

STORAGE NAME: h4687.wrm

DATE: April 7, 1998

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

BILL #: HB 4687 (formerly PCB WRM 98-04)

RELATING TO: Regional water supply authority governance

SPONSOR(S): Committee on Water and Resource Management

COMPANION BILL(S): HB 4027 (s) and SB 1442 (s)

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

- (1) Water & Resource Management YEAS 11 NAYS 0
 - (2)
 - (3)
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 - (5)
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I. SUMMARY:

On March 25, 1998, the House Committee on Water and Resource Management approved PCB WRM 98-04 with one amendment; the PCB has since been numbered HB 4687. The bill is designed to assist in the implementation of the governance restructuring of the West Coast Regional Water Supply Authority (WCRWSA). Specifically, the proposed committee bill would:

- o Under specific conditions limit the ability of member governments of any regional water supply authority, where an interlocal agreement had been signed pursuant to ss. 163.01 and 373.1962, F.S., to challenge permitting or other decisions through the Chapter 120, F.S., Administrative Procedures Act. Included in the interlocal agreements are provisions for member governments to have either waived their rights to challenge or have agreed to participate in alternative dispute resolution.
- o Amend s. 373.1963, F.S., to require that the interlocal agreement comply with certain provisions. Among the more notable provisions, in accordance with Section 4, Art. VIII, of the Florida Constitution, the member governments are authorized to relinquish to WCRWSA their individual rights to develop potable water sources, without the vote of their electors, except as otherwise provided under the terms of the interlocal agreement. Also, member governments would be prohibited from imposing any tax or fee upon WCRWSA in conjunction with water supply.
- o Authorize WCRWSA to use the powers of Part II of Chapter 159, F.S., for the financing of water supply facilities.
- o Provide that governmental or quasi-judicial boards or commissions established by local ordinance, general law, or special act, and whose members either serve on, or are appointed by, a member government, may be bound by the dispute resolution procedures set forth in the interlocal agreement.
- o Protect the current authority of the Southwest Florida Water Management District and the Department of Environmental Protection.
- o Amend s. 682.02, F.S., to specifically provide that in written interlocal agreements that parties may agree to arbitrate water use permitting disputes and other matters.
- o Amend s. 768.28, F.S., to provide that regional water supply authorities may indemnify and assume certain liabilities.
- o Specify that this act shall supersede any conflicting statutory provisions, whether contained in general or special law, that apply directly or indirectly to the exclusivity of water supply or withdrawal of water.

HB 4687 would take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Regional Water Supply Authorities:

Section 4, Art. VIII, of the 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., 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, F.S., 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 ss. 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 s. 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 plans to 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.

B. EFFECT OF PROPOSED CHANGES:

HB 4687 would assist in the implementation of the governance restructuring of WCRWSA. In order to simplify the discussion of the effect of this bill, the proposed changes are roughly grouped into those changes affecting the organization of WCRWSA and those involving external law.

As to those proposed changes related to the organization of WCRWSA, HB 4687 is generally consistent with the existing statutory direction found in ss. 373.1962 and 373.1963, F.S., as well as the recommendations received by the Legislature from WCRWSA. The amended s. 373.1963(1)(b), F.S., provides in accordance with s. 4, Art. VIII, of the Florida Constitution, that the member governments of WCRWSA are authorized to enter into a interlocal agreement with the following terms without the vote of their electors:

-- member governments relinquish to WCRWSA their individual rights to develop potable water sources except as otherwise provided in the interlocal agreement;

-- member governments may not impose any tax or fee upon WCRWSA in conjunction with the production or the supply of water not otherwise provided for in the interlocal agreement;

-- WCRWSA may use the powers of Part II, Chapter 159, F.S., for financing water supply facilities; and

-- member governments and any board or commission associated with member governments agreeing to be bound by the interlocal agreement shall be limited to the procedures in the agreement with regard to action that directly or indirectly restricts the use of lands or other activities related to the production or supply of water.

However, unlike the existing language in s. 373.1963, F.S., HB 4687 as amended requires that if the parties undertake governance that the resultant interlocal agreement **must** comply with certain existing requirements:

-- the parties agree that cooperative efforts are mandatory to supply adequate and dependable water without adverse environmental effects upon areas where water is withdrawn;

-- WCRWSA shall acquire full or lesser interests in all regionally significant wholesale water supply facilities owned by member governments at an agreed upon price;

-- WCRWSA shall charge a uniform wholesale rate to member governments for the wholesale supply of potable water;

-- the interlocal agreement may include alternative dispute resolution procedures for water use permitting;

-- provisions relating to the "partnership plan" between SWFWMD and WCRWSA; and

-- unless otherwise provided in the interlocal agreement, the WCRWSA board shall consist of nine voting members, all of whom must be elected officials (with two from Hillsborough, Pasco and Pinellas counties, respectively; and one from the City of Tampa, the City of New Port Richey, and the City of St. Petersburg, respectively).

HB 4687 as amended also repeals s. 373.1963(5), F.S. When requested by a member government of the West Coast Regional Water Supply Authority, this section requires the SWFWMD to review whether a water withdrawal within the jurisdictional boundaries of the member government is in compliance with applicable permits and regulations.

With regard to external changes, HB 4687 as amended proposes to amend a number of sections of law in order to ensure the effective implementation of the

governance restructuring. First, the bill amends s. 120.52(12), F.S., to exclude from the definition of "party," for purposes of the Florida APA, a member government to the extent that an interlocal agreement under ss. 163.01 and 373.1962, F.S., exists in which the member government agrees that its substantial interests are not affected or that it is bound by alternative dispute resolution. HB 4687 as amended provides that the exclusion is limited to only those particular types of disputes or controversies identified in an interlocal agreement.

The proposed committee bill also amends s. 682.02, F.S. It specifically provides that in any written interlocal agreement under ss. 163.01 and 373.1962, F.S., that parties may agree to arbitrate any controversy between them concerning water use permitting and other matters.

The third and final external change relates to s. 768.28, F.S., which provides for the waiver of sovereign immunity. Basically, HB 4687 as amended provides that s. 768.28(18), F.S., does not preclude a regional water supply authority from the indemnification and assumption of the liabilities associated with property acquired from member governments and arising from acts or omissions of the authority in performing the interlocal agreement.

Also, HB 4687 as amended adds that nothing in subsection (1) of s. 373.1963, F.S., shall modify the rights or responsibilities of SWFWMD or DEP pursuant to Chapters 373 and 403, F.S., and as otherwise set forth by statutes.

The very last portion of HB 4687 as amended provides that the provisions of the act supersede any conflicting provisions contained in all other general or special laws as they apply directly or indirectly to the exclusivity of water supply or withdrawal of water, including provisions relating to environmental effects. Moreover, the bill declares that its provisions are intended to be a complete revision of all laws related to a water supply authority created under ss. 373.1962 and 373.1963, F.S.

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?

Assuming the parties execute the interlocal agreement, then member governments would lose the right to impose a tax or charge on WCRWSA with regard to water supply activities.

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

Yes. Assuming the responsibility for the production of water shifts from local governments to WCRWSA because of an interlocal agreement executed pursuant to an amended s. 373.1963, F.S., WCRWSA would manage a regional wholesale water supply system serving the people of the northern Tampa Bay area.

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

No.

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

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Subject to the conditions of an interlocal agreement, the right of certain local governments to produce water would transfer to WCRWSA.

- (2) what is the cost of such responsibility at the new level/agency?

Indeterminate.

- (3) how is the new agency accountable to the people governed?

Under the terms of governance restructuring, the WCRWSA board would be comprised of elected officials who would represent the local government jurisdictions to be served.

2. Lower Taxes:

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

No.

- 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 120.52(12), 373.1963(1), 682.02, and 768.28(18), F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 120.52(12), F.S., to exclude from the definition of "party" as used in the Florida APA a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of said board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under ss. 120.569, 120.57, or 120.68, F.S., to the extent that an interlocal agreement under ss. 163.01 and 373.1962, F.S., exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. Specifies that this exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

Section 2: Amends s. 373.1963, F.S., to authorize the implementation of changes in governance recommended by WCRWSA in its reports to the Legislature. Repeals s. 373.1963(5), F.S., which requires the SWFWMD to review whether a water withdrawal is in compliance with applicable permits and regulations when requested by the member government of the West Coast Regional Water Supply Authority. Eliminates a reference to a supplemental report to be submitted to the President of the Senate and the Speaker of the House of Representatives. Provides that WCRWSA and its member governments may reconstitute

WCRWSA's governance under a voluntary interlocal agreement. Requires that the interlocal agreement comply with certain existing provisions in law. Provides that in accordance with s. 4, Art. VIII, of the Florida Constitution and notwithstanding s. 163.01, F.S., that the interlocal agreement may include the following terms, which are considered approved by the parties without a vote of their electors, upon execution of the interlocal agreement by all member governments and upon satisfaction of all conditions precedent in the interlocal agreement. Authorizes WCRWSA to use the powers provided in Part II, Chapter 159, F.S., for financing water treatment, production, or transmission facilities and provides that all such water facilities are considered a "manufacturing plant" for purposes of s. 159.27(5), F.S., and serve a public purpose. Provides that the interlocal agreement may include procedures for resolving their parties' differences regarding water management district proposed agency action in the water use permitting process within the authority. Eliminates provision stating that nothing herein or in said proceedings shall affect the rights of participants under Chapter 120, F.S. Provides that nothing in this subsection shall be construed to modify the rights or responsibilities of the authority, its member governments, except as otherwise provided herein, or the Southwest Florida Water Management or the department pursuant to Chapters 373 or 403, F.S., and as otherwise set forth by statutes.

Section 3: Amends s. 682.02, F.S., so that the section applies to written interlocal agreements under ss. 163.01 and 373.1962, F.S., in which two or more parties agree to submit to arbitration any controversy between them concerning water use permit applications and other matters, regardless of whether or not the water management district with jurisdiction over the subject application is a party to the interlocal agreement or a participant in the arbitration.

Section 4: Amends s. 768.28(18), F.S., to provide that the restrictions of this subsection do not prevent a regional water supply authority from indemnifying and assuming the liabilities of its member governments for obligations arising from past acts or omissions at or with property acquired from a member government by the authority and arising from the acts or omissions of the authority in performing activities contemplated by an interlocal agreement. Provides such indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants established by this section.

Section 5: Provides that the provisions of this act 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 any, in conjunction with the production and supply of potable water. Provides that provisions of this act are intended to be a complete revision of all laws related to a water supply authority created under ss. 373.1962 and 373.1963, F.S.

Section 6: Provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate. However, there are likely to be one-time fiscal impacts associated with the transfer of responsibility and infrastructure to WCRWSA from six local governments.

2. Recurring Effects:

Indeterminate. However, the loss of the right to tax or charge water supply activities by WCRWSA may affect the member governments, depending the extent of WCRWSA's activities within their jurisdiction. (The interlocal agreement currently under negotiation attempts to address this issue).

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. However, if the interlocal agreement becomes a reality, customers in certain local government jurisdictions may see higher water costs.

2. Direct Private Sector Benefits:

Indeterminate. However, if the interlocal agreement becomes a reality, customers in certain local government jurisdictions may see lower water costs.

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 4687 as amended does not impose any mandatory condition on local government, this bill does not invoke Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 4687 as amended does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

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

HB 4687 as amended does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 24, 1998, the House Committee on Water and Resource Management unanimously adopted PCB WRM 98-04. On that same date, members of the Committee also unanimously adopted a single amendment to PCB WRM 98-04. As a result of this amendment, the interlocal agreement authorized under s. 373.1963, F.S., can no longer contain a provision that prevents a member government from restricting or prohibiting the use of land by WCRWSA for water supply purposes under the member government's zoning, comprehensive planning, or other regulatory powers. On April 7, 1998, the PCB was numbered HB 4687.

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VII. SIGNATURES:

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