

STORAGE NAME: h4027.wrm
DATE: March 16, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Water & Resource Management
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4027
RELATING TO: Water resource development and supply
SPONSOR(S): Representative Littlefield
COMPANION BILL(S): SB 1622 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Water & Resource Management
 - (2) General Government Appropriations
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 4027 would amend s. 373.0442, F.S., to require that the Southwest Florida Water Management District (SWFWMD) and the West Coast Regional Water Supply Authority (WCRWSA) execute a "partnership plan" no later than July 1, 1998. The bill calls for the execution of this partnership plan to expedite the implementation of minimum flows and levels (MFLs) for Hillsborough, Pasco and Pinellas counties and to restore public and private properties damaged by water withdrawals. At a minimum, HB 4027 mandates that the plan contain the following requirements:

- ensure that SWFWMD retains sole authority for the implementation of MFLs;
- place control of the allocation of funds relating to the implementation of MFLs and any prevention or recovery strategy with SWFWMD;
- direct that the expenditure of funds be allocated first to alternative water sources;
- determine the acreage adversely impacted by withdrawals and a projected monetary amount necessary to mitigate such impacts; and
- for purposes of mitigation, require the payment of the amount identified above by the WCRWSA no later than July 1, 2003 or, alternatively, require the construction of alternative sources of water to reduce by not less than one-third the amount of withdrawals from wellfields no later than July 1, 2003.

In addition, HB 4027 directs the Secretary of the Department of Environmental Protection (DEP) to execute the plan on the behalf of SWFWMD in the event that the plan is not executed by July 1, 1998. The bill also requires the Secretary to consider additional factors when approving an agreement to create a regional water supply authority.

HB 4027 would take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Establishment and Implementation of MFLs:

Minimum flows and levels constitute a major feature of Chapter 373, F.S. MFLs manage water resources by preserving the integrity of the hydrologic system while allowing appropriate uses of surface water and groundwater. They are designed to determine the amount of water a particular source can yield without causing "significant harm" to the water resource and to facilitate a planning process in which projected demands are compared to the available supply.

Until recently, the WMDs had established very few MFLs. In the 1996 session, pursuant to Chapter 96-339, L.O.F., the Legislature required the Southwest Florida WMD (SWFWMD) to establish MFLs for priority water bodies. SWFWMD initially met the October 1, 1997, statutory deadline with the adoption of a rule. However, in December of 1997, SWFWMD began reevaluating this rule and is currently considering the adoption of a new MFL rule for these priority waterbodies.

Coupled with the development of MFLs, s. 373.0421(2), F.S., further directs the WMDs to implement a recovery or prevention strategy if the level of a waterbody falls below, or is projected to fall below, the appropriate MFL within 20 years. As soon as practicable, the WMD must develop the recovery or prevention strategy, including a timetable for providing additional water supplies to offset any reduction in permitted withdrawals.

Regional Water Supply Authorities:

Article VIII, Section 4, Florida Constitution, allows local governments, by law or resolution, to transfer any function or power to a special district. Section 373.1962, F.S., provides for the creation of regional water supply authorities to develop, recover, store and supply water for county and municipal purposes. It requires that such water supply and development be done so as to reduce adverse environmental impacts of excessive or improper withdrawals of water from concentrated areas. Section 373.1962(1), F.S., provides criteria for the DEP to follow in approving a regional water supply authority agreement. The powers and duties of the authorities include the following:

- levying ad valorem taxes;
- acquiring water and water rights;
- developing, storing and transporting water;
- collecting, treating and recovering wastewater; and
- exercising the power of eminent domain.

West Coast Regional Water Supply Authority

The West Coast Regional Water Supply Authority was created in 1974. It now has the following members: City of St. Petersburg, City of Tampa, and City of New Port Richey (a non-voting member), Hillsborough County, Pinellas County and Pasco County. WCRWSA owns and operates some water supply facilities as well as operating facilities owned by individual member governments. It has executed various water supply contracts with each member government and develops water to sell at cost to those governments. Under the existing organization of WCRWSA, any member government may decline to participate financially in the development of additional water supply capacity, in effect providing a "veto." That is, unless member governments choose to fund water supply development without the financial participation of one or more members who decline to participate, such projects are effectively blocked.

At the present time, WCRWSA operates as the primary wholesale water supplier in the Tampa Bay region. WCRWSA supplies potable water to these six member governments at cost, and these local governments in turn supply water to roughly 1.8 million residents. Currently, WCRWSA possesses a total production capacity of 289.1 million gallons per day, although actual usage for fiscal year 1995 amounted to approximately 216 million gallons per day.

WCRWSA stands at the center of the controversy in the northern Tampa Bay area over widespread environmental damage in Hillsborough and Pasco counties. Residents in these counties have watched wetlands, lakes and wells dry up primarily because of pumping by WCRWSA. Moreover, questions have arisen about whether WCRWSA can successfully meet the water needs of the Tampa Bay region. These concerns primarily center on whether its existing governance structure prevents effective water management. In response to these concerns and pursuant to legislative directive as embodied in section 373.1963, F.S., the member governments are negotiating a voluntary agreement designed to transform WCRWSA into a more effective regional wholesale water supplier.

Recent Legislative Direction To WCRWSA

Recognizing the need to reorganize WCRWSA, the 1996 Legislature amended s. 373.1963, F.S., to require WCRWSA to develop an evaluation and recommendation addressing a change in its governance structure. This evaluation and recommendation was due to the Speaker of the House and the President of the Senate by February 1, 1997. WCRWSA prepared and sent to the Speaker and the President this evaluation and recommendation in January of 1997.

In light of this report, the 1997 Legislature returned to the issue of the internal governance of WCRWSA. This time the Legislature amended s. 373.1963, F.S., to provide for a **voluntary** interlocal agreement designed to transform WCRWSA into the exclusive wholesale water supplier in the Tampa Bay region. The voluntary interlocal agreement set out in s. 373.1963, F.S., would achieve this transformation of WCRWSA in two basic ways. First, it expands the scope of WCRWSA's authority by requiring member governments to relinquish to WCRWSA their individual rights to develop potable water sources and by establishing WCRWSA as the exclusive wholesale potable water supplier for all members. To this end, the voluntary interlocal agreement provides that WCRWSA shall acquire full or lesser interests in **all regionally significant wholesale water supply facilities** owned by member governments. Finally, s. 373.1963, F.S.,

STORAGE NAME: h4027.wrm

DATE: March 16, 1998

PAGE 4

requires this voluntary interlocal agreement to set a uniform per gallon wholesale rate and allocate all capital and operation costs for both existing and future facilities to the members based on water usage.

Second, the voluntary interlocal agreement would change the internal governance structure of WCRWSA. Specifically, WCRWSA would be governed by a Board of Commissioners consisting of nine voting members, all of whom would be elected officials. Under the voluntary interlocal agreement, the majority vote of the member governments (and in some cases, the super-majority vote) would bind West Coast in all matters relating to funding of wholesale water supply, production, delivery, and related activities.

Update On Current Negotiations Involving WCRWSA

The WCRWSA member governments are continuing to negotiate an agreement along the lines of the voluntary interlocal agreement provided in s. 373.1963, F.S. Consistent with s. 373.1963, this agreement is currently drafted to place all water supply facilities producing more than a million gallons a day in WCRWSA's control, except that the City of Tampa can continue to draw surface water from the Hillsborough River and Tampa Bypass Canal. Along with WCRWSA acquiring existing water supply facilities, the member governments have agreed to relinquish their rights to develop potable water supplies. The negotiations over governance also are focused on the development of a master water supply contract to replace the multitude of existing "water supply entitlement" contracts between WCRWSA and the various member governments. Finally, to acquire the facilities, the member governments have agreed to the use cash or a credit system. Under this credit system, WCRWSA would sell water to the member governments at a uniform wholesale rate from which WCRWSA would deduct the value of whatever water supply facilities the respective member government turned over to WCRWSA. These credits would end after 30 years.

Separate from the governance negotiations, WCRWSA and SWFWMD are discussing a "Partnership Plan" to address the planning and funding of additional water supply sources in the Tampa Bay region. Under the mandates of 373.042 and 373.0421, F.S., SWFWMD must set minimum flows and levels for water resources in the territory of WCRWSA. It is expected that the establishment of these minimum flows and levels will reduce the amount of groundwater available for use by WCRWSA to supply potable water. This "Partnership" agreement between WCRWSA and SWFWMD represents an attempt to address the anticipated impact of reduced groundwater withdrawals and to develop additional water supply sources without resort to further litigation. Pursuant to 373.1963(1)(f), F.S., WCRWSA and SWFWMD must develop alternative sources of potable water to meet the needs of the member governments for at least 20 years and for natural systems. WCRWSA and SWFWMD must mutually bear development and construction costs for the above infrastructure.

To achieve this goal, SWFWMD would integrate the "Partnership" agreement into its recovery strategy for the existing wellfields in Hillsborough, Pasco, and Pinellas counties. In addition, and to help reduce the reliance on groundwater, the "Partnership" agreement envisions annual funding from SWFWMD to WCRWSA and its members for water conservation and reclamation. The "Partnership" agreement also contemplates that SWFWMD would provide WCRWSA with \$183

million for the development of new water sources. Overall, this portion of the agreement aims to bring 85 million gallons per day of new water on line in the next 10 years while reducing pumping from the WCRWSA system from 144 million gallons per day to 90 million gallons per day.

Because of the extent of environmental damage in the northern Tampa Bay area and the importance of WCRWSA to the region's water supply, Representative Littlefield filed HB 4027. He filed the bill to serve two main objectives: to ensure the implementation of MFLs in the area and to push for the completion of the negotiations on the current partnership plan.

B. EFFECT OF PROPOSED CHANGES:

HB 4027 proposes to create s. 373.0422, F.S., addressing the establishment of MFLs Hillsborough, Pasco and Pinellas counties. Primarily, this bill would incorporate considerations that affect the partnership plan between SWFWMD and WCRWSA that are currently dealt with in s. 373.1963, F.S. HB 4027, for instance, imposes a statutory deadline of no later July 1, 1998, for the execution of the partnership plan. At this time, the parties estimate that current partnership plan under negotiation might take effect in April of 1998. To a much greater degree than the current partnership plan, HB 4027 requires, in effect, that the partnership plan would become the vehicle for both MFLs and the recovery/prevention strategy.

HB 4027 also enumerates the following minimum requirements for the plan:

- ensure that SWFWMD retains sole authority for the implementation of MFLs;
- place control of the allocation of funds relating to the implementation of MFLs and any prevention or recovery strategy with SWFWMD;
- direct that the expenditures of funds be first allocated to alternative water sources;
- determine the acreage adversely impacted by withdrawals and a projected monetary amount necessary to mitigate such impacts;
- and, for purposes of mitigation, require the payment of the amount identified above by the WCRWSA no later than July 1, 2003 or, alternatively, require the construction of alternative sources of water to reduce by not less than one-third the amount of withdrawals from wellfields no later than July 1, 2003.

By vesting control of the allocation of funds for the recovery/prevention strategy with SWFWMD, this minimum requirement appears to undermine the trust fund contemplated by the current partnership plan. The parties have proposed this trust fund as a means to encourage WCRWSA to undertake alternative water supply development without necessarily binding SWFWMD to future appropriations (which later governing boards may not observe anyway).

In requiring that initial expenditures of funds go to alternative water sources, there is a concern that this condition could interfere with the development of the inter-connects between the various wellfields used by WCRWSA. Any delay to the development of these inter-connects could handicap WCRWSA's ability to rotate pumpage needs in light of changing conditions.

Finally, HB 4027 provides additional language addressing the partnership plan and the approval process for a regional water supply authority. First, in the event that a plan has not been executed by July 1, 1998, the DEP Secretary is directed to act on the behalf of SWFWMD to execute the plan. Second, the bill requires that SWFWMD or the Secretary report to the Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 5, 1999, on the progress achieved pursuant to the plan, including identification of any impediments to the objectives described in subsection (1) of the amended s. 373.0422, F.S.

Lastly, HB 4027 amends s. 373.1962, F.S., to require the Secretary to consider the following additional factors in approving an agreement to create a regional water supply authority:

- the commitment of the authority to implement alternative sources of water;

- the reduction of surface and groundwater usage in those areas identified by the appropriate water management district to be experiencing, or reasonably expected to experience, adverse effects from continued reliance on such sources;

- the proposed organizational structure of the authority and the ability to effectively deliver water from sources which will not cause adverse environmental impacts; and

- the inclusion of alternative dispute mechanisms.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. HB 4027 may force both the WCRWSA and SWFWMD to conform the partnership plan currently under negotiation to the requirements of the bill. For instance, under HB 4027, SWFWMD would need to determine the amount of acreage of surface waters and wetlands that have been adversely impacted by wellfield withdrawals and a projected monetary amount necessary to mitigate such impacts.

In addition, HB 4027 requires the Secretary of the Department of Environmental Protection to consider additional factors as part of an interlocal agreement for a regional water supply authorities.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Potentially yes. Like the partnership plan currently under negotiation, the plan contemplated by HB 4027 may force an increase in ad valorem taxes to pay for alternative water sources and/or the cost of mitigation.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. STATUTE(S) AFFECTED:

Sections 373.0422 and 373.1962, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 373.0422, F.S., to express legislative intent that to ensure timely and effective implementation of MFLs, to prevent further environmental damage caused by wellfield withdrawals, and to protect and restore public and private lands damaged by such withdrawals that the SWFWMD execute a partnership plan with WCRWSA no later than July 1, 1998. Provides that this plan shall set forth the actions necessary of all parties to implement the established minimum flows and levels and the recovery or prevention strategy. Provides that the execution of the plan shall be independent of any requirement set forth in the chapter applicable to governance of WCRWSA. Establishes minimum requirements for the plan. Provides, in the event that the plan is not executed by July 1, 1998, that the Secretary of Department of Environmental Protection is directed to act on behalf of SWFWMD to execute the plan. Requires SWFWMD or the secretary to report to the Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 5, 1999, on the progress achieved pursuant to the plan, including the identification of any impediments to accomplishing the objectives.

Section 2: Amends s. 373.1962, F.S., to require the Secretary of the Department of Environmental Protection to consider additional factors when approving an interlocal agreement to create a regional water supply authority.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate. However, because HB 4027 appears to contemplate expenditures by the SWFWMD to assist WCRWSA with water supply development, the bill would appear to have some fiscal impact on SWFWMD.

Additionally, HB 4027 requires that WCRWSA would either pay for the mitigation of environmental damage caused by wellfield withdrawals or construct alternative sources of water to reduce by not less than one-third the actual amount of withdrawals. This requirement could potentially impact WCRWSA.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Potentially, the shift away from groundwater sources to alternative water sources that HB 4027 appears to contemplate may increase the retail cost of water as alternative water sources tend to cost more than groundwater.

STORAGE NAME: h4027.wrm

DATE: March 16, 1998

PAGE 10

2. Direct Private Sector Benefits:

Under HB 4027, some firms involved in the alternative water source industry, whether through design or construction, may experience increased business.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because HB 4027 does not impose any mandatory condition on local governments, the bill does not trigger Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 4027 does not affect the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 4027 does not affect the proportion of state tax revenue shared with local governments.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

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STORAGE NAME: h4027.wrm
DATE: March 16, 1998
PAGE 11