

By the Committee on Natural Resources and Senator Latvala

312-2127-98

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 the West Coast Regional Water
9 Supply Authority and its member governments
10 under interlocal agreements; declaring
11 legislative intent to supersede other laws;
12 repealing s. 373.1963(5), F.S., relating to a
13 process for review of a consumptive use permit;
14 amending s. 682.02, F.S.; providing for the
15 arbitration of certain controversies concerning
16 water use; amending s. 768.28, F.S.; allowing
17 an authority to indemnify its member
18 governments; providing an effective date.

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

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

24 120.52 Definitions.--As used in this act:

25 (12) "Party" means:

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

28 (b) Any other person who, as a matter of
29 constitutional right, provision of statute, or provision of
30 agency regulation, is entitled to participate in whole or in
31 part in the proceeding, or whose substantial interests will be

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.

20
21 The term "party" does not include a member government of a
22 regional water supply authority or a governmental or
23 quasi-judicial board or commission established by local
24 ordinance or special or general law where the governing
25 membership of such board or commission is shared with, in
26 whole or in part, or appointed by a member government of a
27 regional water supply authority in proceedings under s.
28 120.569, s. 120.57, or s. 120.68, to the extent that an
29 interlocal agreement under ss. 163.01 and 373.1962 exists in
30 which the member government has agreed that its substantial
31 interests are not affected by the proceedings or that it is to

1 be bound by alternative dispute resolution in lieu of
2 participating in the proceedings. This exclusion applies only
3 to those particular types of disputes or controversies, if
4 any, identified in an interlocal agreement.

5 Section 2. Present subsection (5) of section 373.1963,
6 Florida Statutes, is repealed, subsection (1) of said section
7 is amended, subsections (2), (3), and (4) are renumbered as
8 subsections (3), (4), and (5), respectively, and a new
9 subsection (2) is added to said section, to read:

10 373.1963 Assistance to West Coast Regional Water
11 Supply Authority.--

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

27 (a) The authority and its member governments agree
28 that cooperative efforts are mandatory to meet their water
29 needs in a manner that will provide adequate and dependable
30 supplies of water where needed without resulting in adverse
31

1 environmental effects upon the areas from which the water is
2 withdrawn or otherwise produced.

3 (b) In accordance with s. 4, Art. VIII of the State
4 Constitution and notwithstanding s. 163.01, the interlocal
5 agreement may include the following terms, which are
6 considered approved by the parties without a vote of their
7 electors, upon execution of the interlocal agreement by all
8 member governments and upon satisfaction of all conditions
9 precedent in the interlocal agreement:~~To the extent provided~~
10 ~~in the interlocal agreement, and to the extent permitted by~~
11 ~~law.~~

12 1. All member governments shall relinquish to the
13 authority their individual rights to develop potable water
14 supply sources, except as otherwise provided in the interlocal
15 agreement;

16 2. The authority shall be the sole and exclusive
17 wholesale potable water supplier for all member governments;
18 and

19 3. The authority shall have the absolute and
20 unequivocal obligation to meet the wholesale needs of the
21 member governments for potable water.

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

26 5. A member government may not impose any tax, fee, or
27 charge upon the authority in conjunction with the production
28 or supply of water not otherwise provided for in the
29 interlocal agreement.

30 6. The authority may use the powers provided in part
31 II of chapter 159 for financing and refinancing water

1 treatment, production, or transmission facilities, including,
2 but not limited to, desalinization facilities. All such water
3 treatment, production, or transmission facilities are
4 considered a "manufacturing plant" for purposes of s.
5 159.27(5) and serve a paramount public purpose by providing
6 water to citizens of the state.

7 7. A member government and any governmental or
8 quasi-judicial board or commission established by local
9 ordinance or general or special law where the governing
10 membership of such board or commission is shared, in whole or
11 in part, or appointed by a member government agreeing to be
12 bound by the interlocal agreement shall be limited to the
13 procedures set forth therein regarding actions that directly
14 or indirectly restrict or prohibit the use of lands or other
15 activities related to the production or supply of water.

16 (c) The authority shall acquire full or lesser
17 interests in all regionally significant member government
18 wholesale water supply facilities and tangible assets and each
19 member government shall convey such interests in the
20 facilities and assets to the authority, at an agreed value.

21 (d) The authority shall charge a uniform per gallon
22 wholesale rate to member governments for the wholesale supply
23 of potable water. All capital, operation, maintenance, and
24 administrative costs for existing facilities and acquired
25 facilities, authority master water plan facilities, and other
26 future projects must be allocated to member governments based
27 on water usage at the uniform per gallon wholesale rate.

28 (e) ~~To the extent provided in The interlocal agreement~~
29 ~~may include and to the extent permitted by law, member~~
30 ~~governments shall develop~~ procedures for resolving the
31 parties'~~their~~ differences regarding water management district

1 proposed agency action in the water use permitting process
2 within the authority. Such procedures should minimize the
3 potential for litigation and include alternative dispute
4 resolution. Any governmental or quasi-judicial board or
5 commission established by local ordinance or general or
6 special law where the governing members of such board or
7 commission is shared, in whole or in part, or appointed by a
8 member government, may agree to be bound by the dispute
9 resolution procedures set forth in the interlocal agreement.
10 ~~Nothing herein or in said procedures shall affect the rights~~
11 ~~of participants under chapter 120.~~

12 (f) Upon execution of the voluntary interlocal
13 agreement provided for herein, the authority shall jointly
14 develop with the Southwest Florida Water Management District
15 alternative sources of potable water and transmission
16 pipelines to interconnect regionally significant water supply
17 sources and facilities of the authority in amounts sufficient
18 to meet the needs of all member governments for a period of at
19 least 20 years and for natural systems. Nothing herein,
20 however, shall preclude the authority and its member
21 governments from developing traditional water sources pursuant
22 to the voluntary interlocal agreement. Development and
23 construction costs for alternative source facilities, which
24 may include a desalination facility and significant regional
25 interconnects, must be borne as mutually agreed to by both the
26 authority and the Southwest Florida Water Management District.
27 Nothing herein shall preclude authority or district cost
28 sharing with private entities for the construction or
29 ownership of alternative source facilities. By December 31,
30 1997, the authority and the Southwest Florida Water Management
31 District shall:

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

4 2. Jointly prepare and submit to the President of the
5 Senate and the Speaker of the House of Representatives a
6 report describing the progress made and impediments
7 encountered in their attempts to implement the water resource
8 development and water supply development directives contained
9 in this paragraph.

10
11 Nothing in this section ~~subsection~~ shall be construed to
12 modify the rights or responsibilities of the authority or its
13 member governments, except as otherwise provided herein, or of
14 the Southwest Florida Water Management District or the
15 department pursuant to chapter 373 or chapter 403 and as
16 otherwise set forth by statutes.

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

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

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

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

31

1 Except as otherwise provided in this section or in the
2 voluntary interlocal agreement between the member governments,
3 a majority vote shall bind the authority and its member
4 governments in all matters relating to the funding of
5 wholesale water supply, production, delivery, and related
6 activities.

7 (2) The provisions of this section supersede any
8 conflicting provisions contained in all other general or
9 special laws or provisions thereof as they may apply directly
10 or indirectly to the exclusivity of water supply or withdrawal
11 of water, including provisions relating to the environmental
12 effects, if any, in conjunction with the production and supply
13 of potable water, and the provisions of this section are
14 intended to be a complete revision of all laws related to a
15 regional water supply authority created under ss. 373.1962 and
16 373.1963.

17 Section 3. Section 682.02, Florida Statutes, is
18 amended to read:

19 682.02 Arbitration agreements made valid, irrevocable,
20 and enforceable; scope.--Two or more parties may agree in
21 writing to submit to arbitration any controversy existing
22 between them at the time of the agreement, or they may include
23 in a written contract a provision for the settlement by
24 arbitration of any controversy thereafter arising between them
25 relating to such contract or the failure or refusal to perform
26 the whole or any part thereof. This section also applies to
27 written interlocal agreements under ss. 163.01 and 373.1962 in
28 which two or more parties agree to submit to arbitration any
29 controversy between them concerning water use permit
30 applications and other matters, regardless of whether or not
31 the water management district with jurisdiction over the

1 subject application is a party to the interlocal agreement or
2 a participant in the arbitration.Such agreement or provision
3 shall be valid, enforceable, and irrevocable without regard to
4 the justiciable character of the controversy; provided that
5 this act shall not apply to any such agreement or provision to
6 arbitrate in which it is stipulated that this law shall not
7 apply or to any arbitration or award thereunder.

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

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

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

1 limits of liability to third-party claimants established by
2 this section.

3 Section 5. This act shall take effect upon becoming a
4 law.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1442

4 The committee substitute further provides that the term
5 "party", in addition to not including a member government of a
6 regional water supply authority, does not include a
7 governmental or quasi-judicial board or commission established
8 by local ordinance or special or general law where the
9 governing membership of such board or commission is shared
10 with, in whole or in part, or appointed by a member government
11 of a regional water supply authority in proceedings under s.
12 120.569, s. 120.57, or s 120.68, to the extent that an
13 interlocal agreement under ss. 163.01 and 373.1962 exists in
14 which the member government has agreed that its substantial
15 interests are not affected by the proceedings or that it is to
16 be bound by alternative dispute resolution in lieu of
17 participating in the proceedings.

18 Clarifies that all member governments shall relinquish to the
19 authority their individual rights to develop potable water
20 supply sources, except as otherwise provided in the interlocal
21 agreement.

22 Clarifies that a member government may not impose any tax,
23 fee, or charge upon the authority in conjunction with the
24 production or supply of water not otherwise provided in the
25 interlocal agreement.

26 Provides that a member governments and any governmental or
27 quasi-judicial board or commission established by local
28 ordinance or general or special law where the governing
29 membership of such board or commission is shared, in whole or
30 in part, or appointed by a member government shall be limited
31 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.

Provides that 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.

Nothing in s. 373.1963, F.S., shall be construed to modify the
rights or responsibilities of the authority or its member
governments except as provided in this section. Further,
nothing in s. 373.1963, F.S., shall be construed to modify the
rights of the Southwest Florida Water Management District or
the Department of Environmental Protection provided pursuant
to ch. 373, F.S., or ch. 403, F.S.

Section 373.1963, F.S., is amended to provide that the
provisions of this section supersede 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

1 any, in conjunction with the production and supply of potable
2 water, and the provisions of this section are intended to be a
3 complete revision of all laws resulted to a regional water
4 supply authority created under ss. 373.1962 and 373.1963, F.S.
5 A similar provision was contained in the original bill as a
6 separate section in the bill.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31