

By the Committee on Water & Resource Management and  
Representatives Littlefield and Fasano

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.

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

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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.

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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  
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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.

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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.

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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.

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