to the definition of "local government agencies" for purposes of ss. 403.1821-403.1832.

Section 33: Grants, requirements for eligibility.--

The requirement that local governments must submit an independent audit to the Department of Environmental Regulation for water pollution control and stormwater utility loans is added to existing department grant requirements.

Section 34: Wastewater facilities and stormwater management systems revolving loan program.--

The "Wastewater Treatment and Stormwater Management Revolving Loan Fund" is established by broadening the scope of the existing Sewage Treatment Facilities Loan Program. Monies will be made available to local governments for financing the construction and operation of stormwater utilities and sewage treatment facilities.

This section also provides that funds available in the revolving loan fund may be used to pay debt service on, or fund debt service reserve funds, rebate obligations, or other amounts with respect to bonds issued for purposes of the loan program. Bonds are authorized to be issued pursuant to the provisions of s. 14, Art. VII of the State Constitution and s. 403.1834. All bonds issued pursuant to this section shall be issued by the Division of Bond Finance pursuant to the State Bond Act.

In addition, such bonds shall be secured by a debt service reserve which shall be funded at a level which is equal to the maximum annual debt service or the maximum sinking fund requirement where there are no annual payments of principal and interest. In lieu of such debt service reserve, the Division of

Bond Finance may obtain a letter of credit, insurance policy, or other credit enhancement facility at the required level. Adds a definition of "bond" to chapter 403, F.S.

Section 35: Small Community Sewer Construction Assistance Act.--

The act provides criteria for small communities (under 35,000 people) who receive sewer construction grants. Communities will have to abide by detailed recordkeeping procedures and submit to a fiscal examination by the Auditor General upon request by the department.

Section 36: Delegation of Functions.--

This section creates a dredge and fill permitting exemption for systems located within stormwater management systems. The section also exempts stormwater management systems from having to meet state water quality standards (ch. 17-3 and 17-4, F.A.C.) within the management system and requires the districts to consider public health aspects for stormwater facilities used in recreational activities.

Water management districts will permit and regulate these activities under their management and storage of surface water permit program (Part IV, ch. 373, F.S.) thereby eliminating the need for an additional dredge and fill permit.

Section 37: Stormwater Management Trust Fund.--

Creates the Stormwater Management Trust Fund within the Department of Environmental Regulation.

Section 38: Surface Water Improvement and Management Trust Fund Transfers.--

This section requires that funds appropriated to the Surface Water Improvement and Management Trust Fund be transferred quarterly by the Department of Revenue. This is occurring presently, but the department requests language in the statute to assure this precedent continues.

Section 39: State agency compliance.--

This section requires all state agencies to come into compliance with state, water management district, and local government stormwater management programs.

Section 39: Effective Date.--

An effective date of October 1, 1989, is provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

Indeterminate (See Fiscal Comments)

3. Long Run Effects Other Than Normal Growth:

Indeterminate (See Fiscal Comments)

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

DER estimates that local governments may have to expend up to 15 percent of the principle of the loan to meet federal requirements and regulations.

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Stormwater utilities would be supported by user fees.

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

None



D. FISCAL COMMENTS:

Under the authority of the 1987 amendments to s. 319 and 320 of the Federal Water Pollution Control Act, (FWPCA) the Department of Environmental Regulation proposes to establish a revolving loan program for Wastewater Treatment and Stormwater Management, utilizing and renaming the existing Sewage Treatment Loan Fund.

The federal government no longer provides direct grants with a required state match of 20 percent for the construction of wastewater treatment facilities. The new program under the FWPCA provides capitalization over five years for states to establish revolving loan programs. These funds must be used for loans for wastewater treatment facilities initially, but once the loan has been repaid into the revolving fund, the states are given more discretion. After a complete cycle of loans and repayments (expected to occur by 1992) Florida could use the revolving loan program to fund both wastewater treatment facilities and stormwater management facilities.

Currently, Florida's Sewage Treatment Loan Fund is expected to generate between \$60 and \$80 million dollars annually in capitalizing grants from the federal government. Florida is to receive 3.4 percent of the total federal appropriation, however, the Bush administration is recommending a 50 percent decrease in overall funding of the program for the next fiscal year.

Though the exact amount of income into the newly renamed Wastewater Treatment and Stormwater Management Revolving Fund is indeterminate at this time, the department has developed a plan to utilize whatever federal funds are available, and through a leveraged issuance of bonds, insure a fairly steady availability of funds to the local governments and water management districts.

If current estimates of an 1989-90 FY balance of \$70 million are correct, the department estimates that by issuing bonds against the loan repayments they can guarantee the availability of over \$60 million dollars each year for loans.

This amount would be dependent upon the continuance of Federal funding levels and would be available for sewage treatment loans, and after one full cycle of loans, wastewater management loans.

Current estimates of the need for sewage treatment facilities alone exceed \$6 billion over the next 20 years. Requests to DER from local governments this year exceeds \$1.2 billion. Current estimates of the stormwater needs are not available. After one full cycle of loans, and repayments, however, the revenues available for sewage treatment would also be available for stormwater. The effects of such competition for resources is not known, but the revolving fund is currently insufficient to meet the needs of the wastewater program alone.

The Governor's recommended budget contains an appropriation of \$18 million from the infrastructure fund to provide local governments with \$10 million for stormwater demonstration projects, \$5 million to develop watershed management plans and local ordinances for stormwater utilities, and \$1.5 million for computer hardware to tie into the geographical information system (GIS). The remaining \$1.5 million is to be used by DER for developing a geographical information system. The House of Representatives passed their appropriations act on May 4, 1989, with an appropriation of \$500,000 for stormwater. This issue is expected to go to conference. The final appropriation for stormwater amounts to \$2 million. These funds will be used for local government demonstration projects (bricks and mortar).

An amendment was adopted by the Full Committee on Appropriations which further clarifies which division of the State University System is to receive training for the purposes stated in the bill.

Further amendments were adopted in the Finance and Tax Committee relative to restrictions on bonding money in the newly created Wastewater Treatment and Stormwater Management Revolving Trust Fund.

III. LONG RANGE CONSEQUENCES:

The bill is consistent with the goals and policies outlined in the State Comprehensive Plan as follows:

(8) Water Resources.--

(a) Goal.--

. . . Florida shall improve and restore the quality of water not presently meeting water quality standards.

(b) Policies.--

10. Protect surface and groundwater quality and quantity in the state.

IV. COMMENTS:

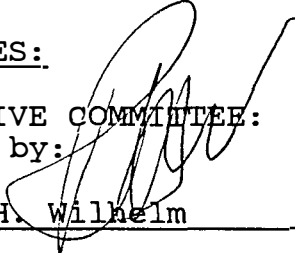
This bill is consistent with the committee mission statement recognizing "water fit to drink" as one of the most important of our natural resources. The bill would also help to promote awareness of water quality and quantity problems and alternative to solve them. The Issues Conference Policy Statement I. B. 1. calls for the state's stormwater runoff problems to be addressed. That is the specific, stated purpose of this bill. This bill was amended onto CS/SB 484 in its entirety.

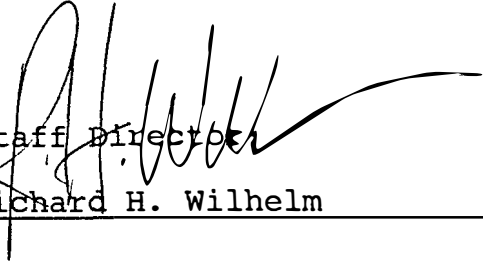
V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

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Richard H. Wilhelm

  
Staff Director:

Richard H. Wilhelm

SECOND COMMITTEE OF REFERENCE:

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Linda Lettera

Staff Director:

Jose' Diez-Arguelles

APPROPRIATIONS:

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RULES AND CALENDAR:

Prepared by:

Staff Director: