

By the Committee on Water & Resource Management and Representative Carlton

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; repealing s.  
11          373.1963(5), F.S., relating to a process for  
12          review of a consumptive use permit; amending s.  
13          682.02, F.S.; providing for the arbitration of  
14          certain controversies concerning water use;  
15          amending s. 768.28, F.S.; allowing an authority  
16          to indemnify its member governments; declaring  
17          legislative intent to supersede other laws;  
18          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. Subsection (5) of section 373.1963, Florida  
6 Statutes, is repealed and subsection (1) of that section, is  
7 amended to read:

8 373.1963 Assistance to West Coast Regional Water  
9 Supply Authority.--

10 (1) It is the intent of the Legislature to authorize  
11 ~~encourage and facilitate~~ the implementation of changes in  
12 governance recommended by the West Coast Regional Water Supply  
13 Authority in its reports ~~report~~ to the Legislature dated  
14 February 1, 1997, and. ~~The authority shall submit a~~  
15 ~~supplemental report to the President of the Senate and the~~  
16 ~~Speaker of the House of Representatives on the status of~~  
17 ~~implementing its prior recommendations for changes in~~  
18 ~~governance by January 5, 1998. The authority and its member~~  
19 governments may reconstitute the authority's ~~its~~ governance in  
20 ~~a manner consistent with its report to the Legislature, and~~  
21 ~~with the provisions set forth herein,~~ under a voluntary  
22 interlocal agreement with a term of not less than 20 years.  
23 The interlocal agreement must comply with this subsection,  
24 ~~which substantially provides~~ as follows:

25 (a) The authority and its member governments agree  
26 that cooperative efforts are mandatory to meet their water  
27 needs in a manner that will provide adequate and dependable  
28 supplies of water where needed without resulting in adverse  
29 environmental effects upon the areas from which the water is  
30 withdrawn or otherwise produced.

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1           (b) In accordance with s. 4, Art. VIII of the State  
2 Constitution and notwithstanding s. 163.01, the interlocal  
3 agreement may include the following terms, which are  
4 considered approved by the parties without a vote of their  
5 electors, upon execution of the interlocal agreement by all  
6 member governments and upon satisfaction of all conditions  
7 precedent in the interlocal agreement:~~To the extent provided~~  
8 ~~in the interlocal agreement, and to the extent permitted by~~  
9 ~~law.~~

10           1. All member governments shall relinquish to the  
11 authority their individual rights to develop potable water  
12 supply sources, except as otherwise provided in the interlocal  
13 agreement;

14           2. The authority shall be the sole and exclusive  
15 wholesale potable water supplier for all member governments;  
16 and

17           3. The authority shall have the absolute and  
18 unequivocal obligation to meet the wholesale needs of the  
19 member governments for potable water.

20           4. A member government may not impose any tax, fee, or  
21 charge upon the authority in conjunction with the production  
22 or supply of water not otherwise provided for in the  
23 interlocal agreement.

24           5. The authority may use the powers provided in part  
25 II of chapter 159 for financing and refinancing water  
26 treatment, production, or transmission facilities, including,  
27 but not limited to, desalinization facilities. All such water  
28 treatment, production, or transmission facilities are  
29 considered a "manufacturing plant" for purposes of s.  
30 159.27(5) and serve a paramount public purpose by providing  
31 water to citizens of the state.

1           6. A member government and any governmental or  
2 quasi-judicial board or commission established by local  
3 ordinance or general or special law where the governing  
4 membership of such board or commission is shared, in whole or  
5 in part, or appointed by a member government agreeing to be  
6 bound by the interlocal agreement shall be limited to the  
7 procedures set forth therein regarding actions that directly  
8 or indirectly restrict or prohibit the use of lands or other  
9 activities related to the production or supply of water.

10           (c) The authority shall acquire full or lesser  
11 interests in all regionally significant member government  
12 wholesale water supply facilities and tangible assets and each  
13 member government shall convey such interests in the  
14 facilities and assets to the authority, at an agreed value.

15           (d) The authority shall charge a uniform per gallon  
16 wholesale rate to member governments for the wholesale supply  
17 of potable water. All capital, operation, maintenance, and  
18 administrative costs for existing facilities and acquired  
19 facilities, authority master water plan facilities, and other  
20 future projects must be allocated to member governments based  
21 on water usage at the uniform per gallon wholesale rate.

22           ~~(e) To the extent provided in~~ The interlocal agreement  
23 may include ~~and to the extent permitted by law, member~~  
24 ~~governments shall develop~~ procedures for resolving the  
25 parties'~~their~~ differences regarding water management district  
26 proposed agency action in the water use permitting process  
27 within the authority. Such procedures should minimize the  
28 potential for litigation and include alternative dispute  
29 resolution. Any governmental or quasi-judicial board or  
30 commission established by local ordinance or general or  
31 special law where the governing members of such board or

1 commission is shared, in whole or in part, or appointed by a  
2 member government, may agree to be bound by the dispute  
3 resolution procedures set forth in the interlocal agreement.  
4 ~~Nothing herein or in said procedures shall affect the rights~~  
5 ~~of participants under chapter 120.~~

6 (f) Upon execution of the voluntary interlocal  
7 agreement provided for herein, the authority shall jointly  
8 develop with the Southwest Florida Water Management District  
9 alternative sources of potable water and transmission  
10 pipelines to interconnect regionally significant water supply  
11 sources and facilities of the authority in amounts sufficient  
12 to meet the needs of all member governments for a period of at  
13 least 20 years and for natural systems. Nothing herein,  
14 however, shall preclude the authority and its member  
15 governments from developing traditional water sources pursuant  
16 to the voluntary interlocal agreement. Development and  
17 construction costs for alternative source facilities, which  
18 may include a desalination facility and significant regional  
19 interconnects, must be borne as mutually agreed to by both the  
20 authority and the Southwest Florida Water Management District.  
21 Nothing herein shall preclude authority or district cost  
22 sharing with private entities for the construction or  
23 ownership of alternative source facilities. By December 31,  
24 1997, the authority and the Southwest Florida Water Management  
25 District shall:

26 1. Enter into a mutually acceptable agreement  
27 detailing the development and implementation of directives  
28 contained in this paragraph; or

29 2. Jointly prepare and submit to the President of the  
30 Senate and the Speaker of the House of Representatives a  
31 report describing the progress made and impediments

1 encountered in their attempts to implement the water resource  
2 development and water supply development directives contained  
3 in this paragraph.

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5 Nothing in this subsection shall be construed to modify the  
6 rights or responsibilities of the authority or its member  
7 governments, except as otherwise provided herein, or of the  
8 Southwest Florida Water Management District or the department  
9 pursuant to chapter 373 or chapter 403 and as otherwise set  
10 forth by statutes.

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

15 1. Three members from Hillsborough County who must be  
16 selected by the county commission; provided, however, that one  
17 member shall be selected by the Mayor of Tampa in the event  
18 that the City of Tampa elects to be a member of the authority;

19 2. Three members from Pasco County, two of whom must  
20 be selected by the county commission and one of whom must be  
21 selected by the City Council of New Port Richey;

22 3. Three members from Pinellas County, two of whom  
23 must be selected by the county commission and one of whom must  
24 be selected by the City Council of St. Petersburg.

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26 Except as otherwise provided in this section or in the  
27 voluntary interlocal agreement between the member governments,  
28 a majority vote shall bind the authority and its member  
29 governments in all matters relating to the funding of  
30 wholesale water supply, production, delivery, and related  
31 activities.

1           Section 3. Section 682.02, Florida Statutes, is  
2 amended to read:

3           682.02 Arbitration agreements made valid, irrevocable,  
4 and enforceable; scope.--Two or more parties may agree in  
5 writing to submit to arbitration any controversy existing  
6 between them at the time of the agreement, or they may include  
7 in a written contract a provision for the settlement by  
8 arbitration of any controversy thereafter arising between them  
9 relating to such contract or the failure or refusal to perform  
10 the whole or any part thereof. This section also applies to  
11 written interlocal agreements under ss. 163.01 and 373.1962 in  
12 which two or more parties agree to submit to arbitration any  
13 controversy between them concerning water use permit  
14 applications and other matters, regardless of whether or not  
15 the water management district with jurisdiction over the  
16 subject application is a party to the interlocal agreement or  
17 a participant in the arbitration.Such agreement or provision  
18 shall be valid, enforceable, and irrevocable without regard to  
19 the justiciable character of the controversy; provided that  
20 this act shall not apply to any such agreement or provision to  
21 arbitrate in which it is stipulated that this law shall not  
22 apply or to any arbitration or award thereunder.

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

25           768.28 Waiver of sovereign immunity in tort actions;  
26 recovery limits; limitation on attorney fees; statute of  
27 limitations; exclusions; indemnification; risk management  
28 programs.--

29           (18) Neither the state nor any agency or subdivision  
30 of the state waives any defense of sovereign immunity, or  
31 increases the limits of its liability, upon entering into a



1 contractual relationship with another agency or subdivision of  
2 the state. Such a contract must not contain any provision that  
3 requires one party to indemnify or insure the other party for  
4 the other party's negligence or to assume any liability for  
5 the other party's negligence. This does not preclude a party  
6 from requiring a nongovernmental entity to provide such  
7 indemnification or insurance. The restrictions of this  
8 subsection do not prevent a regional water supply authority  
9 from indemnifying and assuming the liabilities of its member  
10 governments for obligations arising from past acts or  
11 omissions at or with property acquired from a member  
12 government by the authority and arising from the acts or  
13 omissions of the authority in performing activities  
14 contemplated by an interlocal agreement. Such indemnification  
15 may not be considered to increase or otherwise waive the  
16 limits of liability to third-party claimants established by  
17 this section.

18 Section 5. The provisions of this act supersede any  
19 conflicting provisions contained in all other general or  
20 special laws or provisions thereof as they may apply directly  
21 or indirectly to the exclusivity of water supply or withdrawal  
22 of water, including provisions relating to the environmental  
23 effects, if any, in conjunction with the production and supply  
24 of potable water, and the provisions of this act are intended  
25 to be a complete revision of all laws related to a regional  
26 water supply authority created under ss. 373.1962 and  
27 373.1963, Florida Statutes.

28 Section 6. This act shall take effect upon becoming a  
29 law.

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HOUSE SUMMARY

Provides that a member government of a regional water supply authority is not considered a party in certain administrative proceedings when its participation is precluded by the contents of an interlocal agreement. Revises criteria for governance of the West Coast Regional Water Supply Authority and its member governments under interlocal agreements. Repeals a process for review of a consumptive use permit upon request of a member government alleging adverse impacts. Provides for arbitration of controversies concerning water use permit applications subject to certain interlocal agreements. Allows indemnification of member governments by a regional water supply authority. Provides that the provisions of the act are intended to revise and supersede certain general and special laws.