

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 15, 1998 Revised: _____

Subject: Regional Water Supply Authorities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides that a member government of a regional water supply authority and certain quasi-judicial boards or commissions are not considered a parties in administrative proceedings under ch. 120, F.S., under certain conditions. Provides that the interlocal agreement between the West Coast Regional Water Supply Authority (Authority) and its member governments may include certain provisions without a vote of their electors. Those provisions include not restricting or prohibiting the use of land within a member’s jurisdictional boundaries by the Authority for water supply purposes; not imposing any tax, fee, or charge upon the Authority in conjunction with the production or supply of water; and using certain powers for the financing and refinancing of water treatment, production, or transmission facilities. Provides for the use of arbitration of controversies concerning water use among the parties in an interlocal agreement. Allows the Authority to indemnify its member governments, but such indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants.

This bill amends sections 120.52, 373.1963, 682.02, and 768.28, Florida Statutes.

II. Present Situation:

Formed under chapters 163 and 373, F.S., the West Coast Regional Water Supply Authority (Authority) is an independent governmental entity, comprised of Hillsborough, Pasco and Pinellas Counties, the Cities of Tampa and St. Petersburg, and one non-voting member, the City of New Port Richey. The Authority, organized in 1974, operates as a wholesale developer and supplier of drinking water to the six member governments. The member governments, in turn, supply water to approximately 1.8 million residents of Pinellas, Hillsborough, and Pasco Counties.

Prior to the establishment of the Authority, each member government developed its water resources independently. Conflicts arose as local governments began developing water supplies outside their jurisdictional boundaries. With the creation of the Authority, member governments could contract for individual water entitlements from specific facilities. Thus, each member government has water sources solely through the Authority, its own supply, or both. Through the various contracts with its member governments, the Authority has operated on a “subscription” approach to the development of new water supply sources. The subscription approach to water supply development recovers cost by apportioning the cost of each facility in the system to specific member governments that are entitled to receive water from that facility. This history of supply development has resulted in widely varying water rates and entitlements.

During the 1996 legislative session, the Legislature directed the Authority and its member governments (Hillsborough County, Pasco County, Pinellas County, Tampa, St. Petersburg, and New Port Richey) to evaluate the Authority’s operations and made recommendations for improvements. An independent report to the Legislature prepared by KPMG Peat Marwick LLP for the 1997 legislative session, “*West Coast Regional Water Supply Authority Governance Study for the Florida Legislature*” (Governance Study), analyzed and confirmed the strength of a regional solution.

In 1997, the Legislature passed legislation which provided that “the Authority may reconstitute its governance in a manner consistent with its report to the Legislature, and with the provisions set forth herein, under a voluntary interlocal agreement with a term of not less than 20 years.” The 1997 legislation delineated the following specific provisions which any restructured Authority should substantially provide:

- All member governments shall relinquish to the Authority their individual rights to develop drinking water supply sources;
- The Authority shall be the sole and exclusive wholesale drinking water supplier for all member governments;
- The Authority shall have the absolute and unequivocal obligation to meet the wholesale drinking water needs of the member governments;
- The Authority shall acquire all regionally significant wholesale water supply facilities and tangible assets owned by the member governments at an agreed value;
- The Authority shall charge a uniform per-gallon wholesale rate to member governments for the wholesale supply of drinking water;
- To the extent provided in the interlocal agreement and as permitted by law, the Authority and member governments shall develop procedures for resolving their differences over permitting and other issues, including alternative dispute resolution to minimize the potential for litigation;

- The Authority's governing board of directors shall be expanded to nine members--two each from Pinellas, Pasco and Hillsborough Counties; and one each from Tampa, St. Petersburg and new Port Richey; and
- The Authority and the Southwest Florida Water Management District shall submit a plan or agreement for joint development of alternative water supply sources and facilities in amounts sufficient to meet the projected needs of the member governments over the next 20 years, and the needs of natural systems.

As a result of the Governance Study, the Legislature in 1997 passed ch. 97-160, L.O.F., which encouraged and facilitated the implementation of the Governance Study recommendations submitted to the Legislature. Over the past year, the Authority, together with its member governments and their staffs, special counsel and consultants have worked cooperatively to carry out the mandate contained in section 30 of ch. 97-160, L.O.F. Specifically, the Authority staff, counsel, and consultants, have:

- Conducted multiple workshops with the member governments, separately and in groups;
- Developed new governing documents for the Authority including the draft Amended and Restated Interlocal Agreement and draft Mater Water Supply Contract to supersede existing contracts; and
- Conducted extensive studies related to water rates, water quality, legal issues, title to real property, and an overall water supply facility assessment.

The Governance Study evolved from a cooperative effort of KPMG Peat Marwick LLP and the "Group of 18," a policy panel comprised the Authority's board of directors, plus the city or county administrator and the utility director for each of the six Authority member governments. A product of the independent, in-depth analysis of the operation, governance, facilities and financing the Authority, the Governance Study made five specific recommendations:

1. The board of directors should be expanded from five to nine voting members to provide a more equitable balance among the three counties.
2. The board of directors should be made up of elected representative to ensure public accountability;
3. The Authority should serve as the region's exclusive provider of wholesale water, acquiring groundwater facilities from members and giving all members uniform access to system-wide capacity;
4. The Authority should focus on implementing the Master Water Plan projects to assure the development of diversified water supplies and the creation of an integrated system; and

5. Funding strategies should fairly compensate existing member governments for their water supply facilities to be acquired while moving to a uniform rate for the future.

Three key agreements that have been developed (the Amended and Restated Interlocal Agreement, the Master Water Supply Contract, and the Property Transfer Agreement), and when supported by the requested legislation, will provide for regional water solutions. Each agreement is an integral and necessary part, along with the legislation, of a comprehensive answer to the water needs of the Tampa Bay area.

III. Effect of Proposed Changes:

This bill would assist in the implementation of the governance restructuring of the West Coast Regional Water Supply Authority (Authority.)

Section 1: Section 120.52, F.S., is amended to provide that the definition of “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, F.S., to the extent that an interlocal agreement under ss. 163.01 and 373.1962, F.S., exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

Section 2: Section 373.1963, F.S., is amended to authorize the implementation of changes in governance recommended by the Authority. The interlocal agreement must comply with certain specified provisions. Among those provisions, in accordance with s. 4, Art. VIII of the State Constitution and notwithstanding s. 163.01, F.S., the interlocal agreement may include the following terms, which are considered approved by the parties without a vote of their electors, upon execution of the interlocal agreement by all member governments and upon satisfaction of all conditions precedent in the interlocal agreement:

1. All member governments shall relinquish to the authority their individual rights to develop potable water supply sources, except as otherwise provided in the interlocal agreement.
2. The Authority shall be the sole and exclusive wholesale potable water supplier for all member governments.
3. The Authority shall have the absolute and unequivocal obligation to meet the wholesale needs of the member governments for potable water.

4. A member government may not restrict or prohibit the use of land within a member's jurisdictional boundaries by the Authority for water supply purposes through use of zoning land use, comprehensive planning, or other form of regulation.
5. A member government may not impose any tax, fee, or charge upon the Authority in conjunction with the production or supply of water not otherwise provided for in the interlocal agreement.
6. The Authority may use the powers provided in part II, ch. 159, F.S., for financing and refinancing water treatment, production, or transmission facilities, including, but not limited to, desalination facilities. All such water treatment, production, or transmission facilities are considered a "manufacturing plant" for purposes of s. 159.27(5), F.S., and serve a paramount public purpose by providing water to citizens of the state.
7. A member government and any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing membership of such board or commission is shared, in whole or in part, or appointed by a member government agreeing to be bound by the interlocal agreement shall be limited to the procedures set forth therein regarding actions that directly or indirectly restrict or prohibit the use of lands or other activities related to the production or supply of water.

The interlocal agreement may include procedures for resolving their parties' differences regarding water management district proposed agency action in the water use permitting process within the Authority. These procedures should minimize the potential for litigation and include alternative dispute resolution. Any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing members of such board or commission is shared, in whole or in part, or appointed by a member government, may agree to be bound by the dispute resolution procedures set forth in the interlocal agreement.

The provisions of s. 373.1963, F.S., supercede any conflicting provisions contained in all other general or special laws or provisions thereof as they may apply directly or indirectly to the exclusivity of water supply or withdrawal of water, including provisions relating to the environmental effects, if any, in conjunction with the production and supply of potable water, and the provisions of s. 373.1963, F.S., are intended to be a complete revision of all laws related to a regional water supply authority created under ss. 373.1962 and 373.1963, F.S.

Section 3: Section 682.02, F.S., is amended to provide that the parties which have entered into written interlocal agreements may arbitrate disputes between them concerning water-use permit applications and other matters, regardless of whether or not the water management district with jurisdiction over the subject application is a party to the interlocal agreement or a participant in the arbitration.

Section 4: Section 768.28, F.S., is amended to allow the Authority to indemnify and assume the liabilities of its member governments for obligations arising from past acts or omissions at or with

property acquired from a member government by the Authority and arising from the acts or omissions of the Authority in performing activities contemplated by an interlocal agreement. This indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants as provided in this section.

Section 5: This act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The interlocal agreement between the reconstituted West Coast Regional Water Supply Authority and the member governments would lead to uniform water rates among the regions served. This could mean higher water rates in some areas and lower water rates in others. The interlocal agreement could put an end to the extensive and expensive litigation that has prevailed in this area of the state for the last several years. As a result, the taxpayers in this area would benefit by not having to subsidize the legal fees involved.

C. Government Sector Impact:

Pursuant to the interlocal agreement, the member governments are prohibited from imposing any tax or fee upon the Authority for the production or supply of water within their jurisdiction. This may lead to some reduced revenues in some areas, although the amount of such an impact cannot be determined at this time, and it is not known if such reductions would be significant.

By providing for binding arbitration of disputes through the interlocal agreement, the member governments would avoid high legal fees associated with protracted litigation to settle such disputes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
