

By Senator Latvala

19-577C-98

1                                   A bill to be entitled  
 2           An act relating to regional water supply  
 3           authorities; amending s. 120.52, F.S.;  
 4           providing that a member government is not  
 5           considered a party in administrative  
 6           proceedings under certain conditions; amending  
 7           s. 373.1963, F.S.; revising criteria for  
 8           governance of authorities and member  
 9           governments under interlocal agreements;  
 10          repealing a process for review of the  
 11          modification of a consumptive use permit;  
 12          amending s. 682.02, F.S.; providing for the  
 13          arbitration of controversies concerning water  
 14          use; amending s. 768.28, F.S.; allowing an  
 15          authority to indemnify its member governments;  
 16          declaring legislative intent to supersede other  
 17          laws; providing an effective date.

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

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 21           Section 1. Subsection (12) of section 120.52, Florida  
 22 Statutes, is amended to read:

23           120.52 Definitions.--As used in this act:

24           (12) "Party" means:

25           (a) Specifically named persons whose substantial  
 26 interests are being determined in the proceeding.

27           (b) Any other person who, as a matter of  
 28 constitutional right, provision of statute, or provision of  
 29 agency regulation, is entitled to participate in whole or in  
 30 part in the proceeding, or whose substantial interests will be  
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1 affected by proposed agency action, and who makes an  
2 appearance as a party.

3 (c) Any other person, including an agency staff  
4 member, allowed by the agency to intervene or participate in  
5 the proceeding as a party. An agency may by rule authorize  
6 limited forms of participation in agency proceedings for  
7 persons who are not eligible to become parties.

8 (d) Any county representative, agency, department, or  
9 unit funded and authorized by state statute or county  
10 ordinance to represent the interests of the consumers of a  
11 county, when the proceeding involves the substantial interests  
12 of a significant number of residents of the county and the  
13 board of county commissioners has, by resolution, authorized  
14 the representative, agency, department, or unit to represent  
15 the class of interested persons. The authorizing resolution  
16 shall apply to a specific proceeding and to appeals and  
17 ancillary proceedings thereto, and it shall not be required to  
18 state the names of the persons whose interests are to be  
19 represented.

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21 The term "party" does not include a member government of a  
22 regional water supply authority in proceedings under s.  
23 120.569, s. 120.57, or s. 120.68, to the extent that an  
24 interlocal agreement under ss. 163.01 and 373.1962 exists in  
25 which the member government has agreed that its substantial  
26 interests are not affected by the proceedings or that it is to  
27 be bound by alternative dispute resolution in lieu of  
28 participating in the proceedings. This exclusion applies only  
29 to those particular types of disputes or controversies, if  
30 any, identified in an interlocal agreement.

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1           Section 2. Subsection (5) of section 373.1963, Florida  
2 Statutes, is repealed and subsection (1) of that section, is  
3 amended to read:

4           373.1963 Assistance to West Coast Regional Water  
5 Supply Authority.--

6           (1) It is the intent of the Legislature to authorize  
7 ~~encourage and facilitate~~ the implementation of changes in  
8 governance recommended by the West Coast Regional Water Supply  
9 Authority in its reports ~~report~~ to the Legislature dated  
10 February 1, 1997 and. ~~The authority shall submit a~~  
11 ~~supplemental report to the President of the Senate and the~~  
12 ~~Speaker of the House of Representatives on the status of~~  
13 ~~implementing its prior recommendations for changes in~~  
14 ~~governance by~~ January 5, 1998. The authority and its member  
15 governments may reconstitute the authority's ~~its~~ governance ~~in~~  
16 ~~a manner consistent with its report to the Legislature, and~~  
17 ~~with the provisions set forth herein,~~ under a voluntary  
18 interlocal agreement with a term of not less than 20 years.  
19 The interlocal agreement must comply with this subsection,  
20 ~~which substantially provides~~ as follows:

21           (a) The authority and its member governments agree  
22 that cooperative efforts are mandatory to meet their water  
23 needs in a manner that will provide adequate and dependable  
24 supplies of water where needed without resulting in adverse  
25 environmental effects upon the areas from which the water is  
26 withdrawn or otherwise produced.

27           (b) In accordance with s. 4, Art. VIII of the State  
28 Constitution and notwithstanding s. 163.01, the interlocal  
29 agreement may include the following terms, which are  
30 considered approved by the parties without a vote of their  
31 electors, upon execution of the interlocal agreement by all

1 member governments and upon satisfaction of all conditions  
2 precedent in the interlocal agreement:~~To the extent provided~~  
3 ~~in the interlocal agreement, and to the extent permitted by~~  
4 ~~law.~~

5 1. All member governments shall relinquish to the  
6 authority their individual rights to develop potable water  
7 supply sources;

8 2. The authority shall be the sole and exclusive  
9 wholesale potable water supplier for all member governments;  
10 and

11 3. The authority shall have the absolute and  
12 unequivocal obligation to meet the wholesale needs of the  
13 member governments for potable water.

14 4. A member government may not restrict or prohibit  
15 the use of land within a member's jurisdictional boundaries by  
16 the authority for water supply purposes through use of zoning  
17 land use, comprehensive planning, or other form of regulation.

18 5. A member government may not impose any tax, fee, or  
19 charge upon the authority in conjunction with the production  
20 or supply of water.

21 6. The authority may use the powers provided in part  
22 II, chapter 159 for financing and refinancing water treatment,  
23 production, or transmission facilities, including, but not  
24 limited to, desalinization facilities. All such water  
25 treatment, production, or transmission facilities are  
26 considered a "manufacturing plant" for purposes of s.  
27 159.27(5) and serve a paramount public purpose by providing  
28 water to citizens of the state.

29 (c) The authority shall acquire full or lesser  
30 interests in all regionally significant member government  
31 wholesale water supply facilities and tangible assets and each

1 member government shall convey such interests in the  
2 facilities and assets to the authority, at an agreed value.

3 (d) The authority shall charge a uniform per gallon  
4 wholesale rate to member governments for the wholesale supply  
5 of potable water. All capital, operation, maintenance, and  
6 administrative costs for existing facilities and acquired  
7 facilities, authority master water plan facilities, and other  
8 future projects must be allocated to member governments based  
9 on water usage at the uniform per gallon wholesale rate.

10 (e) ~~To the extent provided in~~ The interlocal agreement  
11 may include ~~and to the extent permitted by law, member~~  
12 ~~governments shall develop~~ procedures for resolving their  
13 parties' differences regarding water management district  
14 proposed agency action in the water use permitting process  
15 within the authority. Such procedures should minimize the  
16 potential for litigation and include alternative dispute  
17 resolution. ~~Nothing herein or in said procedures shall affect~~  
18 ~~the rights of participants under chapter 120.~~

19 (f) Upon execution of the voluntary interlocal  
20 agreement provided for herein, the authority shall jointly  
21 develop with the Southwest Florida Water Management District  
22 alternative sources of potable water and transmission  
23 pipelines to interconnect regionally significant water supply  
24 sources and facilities of the authority in amounts sufficient  
25 to meet the needs of all member governments for a period of at  
26 least 20 years and for natural systems. Nothing herein,  
27 however, shall preclude the authority and its member  
28 governments from developing traditional water sources pursuant  
29 to the voluntary interlocal agreement. Development and  
30 construction costs for alternative source facilities, which  
31 may include a desalination facility and significant regional

1 interconnects, must be borne as mutually agreed to by both the  
2 authority and the Southwest Florida Water Management District.  
3 Nothing herein shall preclude authority or district cost  
4 sharing with private entities for the construction or  
5 ownership of alternative source facilities. By December 31,  
6 1997, the authority and the Southwest Florida Water Management  
7 District shall:

8           1. Enter into a mutually acceptable agreement  
9 detailing the development and implementation of directives  
10 contained in this paragraph; or

11           2. Jointly prepare and submit to the President of the  
12 Senate and the Speaker of the House of Representatives a  
13 report describing the progress made and impediments  
14 encountered in their attempts to implement the water resource  
15 development and water supply development directives contained  
16 in this paragraph.

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18 Nothing in this subsection shall be construed to modify the  
19 rights or responsibilities of the authority, its member  
20 governments, or the Southwest Florida Water Management  
21 District as otherwise set forth by statutes.

22           (g) Unless otherwise provided in the interlocal  
23 agreement, the authority shall be governed by a board of  
24 commissioners consisting of nine voting members, all of whom  
25 must be elected officers, as follows:

26           1. Three members from Hillsborough County who must be  
27 selected by the county commission; provided, however, that one  
28 member shall be selected by the Mayor of Tampa in the event  
29 that the City of Tampa elects to be a member of the authority;

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1           2. Three members from Pasco County, two of whom must  
2 be selected by the county commission and one of whom must be  
3 selected by the City Council of New Port Richey;

4           3. Three members from Pinellas County, two of whom  
5 must be selected by the county commission and one of whom must  
6 be selected by the City Council of St. Petersburg.

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8 Except as otherwise provided in this section or in the  
9 voluntary interlocal agreement between the member governments,  
10 a majority vote shall bind the authority and its member  
11 governments in all matters relating to the funding of  
12 wholesale water supply, production, delivery, and related  
13 activities.

14           Section 3. Section 682.02, Florida Statutes, is  
15 amended to read:

16           682.02 Arbitration agreements made valid, irrevocable,  
17 and enforceable; scope.--Two or more parties may agree in  
18 writing to submit to arbitration any controversy existing  
19 between them at the time of the agreement, or they may include  
20 in a written contract a provision for the settlement by  
21 arbitration of any controversy thereafter arising between them  
22 relating to such contract or the failure or refusal to perform  
23 the whole or any part thereof. This section also applies to  
24 written interlocal agreements under ss. 163.01 and 373.1962 in  
25 which two or more parties agree to submit to arbitration any  
26 controversy between them concerning water-use permit  
27 applications and other matters, regardless of whether or not  
28 the water management district with jurisdiction over the  
29 subject application is a party to the interlocal agreement or  
30 a participant in the arbitration.Such agreement or provision  
31 shall be valid, enforceable, and irrevocable without regard to

1 the justiciable character of the controversy; provided that  
2 this act shall not apply to any such agreement or provision to  
3 arbitrate in which it is stipulated that this law shall not  
4 apply or to any arbitration or award thereunder.

5 Section 4. Subsection (18) of section 768.28, Florida  
6 Statutes, is amended to read:

7 768.28 Waiver of sovereign immunity in tort actions;  
8 recovery limits; limitation on attorney fees; statute of  
9 limitations; exclusions; indemnification; risk management  
10 programs.--

11 (18) Neither the state nor any agency or subdivision  
12 of the state waives any defense of sovereign immunity, or  
13 increases the limits of its liability, upon entering into a  
14 contractual relationship with another agency or subdivision of  
15 the state. Such a contract must not contain any provision that  
16 requires one party to indemnify or insure the other party for  
17 the other party's negligence or to assume any liability for  
18 the other party's negligence. This does not preclude a party  
19 from requiring a nongovernmental entity to provide such  
20 indemnification or insurance. The restrictions of this  
21 subsection do not prevent a regional water supply authority  
22 from indemnifying and assuming the liabilities of its member  
23 governments for obligations arising from past acts or  
24 omissions at or with property acquired from a member  
25 government by the authority and arising from the acts or  
26 omissions of the authority in performing activities  
27 contemplated by an interlocal agreement. Such indemnification  
28 may not be considered to increase or otherwise waive the  
29 limits of liability to third-party claimants established by  
30 this section.

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