

By Senator Laurent

17-1740-98

See CS/HB 3503

1 A bill to be entitled
2 An act relating to water resource management;
3 amending s. 373.016, F.S.; providing
4 legislative policy relating to state and
5 regional water resource management; encouraging
6 use of water from sources nearest the area of
7 need; providing an exception; amending s.
8 373.019, F.S.; defining "donor area"; amending
9 s. 373.196, F.S.; clarifying legislative intent
10 that water resource development is a function
11 of the water management districts; amending s.
12 373.223, F.S.; directing the Department of
13 Environmental Protection or water management
14 district governing board to give significant
15 weight to certain factors when determining the
16 public interest for the transport and use of
17 water across county boundaries or outside the
18 watershed; amending s. 373.229, F.S.; requiring
19 additional information in permit applications
20 for proposed transport and use of water
21 pursuant to s. 373.223(2), F.S.; reenacting s.
22 373.536(5)(c), F.S.; clarifying intent with
23 respect to language inadvertently omitted by
24 legislative action; amending ss. 373.036,
25 373.209, 373.226, 373.421, F.S.; correcting
26 cross-references; providing an effective date.

27

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

29

30 Section 1. Subsections (4) and (5) of section 373.016,
31 Florida Statutes, are renumbered as subsections (5) and (6),

1 respectively, and a new subsection (4) is added to said
2 section to read:

3 373.016 Declaration of policy.--
4 (4)(a) Because water constitutes a public resource
5 benefiting the entire state, it is the policy of the
6 Legislature that the waters in the state be managed on a state
7 and regional basis. Consistent with this directive, the
8 Legislature recognizes the need to allocate water throughout
9 the state so as to meet all reasonable-beneficial uses.
10 However, the Legislature acknowledges that such allocations
11 have in the past adversely affected the water resources of
12 certain areas in this state. To protect such water resources
13 and to meet the current and future needs of those areas with
14 abundant water, the Legislature directs the department and the
15 water management districts to encourage the use of water from
16 sources nearest the area of use or application whenever
17 practicable. Such sources shall include all naturally
18 occurring water sources and all alternative water sources,
19 including, but not limited to, desalination, reuse of
20 reclaimed water and stormwater, conservation, and aquifer
21 storage and recovery. However, this directive to encourage the
22 use of water, whenever practicable, from sources nearest the
23 area of use or application shall not apply to the transport
24 and use of water within the area encompassed by the Central
25 and Southern Florida Flood Control Project.

26 (b) In establishing the policy outlined in paragraph
27 (a), the Legislature realizes that under certain circumstances
28 the need to transport water from distant sources may be
29 necessary for environmental, technical, or economic reasons.

30 Section 2. Subsections (5) through (23) of section
31 373.019, Florida Statutes, are renumbered as subsections (6)

1 through (24), respectively, and a new subsection (5) is added
2 to said section to read:

3 373.019 Definitions.--When appearing in this chapter
4 or in any rule, regulation, or order adopted pursuant thereto,
5 the following words shall, unless the context clearly
6 indicates otherwise, mean:

7 (5) "Donor area" means the county, groundwater basin
8 where appropriate and where mapped, or the watershed wherein
9 the proposed source of water for a transport and use regulated
10 under s. 373.223(2) is located. For the purposes of this
11 definition, "watershed" means the United States Geological
12 Survey hydrologic cataloging units listed in the January 1993
13 "Final Report of the District Water Management Plan
14 Conventions for Surface Water Basin and Floodplain Mapping."

15 Section 3. Subsection (2) of section 373.196, Florida
16 Statutes, is amended to read:

17 373.196 Legislative findings.--

18 (2) Municipalities and counties are encouraged to
19 create regional water supply authorities as authorized herein.
20 It is further the intent that municipalities, counties, and
21 regional water supply authorities are to have the primary
22 responsibility for water supply, and water management
23 districts and their basin boards are to engage only in those
24 functions that are incidental to the exercise of their flood
25 control and water management powers or that are related to
26 water resource development pursuant to s. 373.0831.

27 Section 4. Subsections (1) and (2) of section 373.223,
28 Florida Statutes, are amended to read:

29 373.223 Conditions for a permit.--

30
31

1 (1) To obtain a permit pursuant to the provisions of
2 this chapter, the applicant must establish that the proposed
3 use of water:

4 (a) Is a reasonable-beneficial use as defined in s.
5 373.019~~(4)~~;

6 (b) Will not interfere with any presently existing
7 legal use of water; and

8 (c) Is consistent with the public interest.

9 (2) The governing board or the department may
10 authorize the holder of a use permit to transport and use
11 ground or surface water beyond overlying land, across county
12 boundaries, or outside the watershed from which it is taken if
13 the governing board or department determines that such
14 transport and use is consistent with the public interest, and
15 no local government shall adopt or enforce any law, ordinance,
16 rule, regulation, or order to the contrary. Except for the
17 transport and use of water supplied by the Central and
18 Southern Florida Flood Control Project, when evaluating
19 whether a potential transport and use of ground or surface
20 water across county boundaries or outside the watershed from
21 which it is taken is consistent with the public interest, the
22 governing board or department shall give significant weight to
23 the following factors:

24 (a) The proximity of the proposed water source to the
25 area of use or application.

26 (b) All impoundments, streams, groundwater sources, or
27 watercourses that are geographically closer to the area of use
28 or application than the proposed source, and that are
29 technically and economically feasible for the proposed
30 transport and use.

31

1 (c) All economically and technically feasible
2 alternatives to the proposed source, including, but not
3 limited to, desalination, reuse of reclaimed water and
4 stormwater, and aquifer storage and recovery.

5 (d) The potential environmental impacts that may
6 result from the transport and use of water from the proposed
7 source.

8 (e) Whether the transport and use of water from the
9 donor area will jeopardize the current and future
10 reasonable-beneficial uses of the donor area, such as, in the
11 case of a county, impeding the ability of the donor area to
12 provide water to the population projected to be served under
13 its most recent comprehensive plan or amendment thereto.

14 (f) Consultations with local governments affected by
15 the proposed transport and use.

16
17 The department and the water management districts shall adopt
18 rules to apply these criteria to water use applications.
19 Where the department or the governing boards evaluate water
20 use applications on the basis of these criteria, such
21 applications shall be assessed in a manner consistent with the
22 legislative intent expressed in s. 373.016(4). In any rules
23 implementing this subsection, the burden rests with the
24 applicant to prove by a preponderance of the evidence that the
25 proposed transport and use satisfies these criteria.

26 Section 5. Subsection (3) of section 373.229, Florida
27 Statutes, is renumbered as subsection (4), and a new
28 subsection (3) is added to said section to read:

29 373.229 Application for permit.--

30 (3) In addition to the information required in
31 subsection (1), all permit applications filed with the

1 governing board or the department which propose the transport
2 and use of water across county boundaries or outside the
3 watershed from which it is taken, pursuant to s. 373.223(2),
4 shall contain the following items:

5 (a) A description of the proposed water source in
6 relation to the area of use or application.

7 (b) The availability of all impoundments, streams,
8 groundwater sources, or watercourses that are geographically
9 closer to the area of use or application than the proposed
10 source, and are technically and economically feasible for the
11 proposed transport and use.

12 (c) The availability of any other economically and
13 technically feasible alternative water sources, including, but
14 not limited to, desalination, reuse of reclaimed water and
15 stormwater, and aquifer storage and recovery.

16 (d) The potential environmental impacts that may
17 result from the proposed transport and use of water from the
18 proposed source.

19 (e) Whether the transport and use of water from the
20 donor area will jeopardize the current and future
21 reasonable-beneficial uses of the donor area, such as, in the
22 case of a county, impeding the ability of the donor area to
23 provide water to the population projected to be served under
24 its most recent comprehensive plan or amendment thereto.

25 Section 6. Paragraph (c) of subsection (5) of section
26 373.536, Florida Statutes, is reenacted to read:

27 373.536 District budget and hearing thereon.--

28 (5)

29 (c) Each water management district shall, by August 1
30 of each year, submit for review a tentative budget to the
31 Governor, the President of the Senate, the Speaker of the

1 House of Representatives, the chairs of all legislative
2 committees and subcommittees with substantive or fiscal
3 jurisdiction over water management districts, the secretary of
4 the department, and the governing body of each county in which
5 the district has jurisdiction or derives any funds for the
6 operations of the district. The tentative budget must
7 include, but is not limited to, the following information for
8 the preceding fiscal year and the current fiscal year, and the
9 proposed amounts for the upcoming fiscal year, in a standard
10 format prescribed by the Executive Office of the Governor
11 which is generally consistent with the format prescribed by
12 legislative budget instructions for state agencies and the
13 format requirements of s. 216.031:

14 1. The millage rates and the percentage increase above
15 the rolled-back rate, together with a summary of the reasons
16 the increase is required, and the percentage increase in
17 taxable value resulting from new construction;

18 2. The salary and benefits, expenses, operating
19 capital outlay, number of authorized positions, and other
20 personal services for the following program areas, including a
21 separate section for lobbying, intergovernmental relations,
22 and advertising:

23 a. District management and administration;

24 b. Implementation through outreach activities;

25 c. Implementation through regulation;

26 d. Implementation through acquisition, restoration,
27 and public works;

28 e. Implementation through operations and maintenance
29 of lands and works;

30 f. Water resources planning and monitoring; and
31

1 g. A full description and accounting of expenditures
2 for lobbying activities relating to local, regional, state,
3 and federal governmental affairs, whether incurred by district
4 staff or through contractual services and all expenditures for
5 public relations, including all expenditures for public
6 service announcements and advertising in any media.

7
8 In addition to the program areas reported by all water
9 management districts, the South Florida Water Management
10 District shall include in its budget document a separate
11 section on all costs associated with the Everglades
12 Construction Project.

13 3. The total amount in the district budget for each
14 area of responsibility listed in paragraph (a) and for water
15 resource development projects identified in the district's
16 regional water supply plans.

17 4. A 5-year capital improvements plan.

18 5. A description of each new, expanded, reduced, or
19 eliminated program.

20 6. A proposed 5-year water resource development work
21 program, that describes the district's implementation strategy
22 for the water resource development component of each approved
23 regional water supply plan developed or revised pursuant to s.
24 373.0361. The work program shall address all the elements of
25 the water resource development component in the district's
26 approved regional water supply plans. The office of the
27 Governor, with the assistance of the department, shall review
28 the proposed work program. The review shall include a written
29 evaluation of its consistency with and furtherance of the
30 district's approved regional water supply plans, and adequacy
31 of proposed expenditures. As part of the review, the Executive

1 Office of the Governor and the department shall afford to all
2 interested parties the opportunity to provide written comments
3 on each district's proposed work program. At least 7 days
4 prior to the adoption of its final budget, the governing board
5 shall state in writing to the Executive Office of the Governor
6 which changes recommended in the evaluation it will
7 incorporate into its work program, or specify the reasons for
8 not incorporating the changes. The office of the Governor
9 shall include the district's responses in the written
10 evaluation and shall submit a copy of the evaluation to the
11 Legislature; and

12 7. The funding sources, including, but not limited to,
13 ad valorem taxes, Surface Water Improvement and Management
14 Program funds, other state funds, federal funds, and user fees
15 and permit fees for each program area.

16 Section 7. Paragraph (d) of subsection (1) of section
17 373.036, Florida Statutes, is amended to read:

18 373.036 Florida water plan; district water management
19 plans.--

20 (1) FLORIDA WATER PLAN.--In cooperation with the water
21 management districts, regional water supply authorities, and
22 others, the department shall develop the Florida water plan.
23 The Florida water plan shall include, but not be limited to:

24 (d) Goals, objectives, and guidance for the
25 development and review of programs, rules, and plans relating
26 to water resources, based on statutory policies and
27 directives. The state water policy rule, renamed the water
28 resource implementation rule pursuant to s. 373.019(21)(~~20~~),
29 shall serve as this part of the plan. Amendments or additions
30 to this part of the Florida water plan shall be adopted by the
31 department as part of the water resource implementation rule.

1 In accordance with s. 373.114, the department shall review
2 rules of the water management districts for consistency with
3 this rule. Amendments to the water resource implementation
4 rule must be adopted by the secretary of the department and be
5 submitted to the President of the Senate and the Speaker of
6 the House of Representatives within 7 days after publication
7 in the Florida Administrative Weekly. Amendments shall not
8 become effective until the conclusion of the next regular
9 session of the Legislature following their adoption.

10 Section 8. Subsection (2) of section 373.209, Florida
11 Statutes, is amended to read:

12 373.209 Artesian wells; penalties for violation.--

13 (2) A well is exempt from the provisions of this
14 section unless the Department of Environmental Protection can
15 show that the uncontrolled flow of water from the well does
16 not have a reasonable-beneficial ~~reasonable and beneficial~~
17 use, as defined in s. 373.019~~(4)~~.

18 Section 9. Subsection (2) of section 373.226, Florida
19 Statutes, is amended to read:

20 373.226 Existing uses.--

21 (2) The governing board or the department shall issue
22 an initial permit for the continuation of all uses in
23 existence before the effective date of implementation of this
24 part if the existing use is a reasonable-beneficial use as
25 defined in s. 373.019~~(13)~~ and is allowable under the common
26 law of this state.

27 Section 10. Subsection (1) of section 373.421, Florida
28 Statutes, is amended to read:

29 373.421 Delineation methods; formal determinations.--

30 (1) By January 1, 1994, the Environmental Regulation
31 Commission shall adopt a unified statewide methodology for the

1 delineation of the extent of wetlands as defined in s.
2 373.019(23)(17). This methodology shall consider regional
3 differences in the types of soils and vegetation that may
4 serve as indicators of the extent of wetlands. This
5 methodology shall also include provisions for determining the
6 extent of surface waters other than wetlands for the purposes
7 of regulation under s. 373.414. This methodology shall not
8 become effective until ratified by the Legislature. Subsequent
9 to legislative ratification, the wetland definition in s.
10 373.019(23)(17) and the adopted wetland methodology shall be
11 binding on the department, the water management districts,
12 local governments, and any other governmental entities. Upon
13 ratification of such wetland methodology, the Legislature
14 preempts the authority of any water management district, state
15 or regional agency, or local government to define wetlands or
16 develop a delineation methodology to implement the definition
17 and determines that the exclusive definition and delineation
18 methodology for wetlands shall be that established pursuant to
19 s. 373.019(23)(17) and this section. Upon such legislative
20 ratification, any existing wetlands definition or wetland
21 delineation methodology shall be superseded by the wetland
22 definition and delineation methodology established pursuant to
23 this chapter. Subsequent to legislative ratification, a
24 delineation of the extent of a surface water or wetland by the
25 department or a water management district, pursuant to a
26 formal determination under subsection (2), or pursuant to a
27 permit issued under this part in which the delineation was
28 field-verified by the permitting agency and specifically
29 approved in the permit, shall be binding on all other
30 governmental entities for the duration of the formal
31 determination or permit. All existing rules and methodologies

1 of the department, the water management districts, and local
2 governments, regarding surface water or wetland definition and
3 delineation shall remain in full force and effect until the
4 common methodology rule becomes effective. However, this shall
5 not be construed to limit any power of the department, the
6 water management districts, and local governments to amend or
7 adopt a surface water or wetland definition or delineation
8 methodology until the common methodology rule becomes
9 effective.

10 Section 11. This act shall take effect upon becoming a
11 law.

12 *****

13
14 LEGISLATIVE SUMMARY

15 Provides legislative policy with respect to state and
16 regional water resource management and the use of water
17 from sources nearest the area of need. Defines the term
18 "donor area" for purposes of the transport and use of
19 water. Specifies the factors to be considered by the
20 water management districts and the Department of
21 Environmental Protection in determining whether a
22 proposed transport and use of water across county
23 boundaries or outside the watershed is in the public
24 interest. Requires that additional information be
25 included in a permit application for such proposed
26 transport and use of water.
27
28
29
30
31