

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; prohibiting the adoption of
19 certain actions by the commission unless by a
20 required minimum vote; providing for future
21 termination of the commission pending
22 legislative review of reenactment; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (12) of section 120.52, Florida
28 Statutes, is amended to read:

29 120.52 Definitions.--As used in this act:

30 (12) "Party" means:
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1 (a) Specifically named persons whose substantial
2 interests are being determined in the proceeding.

3 (b) Any other person who, as a matter of
4 constitutional right, provision of statute, or provision of
5 agency regulation, is entitled to participate in whole or in
6 part in the proceeding, or whose substantial interests will be
7 affected by proposed agency action, and who makes an
8 appearance as a party.

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

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

26
27 The term "party" does not include a member government of a
28 regional water supply authority or a governmental or
29 quasi-judicial board or commission established by local
30 ordinance or special or general law where the governing
31 membership of such board or commission is shared with, in

1 whole or in part, or appointed by a member government of a
 2 regional water supply authority in proceedings under s.
 3 120.569, s. 120.57, or s. 120.68, to the extent that an
 4 interlocal agreement under ss. 163.01 and 373.1962 exists in
 5 which the member government has agreed that its substantial
 6 interests are not affected by the proceedings or that it is to
 7 be bound by alternative dispute resolution in lieu of
 8 participating in the proceedings. This exclusion applies only
 9 to those particular types of disputes or controversies, if
 10 any, identified in an interlocal agreement.

11 Section 2. Present subsection (5) of section 373.1963,
 12 Florida Statutes, is repealed, subsection (1) of said section
 13 is amended, subsections (2), (3), and (4) are renumbered as
 14 subsections (3), (4), and (5), respectively, and a new
 15 subsection (2) is added to said section, to read:

16 373.1963 Assistance to West Coast Regional Water
 17 Supply Authority.--

18 (1) It is the intent of the Legislature to authorize
 19 ~~encourage and facilitate~~ the implementation of changes in
 20 governance recommended by the West Coast Regional Water Supply
 21 Authority in its reports ~~report~~ to the Legislature dated
 22 February 1, 1997, and. ~~The authority shall submit a~~
 23 ~~supplemental report to the President of the Senate and the~~
 24 ~~Speaker of the House of Representatives on the status of~~
 25 ~~implementing its prior recommendations for changes in~~
 26 ~~governance by January 5, 1998. The authority and its member~~
 27 governments may reconstitute the authority's ~~its~~ governance
 28 and rename the authority in a manner consistent with its
 29 ~~report to the Legislature, and with the provisions set forth~~
 30 ~~herein,~~ under a voluntary interlocal agreement with a term of
 31

1 not less than 20 years. The interlocal agreement must comply
2 with this subsection, which substantially provides as follows:

3 (a) The authority and its member governments agree
4 that cooperative efforts are mandatory to meet their water
5 needs in a manner that will provide adequate and dependable
6 supplies of water where needed without resulting in adverse
7 environmental effects upon the areas from which the water is
8 withdrawn or otherwise produced.

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

18 1. 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 2. The authority shall be the sole and exclusive
23 wholesale potable water supplier for all member governments;
24 and

25 3. The authority shall have the absolute and
26 unequivocal obligation to meet the wholesale needs of the
27 member governments for potable water.

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

1 5. A member government may not impose any tax, fee, or
2 charge upon the authority in conjunction with the production
3 or supply of water not otherwise provided for in the
4 interlocal agreement.

5 6. The authority may use the powers provided in part
6 II of chapter 159 for financing and refinancing water
7 treatment, production, or transmission facilities, including,
8 but not limited to, desalinization facilities. All such water
9 treatment, production, or transmission facilities are
10 considered a "manufacturing plant" for purposes of s.
11 159.27(5) and serve a paramount public purpose by providing
12 water to citizens of the state.

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

22 (c) The authority shall acquire full or lesser
23 interests in all regionally significant member government
24 wholesale water supply facilities and tangible assets and each
25 member government shall convey such interests in the
26 facilities and assets to the authority, at an agreed value.

27 (d) The authority shall charge a uniform per gallon
28 wholesale rate to member governments for the wholesale supply
29 of potable water. All capital, operation, maintenance, and
30 administrative costs for existing facilities and acquired
31 facilities, authority master water plan facilities, and other

1 future projects must be allocated to member governments based
 2 on water usage at the uniform per gallon wholesale rate.

3 ~~(e) To the extent provided in~~ The interlocal agreement
 4 may include ~~and to the extent permitted by law, member~~
 5 ~~governments shall develop~~ procedures for resolving the
 6 parties'~~their~~ differences regarding water management district
 7 proposed agency action in the water use permitting process
 8 within the authority. Such procedures should minimize the
 9 potential for litigation and include alternative dispute
 10 resolution. Any governmental or quasi-judicial board or
 11 commission established by local ordinance or general or
 12 special law where the governing members of such board or
 13 commission is shared, in whole or in part, or appointed by a
 14 member government, may agree to be bound by the dispute
 15 resolution procedures set forth in the interlocal agreement.
 16 ~~Nothing herein or in said procedures shall affect the rights~~
 17 ~~of participants under chapter 120.~~

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

1 authority and the Southwest Florida Water Management District.
2 Nothing herein shall preclude authority or district cost
3 sharing with private entities for the construction or
4 ownership of alternative source facilities. By December 31,
5 1997, the authority and the Southwest Florida Water Management
6 District shall:

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

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

16
17 Nothing in this section ~~subsection~~ shall be construed to
18 modify the rights or responsibilities of the authority or its
19 member governments, except as otherwise provided herein, or of
20 the Southwest Florida Water Management District or the
21 department pursuant to chapter 373 or chapter 403 and as
22 otherwise set forth by statutes.

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

27 1. Three members from Hillsborough County who must be
28 selected by the county commission; provided, however, that one
29 member shall be selected by the Mayor of Tampa in the event
30 that the City of Tampa elects to be a member of the authority;
31

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.

7
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 (2) The provisions of this section supersede any
15 conflicting provisions contained in all other general or
16 special laws or provisions thereof as they may apply directly
17 or indirectly to the exclusivity of water supply or withdrawal
18 of water, including provisions relating to the environmental
19 effects, if any, in conjunction with the production and supply
20 of potable water, and the provisions of this section are
21 intended to be a complete revision of all laws related to a
22 regional water supply authority created under ss. 373.1962 and
23 373.1963.

24 Section 3. Section 682.02, Florida Statutes, is
25 amended to read:

26 682.02 Arbitration agreements made valid, irrevocable,
27 and enforceable; scope.--Two or more parties may agree in
28 writing to submit to arbitration any controversy existing
29 between them at the time of the agreement, or they may include
30 in a written contract a provision for the settlement by
31 arbitration of any controversy thereafter arising between them

1 relating to such contract or the failure or refusal to perform
2 the whole or any part thereof. This section also applies to
3 written interlocal agreements under ss. 163.01 and 373.1962 in
4 which two or more parties agree to submit to arbitration any
5 controversy between them concerning water use permit
6 applications and other matters, regardless of whether or not
7 the water management district with jurisdiction over the
8 subject application is a party to the interlocal agreement or
9 a participant in the arbitration. Such agreement or provision
10 shall be valid, enforceable, and irrevocable without regard to
11 the justiciable character of the controversy; provided that
12 this act shall not apply to any such agreement or provision to
13 arbitrate in which it is stipulated that this law shall not
14 apply or to any arbitration or award thereunder.

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

17 768.28 Waiver of sovereign immunity in tort actions;
18 recovery limits; limitation on attorney fees; statute of
19 limitations; exclusions; indemnification; risk management
20 programs.--

21 (18) Neither the state nor any agency or subdivision
22 of the state waives any defense of sovereign immunity, or
23 increases the limits of its liability, upon entering into a
24 contractual relationship with another agency or subdivision of
25 the state. Such a contract must not contain any provision that
26 requires one party to indemnify or insure the other party for
27 the other party's negligence or to assume any liability for
28 the other party's negligence. This does not preclude a party
29 from requiring a nongovernmental entity to provide such
30 indemnification or insurance. The restrictions of this
31 subsection do not prevent a regional water supply authority

1 from indemnifying and assuming the liabilities of its member
2 governments for obligations arising from past acts or
3 omissions at or with property acquired from a member
4 government by the authority and arising from the acts or
5 omissions of the authority in performing activities
6 contemplated by an interlocal agreement. Such indemnification
7 may not be considered to increase or otherwise waive the
8 limits of liability to third-party claimants established by
9 this section.

10 Section 5. (1)(a) The Miami River Commission is
11 hereby established as the official coordinating clearinghouse
12 for all public policy and projects related to the Miami River
13 to unite all governmental agencies, businesses, and residents
14 in the area to speak with one voice on river issues, to
15 develop coordinated plans, priorities, programs, projects, and
16 budgets that might substantially improve the river area, and
17 to act as the principal advocate and watchdog to ensure that
18 river projects are funded and implemented in a proper and
19 timely manner.

20 (b) The commission may seek and receive funding to
21 further its coordinating functions regarding river improvement
22 projects of the commission. Nothing in this act affects or
23 supersedes the regulatory authority of any governmental agency
24 or any local government and any responsibilities of any
25 governmental entity relating to the Miami River shall remain
26 with such respective governmental entity. However, the
27 commission may accept any specifically defined coordinating
28 authority or functions delegated to the commission by any
29 governmental entity, through a memorandum of understanding or
30 other legal instrument. The commission shall use powers of
31 persuasion to achieve its objectives through the process of

1 building a consensus work plan and through widespread
2 publication of regular progress reports.

3 (2) The Miami River Commission shall consist of:

4 (a) A policy committee comprised of the Governor, the
5 chair of the Dade delegation, the chair of the governing board
6 of the South Florida Water Management District, the Miami-Dade
7 County State Attorney, the Mayor of Miami, the Mayor of
8 Miami-Dade County, a commissioner of the City of Miami
9 Commission, a commissioner of the Miami-Dade County
10 Commission, the chair of the Miami River Marine Group, the
11 chair of the Marine Council, the Executive Director of the
12 Downtown Development Authority, and the chair of the Greater
13 Miami Chamber of Commerce; two neighborhood representatives,
14 selected from the Spring Garden Neighborhood Association, the
15 Grove Park Neighborhood Association, and the Miami River
16 Neighborhood Enhancement Corporation, one neighborhood
17 representative to be appointed by the city commission and one
18 neighborhood representative to be appointed by the county
19 commission, each selected from a list of 3 names submitted by
20 each such organization; one representative from an
21 environmental or civic association, appointed by the Governor;
22 and three members-at-large, who shall be persons who have a
23 demonstrated history of involvement on the Miami River through
24 business, residence, or volunteer activity, one appointed by
25 the Governor, one appointed by the city commission, and one
26 appointed by the county commission. All members shall be
27 voting members. The committee shall also include a member of
28 the United States Congressional delegation and the Captain of
29 the Port of Miami as a representative of the United States
30 Coast Guard, as nonvoting, ex officio members. The policy
31 committee may meet monthly, but shall meet at least quarterly.

1 (b) A managing director who has the responsibility to
2 implement plans and programs.

3 (c) A working group consisting of all governmental
4 agencies that have jurisdiction in the Miami River area, as
5 well as representatives from business and civic associations.

6 (3) The policy committee shall have the following
7 powers and duties:

8 (a) Consolidate existing plans, programs, and
9 proposals into a coordinated strategic plan for improvement of
10 the Miami River and surrounding areas, addressing
11 environmental, economic, social, recreational, and aesthetic
12 issues. The committee shall monitor the progress on each
13 element of such plan and shall revise the plan regularly.

14 (b) Prepare an integrated financial plan using the
15 different jurisdictional agencies available for projected
16 financial resources. The committee shall monitor the progress
17 on each element of such plan and revise the plan regularly.

18 (c) Provide technical assistance and political support
19 as needed to help implement each element of the strategic and
20 financial plans.

21 (d) Accept any specifically defined coordinating
22 authority or function delegated to the committee by any level
23 of government through a memorandum of understanding or other
24 legal instrument.

25 (e) Publicize a semiannual report describing
26 accomplishments of the commission and each member agency, as
27 well as the status of each pending task. The committee shall
28 distribute the report to the City and County Commissions and
29 Mayors, the Governor, chair of the Dade County delegation,
30 stakeholders and the local media.

31

1 (f) Seek grants from public and private sources and
2 receive grant funds to provide for the enhancement of its
3 coordinating functions and activities and administer contracts
4 that achieve these goals.

5 (g) Coordinate a joint planning area agreement between
6 the Department of Community Affairs, the city, and the county
7 under the provisions of s. 163.3177(11)(a), (b), and (c),
8 Florida Statutes.

9 (h) Provide a forum for exchange of information and
10 facilitate the resolution of conflicts.

11 (i) Act as a clearinghouse for public information and
12 conduct public education programs.

13 (j) Establish the Miami River working group, appoint
14 members to the group, and organize subcommittees, delegate
15 tasks, and seek council from members of the working group as
16 necessary to carry out the powers and duties listed in this
17 subsection.

18 (k) Elect officers and adopt rules of procedure as
19 necessary to carry out the powers and duties listed above and
20 solicit appointing authorities to name replacements for policy
21 committee members who do not participate on a regular basis.

22 (l) Hire the managing director, who shall be
23 authorized to represent the commission and to implement all
24 policies, plans, and programs of the commission. The committee
25 shall employ any additional staff necessary to assist the
26 managing director.

27 Section 6. (1) No item, motion, directive, or policy
28 position that would impact or in any way diminish levels of
29 currently permitted commercial activity on the Miami River or
30 riverfront properties shall be adopted by the Miami River
31

1 Commission unless passed by a unanimous vote of the appointed
2 members of the commission then in office.

3 (2) No item, motion, directive, or policy position
4 suggesting, proposing, or otherwise promoting additional
5 taxes, fees, charges, or any other financial obligation on
6 owners of riverfront property or shipping companies or
7 operators shall be adopted by the Miami River Commission
8 unless passed by a unanimous vote of all appointed members of
9 the commission then in office.

10 Section 7. The Miami River Commission shall terminate
11 July 1, 2003, unless the Legislature, in a review of the
12 creation, operation, and accomplishments of the Miami River
13 Commission during the 2003 Regular Session, determines that
14 the commission should be continued and reenacts provisions
15 providing for its continuation.

16 Section 8. This act shall take effect upon becoming a
17 law.