

STORAGE NAME: h0715s1.wrm

DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 715, HB 1249, HB 1321 and HB 1339

RELATING TO: Water resources

SPONSOR(S): Representative Laurent and others

STATUTE(S) AFFECTED: Amends ss. 259.032, 367.021, 367.022, 367.081, 367.171, 373.016, 373.019, 373.036, 373.042, 373.046, 373.0693, 373.073, 373.079, 373.223, 373.236, 373.507, 373.536, 373.59, 186.007, 186.009, 373.103, 373.114, 373.418, 373.456, 403.031 and 403.0891, Florida Statutes (F.S.). Creates ss. 373.0361, 373.0421, and 373.0381, F.S. Repeals ss. 373.026(10), 373.039, 373.0735 and 403.061(33), F.S.

COMPANION BILL(S): HB 715, HB 1249, SB 1562, HB 1321, HB 1339, SB 1412 & SB 1428 (all similar)

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 9 NAYS 2
- (2) FINANCE & TAXATION
- (3)

I. SUMMARY:

The committee substitute (CS) for HB 715, HB 1249, HB 1321 and HB 1339 primarily amends Chapter 373, F.S., to address five major issues:

1. Establishment/Implementation of minimum flows and levels (MFLs): CS/HB 715, et al requires the water management districts (WMDs) to consider changes and structural alterations to wetlands, surface waters and groundwater, and the effects such changes have had on a water resource when establishing MFLs, but it precludes WMDs from grandfathering-in significant harm caused by consumptive uses of water. It directs the WMDs to implement a recovery or prevention strategy if a waterbody falls below, or is projected to fall below, its MFL. The recovery or prevention strategy must include a timetable that will allow for development of additional water supplies and other measures as an offset concurrent with any reductions in permitted withdrawals. Finally, the bill recognizes that for some surface waterbodies, recovery of MFLs is not practical, and so gives the WMDs the discretion to not set MFLs in certain circumstances.

2. WMD Accountability: CS/ HB 715, et al provides for staggered appointments of WMD governing board members. The bill also provides for: more extensive review of WMD financial management and budgets; appointment of WMD executive directors by the Governor; and direction that attorneys employed by the WMDs must represent the legal interests or position of the governing board.

3. Water Resource and Water Supply Development: CS/HB 715, et al directs the WMDs to initiate water resource development to ensure water is available for all existing and future reasonable-beneficial uses and the environment. It creates stronger linkages among state, WMD and regional water planning. The bill specifies a number of water resource development activities. It says that while water supply development is primarily the responsibility of local governments, and publicly or privately owned utilities, the WMDs or the state shall assist in funding such projects under certain circumstances.

4. Local Sources First: CS/HB 715, et al directs WMDs to consider the availability of local sources when evaluating a water use permit (WUP) application which seeks the transport of water beyond overlying land, across county boundaries, or outside the watershed from which it was taken.

5. Duration of WUPs: CS/HB 715, et al requires WUPs be issued for 20 years if there is sufficient information to provide reasonable assurance that permit conditions will be met. The bill allows the WMDs to require a 5-year compliance report.

In addition, CS/HB 715, et al allows permissible water resource or water supply development projects on public lands acquired through the Conservation and Recreation Lands (CARL) program and the Save Our Rivers (SOR) program, under certain conditions. It also allows water and wastewater utilities to recover costs associated with environmental compliance or WUP conditions.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

History of the development of water law

Prior to the 1950's, the most common method of managing water in Florida was to create special single-purpose districts. Examples of special districts which were legislatively created include irrigation districts, water supply districts, sewer districts and water control districts. Florida enacted its first major multi-purpose water management district, the Central and Southern Florida Flood Control District, in 1949 in response to a major flood that had occurred two years earlier. Other multi-purpose districts were created in the mid-1950's, but no single entity was able to supervise or oversee their projects and operations.

Recognizing that Florida's fragmented approach to handling water issues was incapable of providing a long-term framework for responding to future problems, the Florida Legislature in 1955 created the Florida Water Resources Study Commission. This commission made recommendations that led to the passage of the first major piece of legislation related to water, the 1957 Florida Water Resources Act (the 1957 Act). The 1957 Act established a statewide administrative agency housed within the State Board of Conservation to oversee the development of Florida's water resources. This agency was authorized to issue permits to allow for the capture and use of excess surface and groundwater. It also allowed the agency to establish rules to mandate water conservation in areas of the state where withdrawals were endangering the resource due to the resulting saltwater intrusion.

Despite the the 1957 Act, Florida's water resource problems -- saltwater intrusion, water shortages, destruction of wetlands, and deterioration of water quality -- continued to grow through the 1960's and early 1970's. In the early 1970's a group of water law experts at the University of Florida drafted a Model Water Code for Florida. The Code took provisions of the western states' prior appropriations system and provisions of the eastern states' riparian system of water law and melded them to create a hybrid system of administrative water regulation. In 1972, a Governor's task force on resource management recommended that the Legislature adopt the Code. In 1972 the Legislature passed the Florida Water Resources Act (the 1972 act) which included much of the Model Water Code. This act, incorporated in Chapter 373, F.S., marked the beginning of the modern era of water management for Florida and remains largely unchanged as part of Florida law.

The 1972 Act created a two-tiered administrative structure. The former Department of Natural Resources (and later the former Department of Environmental Regulation) was given responsibility for administering Chapter 373, F.S., at the state level, with the day-to-day management functions to be carried out by five regional WMDs: the Northwest Florida, South Florida, Southwest Florida, St. Johns River and Suwannee River WMDs.

Currently, the Department of Environmental Protection (DEP), created in 1993 through a merger of the former departments of Natural Resources and Environmental Regulation, is responsible for water protection at the state level. Section 373.016(3), F.S., expresses the Legislature's intent to vest in the DEP "the power and responsibility to accomplish the conservation, protection, management,

and control of the waters of the state . . . with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts." Section 373.016(3), F.S., strongly encourages DEP to delegate this power "to the greatest extent practicable" to the governing boards of the WMDs, but retains general supervisory authority in DEP. In order to utilize and conserve the waters of the state, DEP also must coordinate, with local governments and other state agencies created to deal with water issues. This bifurcation of responsibility reflected the Legislature's understanding of the importance of the establishment of a statewide policy, but also its awareness of the diversity of water problems in different regions of the state and the variety of solutions to those problems.

In 1982, the Legislature provided legislative intent "that future growth and development planning reflect the limitations of the available ground water or other available water supplies" (s. 373.0395, F.S.). To that end, the Legislature mandated that the WMDs develop a groundwater basin resource availability inventory (commonly called a "safe yield study"). This inventory, once completed, must be given to each affected municipality, county, and regional planning agency. These agencies in turn are required to review the inventory for consistency with local government comprehensive plans and consider the inventory in future revisions of the plans. Each WMD has completed at least some portion of the required inventory.

Part II of Chapter 373, F.S., provides the statutory framework for consumptive use permitting, now called water use permitting. This regulatory system, enacted in 1972, was intended to supplant the common law doctrine of judicially determined water rights. It created what the Florida Supreme Court described as a "comprehensive administrative system of regulation, resource protection and water use permitting." (See Osceola County v. St. Johns River Water Management District, 504 So.2d 385 (1987)).

The law specifically recognizes state policy to "preserve natural resources, fish and wildlife" (s. 373.016(2)(e), F.S.). This policy can be achieved under Part II of Chapter 373, F.S. through the water use permitting system which regulates human activities that might adversely affect these resources. Each WMD was required by 1983 to implement a consumptive use permit program (s. 373.216, F. S.), which is now called a water use permit (WUP) program. District rules can impose reasonable conditions "to assure that [a] use is consistent with the overall objectives of the district or department and is not harmful to the water resources of the area" (s. 373.219, F.S.). This program does not apply to domestic consumption of water by individual users, or to wells under certain sizes.

In defining the criteria under which a WUP may be issued, the Legislature drew on the common law "reasonable use" test. It adopted a slightly revised standard known as "reasonable-beneficial use," which was incorporated into the law as one of three criteria to be used by the districts in issuing permits. The law defines reasonable-beneficial use as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest" (s. 373.019(4), F.S.).

Section 373.223, F.S., sets forth the standards to be applied in issuing a permit, known as the three-prong test. Any applicant for a permit must establish that the proposed use of water:

- Is a reasonable-beneficial use as defined in section 373.019(4), F.S.;
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.

When the WUP system was instituted, all existing water users who sought permits within two years after the applicable district adopted its rules were automatically given permits (s. 373.226, F.S.). All new applicants were subject to the three-prong test before being issued permits.

Establishment and Implementation of MFLs:

A major feature of the 1972 Act was the establishment of MFLs (s. 373.042, F.S.). MFLs are a tool for managing water resources in a manner that preserves the integrity of the hydrologic system while allowing appropriate uses of surface water and groundwater. MFLs are designed to help determine the amount of water a particular source can provide without causing "significant harm" to the water resource, and to facilitate a planning process in which projected demands can be compared to the available supply.

Until recently, the WMDs had established very few MFLs for surface and groundwater sources. In its 1996 session the Legislature required the Southwest Florida WMD (SWFWMD) to establish MFLs for priority water bodies (Chapter 96-339, Laws of Florida). SWFWMD has made significant progress in setting MFLs, and SWFWMD is on schedule to meet the statutory deadline of October 1, 1997. Additionally, the Governor's Executive Order 96-297 directed the WMDs to establish MFLs by the end of Fiscal Year 1999 for priority water bodies outside the geographic area specified in Chapter 96-299. Staff of the five WMDs say they expect to meet this deadline as well.

To date, MFLs generally have been implemented through WUPs, conservation measures, and occasionally through water shortage restrictions implemented in times of severe drought. Generally, WUP allocation levels are set to prevent "harm" to the water resource (s. 373.219, F.S.). MFLs prevent "significant harm" to the water resource (s. 373.042, F.S.), and emergency water shortage measures are taken to prevent "serious harm" to the water resource (s. 373.246, F.S.).

Concerns exist among some water users regarding what impact the establishment of MFLs will have on existing legal uses. These concerns focus on the issue of whether the limits set by MFLs will be implemented in a manner that will result in cutbacks in permitted withdrawals. Some argue that existing uses should be considered when the MFLs are established, thus protecting existing uses. Conversely, there is concern that if existing uses are taken into account, those uses that already have had an adverse impact on water resources or the ecology would continue, and the establishment of MFLs would not serve the purpose of preventing significant harm.

WMD Accountability:

In the 1972 Act, the Legislature recognized that the magnitude and complexity of water resource problems vary by region. As a result, while vesting responsibility in DEP to manage the waters of the state, the Legislature stated its intent that DEP delegate program responsibilities to the WMDs. The current water management system is regional rather than statewide. The DEP is responsible for administration of Chapter 373, F.S., at the state level, but program responsibilities have largely been delegated to the districts.

The Governor has some supervisory authority over the WMDs by virtue of his power to appoint WMD governing board members. One mechanism for increasing WMD accountability explored in recent years is increasing the Governor's oversight authority. In its 1996 session the Legislature passed a law providing the Governor with the authority to review WMD budgets, and to veto a WMD budget, in whole or in part (Chapter 96-339, Laws of Florida).

Water Resource and Supply Development:

The 1972 Act assigned planning a key role in managing the state's water resources and required adoption of a comprehensive plan for the development and use of the state's water resources - the State Water Use Plan. DEP has undertaken development of the plan on three separate occasions but a comprehensive water use plan has not been adopted.

However, water resources planning has not been lacking. In 1979, DEP offered for public comment a "state water use plan" based upon individual water management plans developed by the WMDs. However, that plan was never formally "adopted" as called for in Chapter 373, F. S., and DEP instead attempted to guide water resources planning through adoption of a "state water policy" by rule (Chapter 17-40 now Chapter 62-40, Florida Administrative Code). DEP recently completed the Florida Water Plan, incorporating some requirements of the State Water Use Plan. The Florida Water Plan is based largely upon the WMD water management plans. These plans are the result of a five-year planning effort that also has produced needs and sources assessments, designation of water use caution areas, progress towards establishing MFLs, and other water planning initiatives, including development of regional water supply plans by the South Florida WMD.

To date, the WMDs' primary role in regard to water supply development has been to regulate water use pursuant to Part II, Chapter 373, F.S., and, to a lesser extent, to engage in water supply planning. Section 373.1961, F.S., authorizes, but does not specifically require, the WMDs to engage in a much broader range of water supply activities, including the authority to develop and operate water production and transmission facilities for the purpose of supplying water to counties, municipalities, private utilities, and regional water supply authorities. Generally, the WMDs have not exercised such authority, although the South Florida WMD's operation of the Central and Southern Florida Flood Control Project could be considered a water supply distribution system. The WMDs' role has more typically consisted of water supply planning and technical assistance and, in some cases, financial assistance. For instance, SWFWMD has invested substantial sums of money into water resource development projects through its New Water Source Initiative program, which matches district and basin board ad valorem tax revenues with local and federal dollars. SWFWMD projects spending at least \$398 million by FY 2007.

Local Sources First:

Current statutes allow for permitted transfers beyond overlying lands, across county boundaries or out of watersheds when such transport is consistent with the public interest (s. 373.073, F.S.). This section also prohibits local government regulation of consumptive water use. The only present implementation of a "Local Sources First" policy is by SWFWMD, which incorporated the policy into its 1990-2010 Needs and Sources Plan. This policy simply states that "local sources are to be developed to the greatest extent feasible prior to importing water from distant sources."

Duration of WUPs:

Section 373.223, F.S., requires applicants for WUPs to meet three criteria prior to obtaining permits: (1) the proposed use of water must be a reasonable-beneficial use (defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest"); (2) the proposed use must not interfere with any presently existing legal use of water; and (3) the proposed use must be consistent with the public interest.

In addition to meeting the above requirements, applicants who are competing to use the same water supply must meet other statutory criteria. Section 373.233(1), F.S., requires WMD governing boards to approve or modify competing applications for WUPs according to which application best serves the public interest. Section 373.233(2), F.S. allows a governing board to "give preference" to an applicant seeking renewal of a permit over one seeking an initial permit when the two are competing for the same water supply. In effect, the provision allows the applicant who will put the water to the most beneficial use to obtain the permit, but if two or more applicants propose equally beneficial uses of the water, the applicant who is seeking renewal of an existing permit likely will be awarded the allocation. It should be noted that no WMD has ever used this provision and made water allocation decisions based on competing uses.

Once the governing board has determined whether an applicant qualifies for a WUP, it must establish a duration period for the permit, pursuant to section 373.236, F.S. That provision allows permits to be issued for "any period of time not exceeding 20 years." Under section 373.236(1), F.S., the duration decision may be based on a reasonable system of classification according to source of water supply or type of use, or both. Because WMD staff cannot always determine how significant an impact a proposed water use will have on a water source, or may not have enough data to determine how much water is available from a source without causing significant harm to the water resource, WMD governing boards frequently set permit durations for periods of less than 20 years.

Public Service Commission regulation of water and wastewater systems

Pursuant to Chapter 367, F.S., the Florida Public Service Commission (the commission), is responsible for regulating water and wastewater utilities in cities and counties that have ceded authority to it.

The water and wastewater utilities regulated by the commission frequently find themselves in a position of being required by DEP, the WMDs, or the federal Environmental Protection Agency to construct certain facilities and pollution control

devices, and later having to prove to the commission that these were reasonable and prudent investments. The commission agrees that when a utility has been required to incur costs in order to comply with environmental requirements, the utility should be able to recover those costs by passing them on to their customers. In fact, the commission has taken the position that it has always allowed utilities to recover the compliance costs required by an environmental regulatory agency. However, the conflict appears to arise when a utility incurs costs to meet an environmental standard, but the compliance measure was not specifically ordered by an environmental agency. In this situation utilities have been denied recovery of environmental compliance costs.

When the commission sets the rate a water or wastewater utility can charge its customers, one of the factors it considers is how much increase in capacity can be charged to current customers, and how much should be charged to future customers. Two different concepts are used in this determination. The first concept is "used and useful in the public service." This term, found in s. 367.081(2) F.S., is unique to Florida water and wastewater regulation. It is generally used to define those expenditures made by water or wastewater utilities which should be passed on to its customers in rates.

The second important term applied by the Public Service Commission is the "margin reserve." Margin reserve was defined the commission staff, in a proposed rule, to include "the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects." The proposed rule later states the relationship of "margin reserve" to the "used and useful" concept: "Margin reserve is an acknowledged component of the used and useful rate base determination that when requested and justified shall be included in rate cases . . ."

The commission and regulated interests have been actively debating the appropriate margin reserve period. The commission currently sets a margin reserve of 12 months for pipes and distribution systems, and 18 month for treatment plants. In 1991 the commission initiated rulemaking to extend the margin reserve. The proposed rule suggested extending the margin reserve period for treatment plants to five years. This rulemaking is still pending, and in April the commission will vote on a final margin reserve rule.

Uses of public conservation lands

In 1979, the Legislature created the Conservation and Recreation Lands (CARL) acquisition program that expanded earlier, smaller scale programs and provided a dedicated funding source. The CARL Trust Fund's major sources of revenue each year are a portion of the state's documentary stamp tax revenues, \$10 million annually from the state severance tax on phosphate, submerged land lease fees and interest earnings. These revenues generate between \$50 million and \$60 million annually. However, since 1990 the major source of funding for acquisition of CARL projects in Florida has been proceeds from Preservation 2000 bonds, sold in annual increments of \$300 million.

Each year, the Land Acquisition Advisory Committee, comprised of representatives of five state agencies ranks a list of proposed acquisitions; the Governor and

Cabinet, sitting as the Board of Trustees of the Internal Trust Fund, reviews and adopts this CARL list. DEP uses the list as a guide for setting land-acquisition priorities among four categories: priority projects, mega/multi-parcel projects, bargain/shared projects, and substantially complete projects. The majority of the acquisition projects on the list are lands which are undisturbed and have retained their natural resource values. At least two of the Everglades projects on the list are the sites of agricultural operations or have otherwise been disturbed by drainage activities.

Section 259.032 (3), F.S., specifies that lands may be purchased through the CARL program for the following purposes:

“(a) To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna representing a natural area unique to, or scarce within, a region of this state or a larger geographic area;

“(b) To conserve and protect lands within designated areas of critical state concern, if the proposed acquisition relates to the natural resource protection purposes of the designation;

“(c) To conserve and protect native species habitat or endangered or threatened species;

“(d) To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources which cannot otherwise be accomplished through local and state regulatory programs;

“(e) To provide areas, including recreational trails, for natural resource based recreation and other outdoor recreation on any part of any site compatible with conservation purposes;

“(f) To preserve significant archaeological or historic sites; or

“(g) To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes.”

The Preservation 2000 program has requirements in addition to the CARL purposes that focus on protection of valuable natural resources that are in peril.

Section 259.032 (9), F.S. specifies that all CARL lands shall be managed:

1. “..in a manner that will provide the greatest combination of benefits to the public and to the resources.”
2. “...for public outdoor recreation which is compatible with the conservation and protection of public lands.” and
3. “...for the purposes for which the lands were acquired...”

The statute also lists specific examples of recreational activities allowable on CARL lands: fishing, hunting, camping, bicycling, hiking, nature study, swimming, boating, canoeing, horseback riding, diving, birding, sailing, jogging, and other related outdoor activities.”

As a WMD counterpart to CARL, the Legislature in 1981 created the Save Our Rivers (SOR) program. The WMDs use monies within the Water Management Lands Trust Fund to purchase acreage for water management, supply, conservation and protection. The trust fund, which is administered by DEP, receives a share of state documentary stamp tax revenues that can be spent on land acquisition and management, and even to pay debt service on bonds issued for land-acquisition projects. The WMDs also receive a 30-percent share of the Preservation 2000 bond proceeds (about \$87 million to be split among the districts) for land acquisition. However, the SOR land purchases made with Preservation 2000 funds would be subject the restrictions in s. 259.101 (2), F.S., discussed above.

B. EFFECT OF PROPOSED CHANGES:

Establishment and Implementation of MFLs:

CS/HB 715, et al requires the WMDs to consider changes and structural alterations to wetlands, surface waters, and groundwater, and the effects such changes have had on the water resource, when establishing MFLs. This provision would require the WMDs to consider the effect of structural changes to water bodies, such as dams or channelization of rivers, as well as the impacts of major flood control works such as the South Florida WMD’s Central and Southern Florida Flood Control Project. In addition to considering the direct alterations caused by structural changes, the WMDs also would be required to consider indirect changes, such as changes to groundwater levels or hydrologically connected wetlands. The committee substitute specifically states that the consideration in this subparagraph is not to be construed to grandfather-in significant harm caused by consumptive use withdrawals.

CS/HB 715, et al also recognizes that some waterbodies can never be restored to their historic hydrologic functions, or that it is not practicable or technically feasible to do so. In such cases, the WMDs and DEP would have the discretion to not set MFLs. The WMDs also are directed to not set MFLs for surface waterbodies less than 25 acres in area, unless the surfacewater bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value, or are unique natural resources. Also exempt would be man-made waterbodies -- such as cooling ponds, drainage ditches, borrow pits, and mining pits -- that were constructed prior to a permitting program or are constructed pursuant to the conditions of a permit or a reclamation plan, unless they have a unique hydrologic value.

The WMDs are further directed to implement a recovery or prevention strategy if a waterbody falls below, or is projected to fall below, its MFL. The recovery or prevention strategy must include a timetable that will allow for development of additional water supplies to offset any reduction in permitted withdrawals. To the extent to which it is practical, the offset must be provided concurrent with any reductions in permitted withdrawals.

CS/HB 715, et al also extends the scientific peer review process to the establishment of MFLs in all five WMDs, not just three counties within SWFWMD, and makes several other refinements.

WMD Accountability:

CS/HB 715, et al provides for staggered appointments of WMD governing board members. Beginning January 1, 1999, in the first year of a Governor's four-year term in office the Governor shall appoint three members to the governing board of each WMD. In the second and third years the Governor shall appoint two members to the governing board of each WMD, except for SWFWMD, where the shall appoint three members the SWFWMD board. In the fourth year the Governor shall appoint two members of the governing board in each WMD, including SWFWMD.

The proposal also provides for each WMD executive director to be appointed by the Governor. Each appointment is to be made from among three recommendations by each respective WMD governing board. The initial appointment shall be subject to confirmation by the Senate, and re-confirmation every four years.

CS/HB 715, et al also requires WMD Basin Boards to prepare post audits, and it requires each WMD provide: 1) the tentative budget, 2) the adopted budget, 3) the past year's expenditures, and 4) the post audit to the Governor, the Speaker of the House, the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and to each county in which it has jurisdiction.

Additionally, the bill requires attorneys employed by the WMDs to represent the legal interests or position of the governing board. Explicitly stating that the attorney is employed by the governing board would place WMD attorneys in the same position as most other attorneys employed in local government. Attorneys employed by a school board, city council, county commission, or another local government board are employed by the board and represent the interests of the board. This would be a change from the way attorneys employed by the WMDs currently appear to operate. Most WMD attorneys appear to consider themselves employed by the organization, as would an attorney hired by an executive agency or a corporation. This view could be consistent with Rule 4-1.13, Rules Regulating the Florida Bar. This rule establishes a general principle that a "lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." However, under the provisions of the bill, WMD attorneys would clearly be in the employ of the governing board, not the WMD as a whole.

Water Resource and Supply Development:

CS/HB 715, et al defines "water resource development" as the formulation and implementation by the WMDs of regional water resource management strategies that range from data-collection to construction of groundwater storage systems. Water resource development is declared to be the responsibility of the WMDs.

Also defined is "water supply development," which is the planning, design, construction, operation and maintenance of public or private facilities for water

collection, treatment, transmission or distribution for sale, resale or end use. Water supply development is declared to be the responsibility of local governments and of government-owned and privately owned utilities, although the bill provides circumstances under which DEP and the WMDs can assist in such development.

The bill also clarifies existing water planning language, and forges stronger links among the Florida Water Plan (currently called the state water use plan), the WMD district water management plans, and the regional water supply plans. The WMDs are directed to plan on a 20-year time frame the development, management and protection of water resources needed to meet the existing and reasonably projected future uses. When planning to meet these needs, the WMD are directed to assure that water would be available to meet these needs during a 1-in-10 year drought event.

WMDs are directed to initiate water resource development to ensure water is available for all existing and future reasonable-beneficial uses and the environment, and participate in the following activities:

- formulate and implement regional water resources development strategies and programs;
- collect data and conduct research to improve the use of surface and groundwater resources for water supply purposes;
- implement nonstructural programs to protect and manage water resources;
- provide for the construction, operation, and maintenance of major public works facilities for replenishment, recapture, storage, and enhancement of surface and ground water resources;
- encourage and promote the development of new technology to maximize the reasonable-beneficial use of surface and groundwater resources;
- cooperate with and assist public and private utilities, regional water supply authorities, and public service corporations in the development of water supply delivery systems.

Local Sources First:

CS/HB 715, et al directs the WMDs to consider the availability of local sources when evaluating a WUP application which seeks the transport of water beyond overlying land, across county boundaries, or outside the watershed from which it was taken. Specifically, the bill directs the WMDs to consider the following factors when determining whether the proposed transport is consistent with the public interest:

- the proximity of the proposed source of water to the area in which it is to be used;
- other environmentally, economically, and technically feasible alternatives to the source being proposed, including desalination, reuse, stormwater, and aquifer storage and recovery;

- cumulative impacts due to groundwater withdrawals; and
- affected local governments.

The bill seeks to grandfather-in current litigation and Chapter 120, F.S., challenges which could be affected by the passage of this legislation, which would codify in statute for the first time any discussion of "Local Sources First."

Duration of WUPs:

CS/HB 715, et al requires WUPs be issued for 20 years if there is sufficient information to provide reasonable assurance that permit conditions will be met. The bill allows the WMDs to require a 5-year compliance report when it is necessary to maintain reasonable assurance that the conditions of the permit can continue to be met. The WMD may modify the permit after receipt of the compliance report. Permit modifications based on the 5-year compliance report shall not subject the permit to competition from other uses, if there is no increase in water allocation or permit duration, and no change in water source other than a change requested by a WMD. The bill also clarifies that these changes shall not be construed to limit the WMDs' or DEP's existing authority to modify or revoke WUPs.

Public Service Commission issues:

Under CS/HB 715, et al the commission must allow water and wastewater utilities to recover the full cost of environmental compliance. The bill defines environmental compliance costs as "reasonable expenses" incurred complying with federal, state, or local environmental laws. Additionally, the bill would require the commission to defer to determinations made in permits or enforcement actions by environmental agencies. These requirement would not, however, eliminate the commission's economic regulatory function; it retains the authority to determine whether a utility made reasonable expenditures in meeting the environmental standards.

The bill also deregulates nonpotable irrigation water in areas where potable water service is available from another source. The commission generally has not regulated these utilities in the past because there is other water available in the areas they serve, and therefore they are not monopolistic utilities which require the type of economic regulation imposed by the commission.

Finally, the bill deals with how much of current investment is "used and useful" to current customers and how long the "margin reserve" period should be. The bill provides that plant and lines for the next five years are "used and useful," the treatment plants and lines constructed to serve future customers for six or seven years are presumed to be "used and useful" unless it can be shown they are not. Treatment plants and pipes for use over seven years are presumed not be "used and useful," unless the utility can show by clear and convincing evidence that the investment is "used and useful."

Use of public lands

CS/HB 715, et al would allow lands acquired under the CARL and SOR programs to be used for permittable water resource and water supply development projects if the following conditions are met:

- MFLs have been established for priority water bodies on the land;
- the project complies with consumptive use permitting criteria; and
- the project is compatible with the purposes for which the lands were acquired.

CS/HB 715, et al would require that when a proposed water resource development or water supply development project is to be located on CARL lands, and the project is designed primarily for intercounty transport of water, the proposed project may not be capitalized with donor county millage revenues.

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?

Yes. Section 9 of CS/HB 715, et al requires the WMDs to adopt by rule portions of their regional water supply plans.

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

Yes. The water resources development provisions require the WMDs to “ensure sufficient water is available for all existing and future reasonable-beneficial uses and the environment . . .” These activities include planning, research, and construction and maintenance of public works projects. Some WMDs already have programs to develop water resources, such as SWFWMD’s New Water Source Initiative.

(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?

Not specifically. If the WMDs are required to bear the cost of ensuring water is available for all existing and future reasonable-beneficial uses these costs will be borne by the landowners in the WMDs through ad valorem taxes. The WMDs which do not already levy their maximum ad valorem tax rate have the authority to raise property taxes to pay for these additional costs.

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:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Section 16 of the bill states that “generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit...” For all practical purposes, this is no change from the current situation of water and wastewater utility customers paying, through rate adjustments, for improvements or expansions to those systems. As mentioned in C.2.a. above, if the WMDs must ensure adequate water exists for all existing and future reasonable-beneficial uses, then they may raise their ad valorem rates to generate the revenue needed to finance such projects. In this case, property owners -- most of whom benefit to some extent -- would be paying for water resource development.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 259.032, F.S., to include permissible water resource and water supply development as an acceptable use of lands acquired under the CARL program, when MFLs have been established for priority water bodies on the land; the project complies with consumptive use permitting criteria; and the project is compatible with the purposes for which the lands were acquired. Specifies that a water resource or water supply development project may not be capitalized from donor county millage revenues when the land for the project was purchased through the CARL Trust Fund and it is anticipated that the project is primarily designed for intercounty transport of ground or surface water.

Section 2: Amends s. 367.021, F.S., to add the definition of "environmental compliance costs," as it relates to water and wastewater systems.

Section 3: Amends s. 367.022, F.S., to exempt from Public Service Commission regulation any person who provides only nonpotable water for irrigation purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well.

Section 4: Amends s. 367.081, F.S., to extend margin reserve time lines for water and wastewater systems regulated by the Public Service Commission.

Section 5: Amends 367.171, F.S. to require "non-jurisdictional" counties to apply the provisions in s. 367.022, F.S. (definitions) and 367.081, F.S. (providing for reuse) when setting rates for privately owned utilities in their jurisdiction.

Section 6: Amends s. 373.016, F.S., the declaration of state water policy, to include the replenishment, recapture, and enhancement of surface or groundwater, and promotion of the availability of sufficient water for all existing and future reasonable-beneficial uses and the environment. Specifies that DEP and the WMDs shall take into account cumulative impacts on water resources and manage them to assure sustainability. Requires DEP and the WMDs to construe and apply the policies in the subsection (3) as a whole.

Section 7: Amends s. 373.019, F.S., to add definitions of "district water management plan;" "Florida water plan;" "regional water supply plan;" "water resource development;" and "water supply development." Renames "state water policy" to "water resource implementation rule." Renumbers existing definitions throughout.

Section 8: Amends s. 373.036, F.S. throughout. Renames the "state water use plan" to the "Florida Water Plan," and revises current requirements. Specifies that the Florida Water Plan shall include, but not be limited to, DEP programs and activities related to water supply, water quality, flood protection, floodplain management, and natural systems; DEP water quality standards; WMD water management plans; and the water resource implementation plan (currently the state water policy rule, Chapter 62-40, Florida Administrative Code). Directs each WMD to develop a water management plan to address water supply, water quality, flood protection, floodplain management, and natural systems. Specifies that these plans

shall be based on a 20-year planning horizon, and shall be updated every 5 years in cooperation with private interests and other governmental entities. Specifies public hearing requirements. Lists minimum types of information to be included in these plans, such as all established MFLs and a districtwide water supply assessment. Deletes less-specific provisions in the current statute that would be replaced by new requirements. Directs WMD governing boards to also give consideration to public recreation and the protection of fish and wildlife when developing the plans required under this section. Removes DEP authority to designate certain uses of a particular water supply, and gives it to the WMDs.

Section 9: Creates s. 373.0361, F.S., related to regional water supply planning. Directs each WMD governing board to initiate, by October 1, 1998, water supply planning for each water supply planning region identified in its district water management plan, where it determines that existing sources of water are inadequate over the 20-year planning period to supply water for all existing and projected reasonable-beneficial uses, and to sustain water resources and the related natural systems. Requires the WMDs to assure water would be available to meet these needs in a 1-in-10 drought event. Requires public input into this planning process. Specifies minimum components of each regional water supply plan, including water supply development options and time-tables and costs of water resource development projects. Specifies that the plan for funding water resource development shall be financially feasible. Directs the governing boards to adopt portions of their regional water supply plans by rule. Beginning November 15, 1997, directs DEP to submit to the Governor and the Legislature annual reports on the status of regional water supply planning. Specifies contents of report.

Section 10: Amends s. 373.042, F.S., to specify conditions under which a WMD would not have to establish MFLs for a surface waterbody, aquifer or water course. Directs each WMD, beginning November 15, 1997, to annually submit to DEP for review and approval a priority list and schedule for establishing MFLs. Specifies that the lists identify those waterbodies which the WMD will voluntarily undertake independent scientific peer review. Directs each WMD to publish its approved priority list in the Florida Administrative Weekly, beginning by January 1, 1998. Significantly revises scientific peer review procedures. Applies scientific peer review MFLs established in all 67 counties by all five WMDs, not only to the Southwest Florida WMD in establishing MFLs for Hillsborough, Pasco and Pinellas counties. Adds scientific or technical assumptions used to develop models to the type of information subject to peer review. Specifies that no MFL adopted by rule or formally noticed for adoption on or before May 2, 1997, shall be subject to peer review as provided in this section.

Section 11: Creates s. 373.0421, F.S. to require the WMDs to consider changes and structural alterations to wetlands, surface waters, and groundwater, and the effects such changes have had on the water resource when establishing MFLs. Specifies that the WMDs and DEP are not required to grandfather-in significant harm caused by consumptive uses. Recognizes existence of certain historic waterbodies that no longer serve their historic purpose, and that recovery of such waterbodies would not be economically or technically feasible, or which would cause adverse environmental or hydrologic impacts. Allows WMDs to decide not to set MFLs for such waterbodies. Directs the WMDs to implement a recovery or prevention strategy if a waterbody falls below, or is projected to fall below, its MFL

within 20 years. The recovery or prevention strategy must include a timetable that will allow for development of additional water supplies, etc. as an offset concurrent with any reductions in permitted withdrawals. Requires WMDs, beginning January 1, 1998, to begin submitting an annual report to the Governor and the Legislature on their progress in water resource management that addresses, at a minimum, all of the elements of this section.

Section 12: Amends s.373.046, F.S., related to interagency agreements. Allows WMDs to establish, where project or local government boundaries cross WMD lines, "single affected districts" for regulatory purposes.

Section 13: Amends s. 373.0693, F.S. to conform a cross-reference with statutory changes made in section 13 of the bill.

Section 14: Amends s. 373.073, F.S. to provide for staggered appointment of governing board members, commencing January 1, 1999. Deletes language made obsolete by the changes, and renumbers subsections, paragraphs and subparagraphs throughout.

Section 15: Amends s. 373.079, F.S. to provide that each of the WMD executive directors shall be appointed by the Governor. Provides that each appointment shall be made from among three recommendations by each respective WMD governing board, and that the initial appointment shall be subject to confirmation by the Senate. Specifies that each executive director shall be reconfirmed by the Senate every 4 years. Provides that attorneys employed by the WMDs shall represent the legal interests or position of the governing board.

Section 16: Creates s. 373.0831, F.S. Expresses legislative findings. Directs the WMDs to initiate water resource development to ensure water is available for all existing and future reasonable-beneficial uses and the environment. Specifies what constitutes water resource development activities. Specifies the role of local governments, government-owned and privately owned water utilities in taking the lead on water supply development. Directs WMDs to include in their budgets funding for water resource development projects. Specifies that water supply development projects which meet certain criteria are eligible for state and WMD funding assistance. Lists minimum criteria.

Section 17: Amends s. 373.223, F.S. to direct DEP or a WMD to consider the availability of local sources when evaluating a WUP application which seeks the transport of water beyond overlying land, across county boundaries, or outside the watershed from which it was taken. Lists factors for DEP or the WMD governing board to consider. Specifies that any permit decision made by a WMD governing board based on such considerations shall not affect certain types of litigation filed prior to the effective date of this act.

Section 18: Amends s. 373.236, F.S. to require WUPs be issued for 20 years if there is sufficient information to provide reasonable assurance that permit conditions will be met, and if that duration is requested. Allows the WMDs to require a 5-year compliance report when it is necessary to maintain reasonable assurance that the conditions of the permit can continue to be met and to modify the permit after receipt of the compliance report. Provides that permit modifications based on the

compliance report shall not subject the permit to competition from other uses, if there is no increase in the permitted allocation, the duration of the permit, or no change in source unless the WMD requests such change. Clarifies that this subsection shall not be construed to limit the existing authority of the DEP or a WMD to modify or revoke WUPs.

Section 19: Directs DEP, in coordination with the state Department of Health and the appropriate WMD, to develop a proposal to re-evaluate areas of the state previously delineated because of ethylene dibromide (EDB) and other chemical contamination of groundwater.

Section 20: Amends s. 373.507, F.S. to require WMD basin boards to prepare postaudits. Provides that each WMD provide: 1.) the tentative budget; 2.) the adopted budget; 3.) the past year's expenditures; and 4.) the postaudit to the Governor, the Speaker of the House, the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

Section 21: Amends s. 373.536, F.S. to provide notice provisions for WMD budget hearings. Requires WMDs to specifically identify administrative and operating expenses in the budget, and how they allocated for these activities and programs in proportion to the time, personnel, and resources devoted to them. Requires the WMDs to submit by August 1 of each year a tentative budget to the Governor, the Speaker of the House, the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

Section 22: Amends s. 373.59, F.S., to allow WMD lands acquired with funds from the Water Management Lands Trust Fund to be used for permissible water resource and water supply development projects when MFLs have been established for priority water bodies on the land; the project complies with consumptive use permitting criteria; and the project is compatible with the purposes for which the lands were acquired. Deletes obsolete language.

Section 23: Amends s. 186.007, F.S., to correct a cross-reference.

Section 24: Amends s. 186.009, F.S., to correct a cross-reference.

Section 25: Amends s. 373.103, F.S., to correct a cross-reference.

Section 26: Amends s. 373.114, F.S., to correct a cross-reference.

Section 27: Amends s. 373.418, F.S., to correct a cross-reference.

Section 28: Amends s. 373.456, F.S., to correct a cross-reference.

Section 29: Amends s. 403.031, F.S., to correct a cross-reference.

Section 30: Amends s. 403.0891, F.S., to correct a cross reference.

Section 31: Repeals s. 373.0735, F.S., effective January 1, 1999.

Section 32: Repeals subsection (10) of s. 373.026, F.S.; s. 373.039, F.S.; and subsection (33) of s. 403.061, F.S.

Section 33: Exempts from the provisions of this bill the establishment and implementation of MFLs for only those priority waterbodies in Pasco County listed pursuant to Chapter 96-339, Laws of Florida, and scientific peer review of the data, etc. used in establishing said MFLs.

Section 34: Provides that this act shall take effect October 1, 1997, unless otherwise provided herein.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. Section 16 of the committee substitute indicates that water supply development projects that meet certain criteria would be eligible for state funding. It does not specify the source of the funding or from which state agency budget this funding would be made available.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The water resource development provisions of this committee substitute could have a significant recurring fiscal impact on the WMDs. The size of the fiscal impact cannot be determined at this time, in part because this proposed legislation does not specify who will bear the cost of the water resource development. For instance, section 16 requires the WMDs to "provide for the construction, operation, and maintenance of major public works facilities for replenishment, recapture, storage, and enhancement or surface and groundwater resource in the district." If the WMDs pay for these major public

works facilities out of their ad valorem tax revenues, the fiscal impact on the WMDs will be substantial. However, if these public works programs are paid for through another funding mechanism, or cost sharing with the direct beneficiaries of the project, the fiscal impact will not be as great.

Similarly, legislative direction expressed in section 16 for the WMDs to contribute funding assistance to eligible water supply development projects would have an indeterminate financial impact on the agencies' budgets.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. If the WMDs are required to bear the cost of ensuing water is available for all existing and future reasonable-beneficial uses these costs will be borne by the land-owners in the WMDs through ad valorem taxes. The WMDs which do not already levy their maximum ad valorem tax rate may raise property taxes to help pay for these projects.

The sections of the bill that deal with water and wastewater utility issues will have economic impacts on the privately-owned utilities and the ratepayers. The utilities have completed a model of the effects of the bill on rates, and Public Service Commission staff has reviewed the model and found it to be accurate. The model predicts a short-term rate increase of 5 percent to 10 percent, but that in three to five years water rates will be equal to or lower than projected rates under the current policy. This short-term increase, but projected long-term decrease in water rates is due to utilities expanding facilities in larger stages and taking advantage of economies of scale.

2. Direct Private Sector Benefits:

Indeterminate, but many provisions of the committee substitute are expected to be beneficial to the private sector. First, it expresses legislative intent for the WMDs to "ensure sufficient water is available for all existing and future reasonable-beneficial uses and the environment," so water should always be plentiful to practically anyone who needs or wants it. Second, the required phased-in implementation of MFLs could benefit the private sector, because in the event that a reduction in water withdrawals from a particular source is necessary in order to avoid violation of an MFL, the reduction cannot be implemented until the WMD develops an alternative water source.

Additionally, longer-duration permits could benefit the private sector by reducing the number of permit renewal applications (and thus the total costs) a water user may be required to file over time. The longer-duration permits also would provide business with a longer period in which to recover the costs of capital investment necessary to receive and utilize the water.

Based on the utility issues in the bill, the economic benefit conferred on ratepayers will be a long-term reduction in water rates, even though there will be a short-term 5 percent to 10 percent increase in rates. The utilities also will incur a benefit under the bill because they will have greater certainty that they will be able to recover environmental compliance costs, and the five-year margin reserve period will allow utilities to stage construction more cost effectively.

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

Indeterminate. The legislative direction to the WMDs to promote the availability of water for all existing and future reasonable-beneficial uses likely would eliminate the current potential for competition among water users for a finite supply of water.

Also, the deregulation of non-potable irrigation water rates in areas where potable water service is available from another source is expected to promote competition and private enterprise.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of CS/HB 715, et al because the bill does not require cities and counties to expend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

Charles R. Fletcher/Joyce Pugh

Joyce Pugh