

By Representative Bitner

1 A bill to be entitled
2 An act relating to water resources development;
3 amending s. 373.016, F.S.; making declarations
4 of water policy; amending s. 373.019, F.S.;
5 defining the terms "water resource
6 development," "water supply development,"
7 "public water utility," and "natural system";
8 creating s. 373.038, F.S.; directing the water
9 management districts to establish water
10 resource development programs; amending s.
11 373.042, F.S.; revising minimum flows and
12 levels requirements; creating s. 373.0421,
13 F.S.; providing guidelines for establishing and
14 implementing minimum flows and levels; amending
15 s. 373.223, F.S.; revising conditions for
16 obtaining consumptive use permits; repealing s.
17 373.019(16), F.S., relating to state water
18 policy; repealing s. 373.026(10), F.S.,
19 relating to a state water policy rule;
20 repealing s. 373.036, F.S., relating to the
21 state water use plan; repealing s. 373.039,
22 F.S., relating to the Florida water plan;
23 repealing s. 403.061(33), F.S., relating to a
24 state water policy rule; providing an effective
25 date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Section 373.016, Florida Statutes, is
30 amended to read:

31 373.016 Declaration of policy.--

1 (1) The waters in the state are among its basic
2 resources. Such waters have not heretofore been conserved or
3 fully controlled so as to realize their full beneficial use.

4 (2) It is further declared to be the policy of the
5 Legislature:

6 (a) To provide an adequate, safe, dependable, and
7 affordable supply of water for all existing and projected
8 reasonable-beneficial uses in the state;

9 ~~(b)(a)~~ To provide for the management of water and
10 related land resources;

11 ~~(c)(b)~~ To promote the conservation, replenishment,
12 recapturing, enhancement, development, and proper utilization
13 of surface water and ground water;

14 ~~(d)(c)~~ To develop and regulate dams, impoundments,
15 reservoirs, and other works and to provide water storage for
16 beneficial purposes;

17 ~~(e)(d)~~ To prevent damage from floods, soil erosion,
18 and excessive drainage;

19 ~~(f)(e)~~ To minimize degradation of water resources
20 caused by the discharge of stormwater;

21 ~~(g)(f)~~ To preserve natural resources, fish, and
22 wildlife;

23 ~~(h)(g)~~ To promote the public policy set forth in s.
24 403.021;

25 ~~(i)(h)~~ To promote recreational development, protect
26 public lands, and assist in maintaining the navigability of
27 rivers and harbors; and

28 ~~(j)(i)~~ To otherwise ~~to~~ promote the health, safety, and
29 general welfare of the people of this state.

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1 In administering this chapter, the department and the
2 governing boards shall construe and apply the policies
3 specified in this subsection as a whole, and no specific
4 policy is to be construed or applied in isolation from the
5 other policies in this subsection.

6 (3) It is further declared to be the policy of the
7 Legislature that:

8 (a) Water resource development is a fundamental
9 mission of water management districts which must be
10 implemented immediately and continually to ensure that an
11 adequate, safe, dependable, and affordable supply of water is
12 available for all existing and projected reasonable-beneficial
13 uses in the state.

14 (b) Water supply development is primarily the
15 responsibility of counties, municipalities, public water
16 utilities, regional water supply authorities, and special
17 taxing districts. Water management districts shall provide
18 funding and other assistance to entities involved in water
19 supply development in accordance with s. 373.1961.

20 (4)~~(3)~~ The Legislature recognizes that the water
21 resource problems of the state vary from region to region,
22 both in magnitude and complexity. It is therefore the intent
23 of the Legislature to vest in the Department of Environmental
24 Protection or its successor agency the power and
25 responsibility to accomplish the conservation, protection,
26 management, and control of the waters of the state, and with
27 sufficient flexibility and discretion to accomplish these ends
28 through delegation of appropriate powers to the various water
29 management districts. The department may exercise any power
30 herein authorized to be exercised by a water management
31 district; however, to the greatest extent practicable, such

1 power should be delegated to the governing board of a water
2 management district.

3 ~~(5)(4)~~ It is further declared the policy of the
4 Legislature that each water management district, to the extent
5 consistent with effective management practices, shall
6 approximate its fiscal and budget policies and procedures to
7 those of the state.

8 Section 2. Subsections (19), (20), (21), and (22) of
9 section 373.019, Florida Statutes, 1996 Supplement, are added,
10 to read:

11 373.019 Definitions.--When appearing in this chapter
12 or in any rule, regulation, or order adopted pursuant thereto,
13 the following words shall, unless the context clearly
14 indicates otherwise, mean:

15 (19) "Water resource development" means the
16 formulation and implementation of regional water resource
17 management strategies, including the collection and evaluation
18 of surfacewater and groundwater data; the development of
19 regional water resource implementation programs; and the
20 construction, operation, and maintenance of major public works
21 facilities to provide for flood control, surface and
22 underground water storage, groundwater recharge augmentation,
23 water transmission, and the capture of water otherwise
24 released to tide.

25 (20) "Water supply development" means the design,
26 construction, operation, and maintenance of public and private
27 facilities for the production, treatment, transmission, or
28 distribution of water for sale, resale, or direct use.

29 (21) "Public water utility" means a governmental or
30 private entity duly authorized under state law to construct or
31 operate public water supply systems, water works systems,

1 sewerage systems, sewage treatment works, reclaimed water
2 systems, or other public water-related facilities.

3 (22) "Natural system" means an ecological system
4 supporting aquatic and wetland-dependent natural resources,
5 including fish and aquatic and wetland-dependent-wildlife
6 habitat.

7 Section 3. Section 373.038, Florida Statutes, is
8 created to read:

9 373.038 Water resource development.--

10 (1) The water management districts shall carry out
11 water resource development as defined in s. 373.019(19). Water
12 resource development will use aquifers and watersheds as the
13 implementation areas.

14 (2) Water resource development must ensure that water
15 is available to sustain all existing and projected
16 reasonable-beneficial uses of water and to maintain the
17 functions of natural systems. The water management districts
18 are responsible for the development, implementation, and
19 funding of water resource development programs. These programs
20 must be developed in coordination with public water utilities
21 and other use groups.

22 (3) Water resource development must:

23 (a) Identify safe, affordable, and dependable sources
24 of water for use by all existing and projected
25 reasonable-beneficial uses and for maintaining the functions
26 of natural systems by the creation and completion of an
27 analysis of existing water sources within the jurisdiction of
28 each water management district. The analyses must be based
29 upon the best available data and must identify and quantify
30 available sources of water based upon minimum flows and levels
31 established under s. 373.042. When the best available

1 information is insufficient to determine source availability,
2 the water management districts shall collect and evaluate
3 additional surfacewater or groundwater data.

4 (b) Quantify the water needs necessary to maintain the
5 functions of natural systems, recognizing meteorological
6 events, surface alterations, and long-term and seasonal
7 fluctuations of water levels within the natural systems and
8 proposed reservation of water under s. 373.223(3).

9 (c) Compile water supply needs of all existing and
10 projected reasonable-beneficial uses, based on a 20-year
11 planning horizon and using best available information. The
12 level of certainty associated with identifying the water
13 supply needs of existing and projected reasonable-beneficial
14 uses must be based on the assurance that water is available to
15 meet those needs for a 1-in-10-year drought event without
16 imposition of water shortage restrictions.

17 (d) Identify water resource development projects
18 including capital improvements and major public works
19 facilities necessary to address the shortfalls. Identify
20 reliable sources of district funding with which to implement
21 the regional water resource implementation programs, including
22 a defensible cash-flow analysis identifying funding to
23 implement land acquisition for, and construction and operation
24 of, capital facilities or alternative sources, if identified,
25 and funding to implement the noncapital components of the
26 initiative.

27 (e) Identify and correct existing district regulatory
28 impediments to the implementation of water resource
29 development projects and propose corrective measures for each
30 identified impediment beyond the control of the district.

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1 (4) Water resource development programs shall be
2 adopted by the Governing Board and are subject to review as an
3 order under s. 120.59. Upon adoption of a program, the water
4 management district will initiate rulemaking under chapter 120
5 to adopt necessary rules to implement the water resource
6 development program.

7 (5) Beginning on January 1, 1998, and each January 1
8 thereafter, the water management districts shall report to the
9 Governor and Legislature on the progress they have made in
10 implementing a water resource development program. The report
11 must address, at a minimum, all of the elements set forth in
12 this section.

13 (6) In addition to water resource development, the
14 districts shall, if requested, provide assistance to regional
15 water supply authorities, counties, municipalities, public
16 water utilities, special taxing districts, or other units of
17 local government for water supply development activities as
18 defined in s. 373.019(20).

19 Section 4. Section 373.042, Florida Statutes, 1996
20 Supplement, is amended to read:

21 373.042 Minimum flows and levels.--

22 (1) Within each section, or the water management
23 district as a whole, the department or the governing board
24 shall establish the following:

25 (a) Minimum flow for all surface watercourses in the
26 area. The minimum flow for a given watercourse shall be the
27 limit at which further withdrawals would be significantly
28 harmful to the water resources ~~or ecology~~ of the area.

29 (b) Minimum water level. The minimum water level
30 shall be the level of ground water ~~groundwater~~ in an aquifer
31 and the level of surface water at which further withdrawals

1 would be significantly harmful to the water resources of the
2 area.

3
4 ~~The minimum flow and minimum water level shall be calculated~~
5 ~~by the department and the governing board using the best~~
6 ~~information available. When appropriate, minimum flows and~~
7 ~~levels may be calculated to reflect seasonal variations. The~~
8 department and the governing board shall also consider, and at
9 their discretion may provide for, the protection of
10 nonconsumptive uses in the establishment of minimum flows and
11 levels.

12 (2) By July 1, 1996, the Southwest Florida Water
13 Management District shall amend and submit to the department
14 for review and approval its priority list for the
15 establishment of minimum flows and levels, and delineating the
16 order in which the governing board shall establish the minimum
17 flows and levels for surface watercourses, aquifers, and
18 surface water in the counties of Hillsborough, Pasco, and
19 Pinellas. The other districts shall also develop priority
20 lists and schedules for the establishment of minimum flows and
21 levels for surface watercourses, aquifers, and surface waters
22 in each district. The priority list must ~~shall be based upon~~
23 ~~the importance of the waters to the state or region and the~~
24 ~~existence of or potential for significant harm to the water~~
25 ~~resources or ecology of the state or region, and shall include~~
26 those waters that ~~which~~ are experiencing or may reasonably be
27 expected to experience ~~experiencing~~ adverse impacts and those
28 waters that ~~which~~ are identified under s. 373.038 as possible
29 new water supply sources of ~~proposing to withdraw~~ 5 million
30 gallons or more per day in the future. The development of the
31 priority list does ~~shall~~ not constitute a point of entry to an

1 administrative proceeding pursuant to chapter 120. Except as
2 provided in subsection (3), the development of priority lists
3 and the compliance with the schedule for establishment of
4 minimum flows and levels under this section satisfies the
5 requirements of subsection (1).

6 (3) Minimum flows or levels for priority waters in
7 Hillsborough, Pasco, and Pinellas counties must ~~subsection (2)~~
8 ~~shall~~ be established by October 1, 1997. Where a minimum flow
9 or level for the priority waters has not been established by
10 the applicable deadline, the secretary of the department
11 shall, if requested by the governing body of any local
12 government within whose jurisdiction the affected waters are
13 located, establish the minimum flows and levels in accordance
14 with the procedures established by this section. The
15 department's reasonable costs in establishing a minimum flow
16 or level shall, upon request of the secretary, be reimbursed
17 by the applicable district.

18 (4) All scientific or technical data, methodologies,
19 and models, including all scientific and technical assumptions
20 employed in each model, used to establish a minimum flow or
21 level are subject to independent scientific peer review.
22 Independent scientific peer review means review by a panel of
23 independent, recognized experts in the fields of hydrology,
24 hydrogeology, limnology, biology, and other scientific
25 disciplines relevant to the establishment of the minimum flow
26 or level. The department or governing board shall give
27 significant weight to the final report of the peer review
28 panel when establishing the minimum flow or level.

29 (5) Minimum levels may not be established for isolated
30 wetlands or surface waterbodies less than 25 acres in areal
31 extent. ~~Prior to the establishment of minimum flows or levels~~

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1 ~~for water resources areas identified in subsection (2), and~~
2 ~~prior to filing any petition for administrative hearing,~~
3 ~~scientific or technical data and methodologies, if in dispute,~~
4 ~~shall, upon written request to the governing board by a~~
5 ~~substantially affected person, be subject to independent~~
6 ~~scientific peer review. The members of the peer review panel~~
7 ~~shall be selected by agreement of the parties in interest~~
8 ~~within 60 days after receipt of the request. In the event the~~
9 ~~panel is not selected within this time, then, upon the~~
10 ~~agreement of all parties, the time may be waived, or, if no~~
11 ~~waiver occurs, the governing board may proceed to establish~~
12 ~~the minimum flows and levels. The cost of the peer review~~
13 ~~shall be borne equally by the parties selecting the panel, to~~
14 ~~the extent economically feasible. The panel shall conduct at~~
15 ~~least one public meeting of the full panel in accordance with~~
16 ~~s. 286.011(1) and (6) prior to the submission of the final~~
17 ~~report. The panel shall submit a final report to the~~
18 ~~governing board within 120 days after selection. Upon request~~
19 ~~by all members of the panel and agreement of the parties, the~~
20 ~~time for submittal may be extended for up to 30 additional~~
21 ~~days. In the event the final report is not submitted within~~
22 ~~such time, the governing board may proceed to establish the~~
23 ~~minimum flows and levels pursuant to this section. Filing of a~~
24 ~~request shall toll any applicable deadline under chapter 120,~~
25 ~~or other law or district rule, until 60 days following~~
26 ~~submittal of the final report. Any such deadlines shall also~~
27 ~~be tolled for 60 days following the withdrawal of the request,~~
28 ~~agreement of the parties that peer review will no longer be~~
29 ~~pursued, or failure to meet any deadline set forth in this~~
30 ~~subsection. If the selection of the panel is subject to the~~
31 ~~requirements of chapter 287, then the panel shall submit its~~

1 ~~final report to the governing board within 120 days after the~~
2 ~~completion of the process required pursuant to chapter 287.~~
3 ~~The governing board shall give significant weight to the final~~
4 ~~report of the panel in establishing the minimum flow or level,~~
5 ~~as appropriate. The final report may also be entered into the~~
6 ~~record by any party to the proceeding in which the minimum~~
7 ~~flow or level is applicable.~~

8 ~~(6)(5)~~ If a petition for administrative hearing is
9 filed under chapter 120 challenging the establishment of the
10 minimum flows or levels, the report of the independent
11 scientific peer review is admissible as evidence in the final
12 hearing, and the administrative law judge ~~hearing officer~~ must
13 render the final order within 120 days after the filing of the
14 petition. The time limit for rendering the final ~~an~~ order
15 shall not be extended except by agreement of all the parties.
16 To the extent that the parties agree to the findings of the
17 peer review panel, they may stipulate that those findings be
18 incorporated as findings of fact in the final order.

19 Section 5. Section 373.0421, Florida Statutes, is
20 created to read:

21 373.0421 Establishment and implementation of minimum
22 flows and levels.--

23 (1) When establishing a minimum flow or level, the
24 department or governing board shall recognize:

25 (a) Existing permitted and other existing and
26 projected legal uses;

27 (b) Existing uses of the land that cannot reasonably
28 be altered;

29 (c) Hydrologic changes that have occurred as a result
30 of alterations to watersheds, surface watercourses, aquifers,
31 and surface waters, and the effects the alterations have

1 placed on the hydrology of the affected watershed, surface
2 watercourse, aquifer, or surface water;

3 (d) Natural, seasonal, and long-term fluctuations in
4 water flows and levels;

5 (e) Flood protection needs; and

6 (f) Other uses made of the surface watercourse,
7 aquifer, or surface water, including recreation in and on the
8 water, navigation, and other nonpermitted legal uses.

9 (2) When a flow or level is below the minimum
10 established under this section and s. 373.042, the department
11 or the district shall take action to achieve recovery of the
12 established minimum flow or level as soon as practicable. The
13 water management districts or the department shall offset any
14 adverse impact to the water supply of an existing permitted or
15 other legal use caused by the adoption or implementation of a
16 minimum flow or level, or in the case of a managed
17 surfacewater system by the adoption or implementation of a
18 change in source or operation, by developing and funding
19 sufficient water supply to offset any loss of consumptive use
20 before the implementation of the minimum flow or level or
21 change in source or operation.

22 (3) The establishment of minimum flows and water
23 levels does not limit or require enhancement or restoration of
24 the natural system.

25 Section 6. Subsection (3) of section 373.223, Florida
26 Statutes, is amended to read:

27 373.223 Conditions for a permit.--

28 (3) The governing board or the department, by
29 regulation, may reserve from use by permit applicants, water
30 in such locations and quantities, and for such seasons of the
31 year, as in its judgment may be required for the protection of

1 fish and wildlife or the public health and safety. Such
2 reservations shall be subject to periodic review and revision
3 in the light of changed conditions. However, all presently
4 existing legal uses of water shall be protected so long as
5 such use is not contrary to the public interest. The governing
6 board or the department shall offset any adverse impact to the
7 water supply of an existing permitted or other legal use
8 caused by a reservation by developing and funding sufficient
9 water supply to offset any loss of consumptive use before
10 implementation of the reservation.

11 Section 7. Sections 373.019(16), 373.026(10), 373.036,
12 373.039, and 403.061(33), Florida Statutes, are repealed.

13 Section 8. This act shall take effect upon becoming a
14 law.

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17 SENATE SUMMARY

18 Revises and repeals various sections in chapters 373 and
19 403, F.S., relating to state water policy and water
resources development. (See bill for details.)
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