

By Senator Laurent

17-1184A-00

1 A bill to be entitled
2 An act relating to the consumptive use of
3 water; creating s. 373.2705, F.S.; creating a
4 pilot program in the Southern Water Use Caution
5 Area for market-based approaches to water-use
6 leases; expressing legislative findings and
7 intent; including definitions; specifying
8 framework and procedures for the pilot program
9 in which consumptive use permittees may lease
10 the use of their allocated water; specifying
11 conditions of the contract between permittees
12 and those who lease the use of their water;
13 prescribing the authority of the Southwest
14 Florida Water Management District; amending s.
15 373.219, F.S.; providing an exemption from
16 permit requirements for lessees under the pilot
17 program; amending s. 373.236, F.S.; providing
18 for the duration of permits; directing the
19 water management district to submit a report of
20 the pilot program's status, beginning March 1,
21 2002; providing an effective date.

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

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25 Section 1. Section 373.2705, Florida Statutes, is
26 created to read:

27 373.2705 Southern Water Use Caution Area pilot
28 program.--

29 (1)(a) The Legislature finds that the state's five
30 water management districts have identified through their
31 regional water supply planning efforts that in the next 20

1 years, Florida's water consumption will have increased by 1.8
2 billion gallons a day, to a total of 9 billion gallons a day,
3 and could cost an estimated \$6 billion to implement.

4 (b) The Legislature finds that within the Southern
5 Water Use Caution Area of the Southwest Florida Water
6 Management District, the total permitted water allocations for
7 all water-use permittees is at least double the region's
8 sustainable yield of 550 million gallons to 650 million
9 gallons of water a day. Estimated actual water usage in the
10 region also is about 650 million gallons a day.

11 (c) The Legislature finds that the existing
12 bureaucratic structure for regulating consumptive uses of
13 water may be too slow and costly to meet these future water
14 needs and is too dependent on taxpayer-funded solutions.

15 (d) The Legislature finds that despite this heavily
16 regulated structure natural systems are suffering, even as
17 long-term recovery strategies are being implemented, because
18 the water management districts continue to issue water-use
19 permits without the benefit of sufficient data and established
20 minimum flows and levels as required by s. 373.042.

21 (e) The Legislature finds that private-sector market
22 approaches could provide the flexibility, innovation, and cost
23 efficiency lacking in the current regulatory structure for
24 consumption of water, as long as the water needs of natural
25 systems are protected.

26 (2)(a) It is the intent of the Legislature that the
27 Southwest Florida Water Management District expeditiously
28 adopt minimum flows and levels for its designated significant
29 waterbodies in the Southern Water Use Caution Area in order to
30 prevent further environmental damage to the region's vital
31 natural systems.

1 (b) Further, the Legislature intends for the district
2 to make available opportunities for water-use leases in the
3 Southern Water Use Caution Area which reduce the chance for
4 significant environmental harm, protect domestic water users
5 and existing users, promote conservation, and provide
6 efficient and cost-effective transport and use of water
7 without expanding regulatory controls.

8 (c) It is the Legislature's intent to create a
9 voluntary program within the Southern Water Use Caution Area
10 whereby water-use permittees may lease the use of all or part
11 of their permitted allocations as adjusted under subsection
12 (6) to third parties, who would not be required to obtain
13 individual water use permits.

14 (3) As used in this section, the term:

15 (a) "Aquifer transfer" means those leases of water use
16 where the lessor's groundwater withdrawal point is in a
17 different location from the lessee's groundwater withdrawal
18 point.

19 (b) "Domestic water use" means the use of water for
20 the individual personal household purposes of drinking,
21 bathing, cooking, or sanitation at a single-family dwelling or
22 duplex if the water is obtained from one well for each
23 single-family dwelling or duplex and no water-use permit is
24 required.

25 (c) "Most-impacted area," or "MIA" means that area
26 within the Southern Water Use Caution Area as set forth in
27 Section 7.2.8.A and Figure 7.2-2, of the Southwest Florida
28 Water Management District's Basis of Review.

29 (d) "Southern Water Use Caution Area" means that
30 portion of the Southwest Florida Water Management District
31 which has been designated pursuant to chapter 40D-2.801,

1 Florida Administrative Code. It encompasses all of Manatee,
2 Sarasota, Hardee, and DeSoto counties and portions of
3 Hillsborough, Charlotte, Polk, and Highlands County.

4 (e) "Three-year-average actual usage," in the context
5 of the pilot program means the average of the three highest
6 annual amounts of water used by a permittee during the period
7 1989-1999. The district shall determine this average for each
8 permittee participating in the pilot program, using metered
9 data, if available; otherwise, the district shall determine a
10 participant's 3-year-average actual usage based on best
11 available estimates of average water use by similar users
12 within the Southern Water Use Caution Area.

13 (4)(a) By December 31, 2000, the district shall
14 establish minimum flows or levels for the following
15 waterbodies in the Southern Water Use Caution Area:

- 16 1. The Floridan Aquifer;
- 17 2. The Upper Peace River;
- 18 3. Lakes Eagle, McLeod, Wales, Clinch, and Crooked in
19 Polk County; and
- 20 4. Lakes Lotela, Letta, Placid, and Jackson in
21 Highlands County.

22 (b) In order to provide adequate due process while
23 ensuring timely development of minimum flows and levels under
24 this subsection, proposed rules authorized by s. 373.0421 will
25 be ineffective pending resolution of an administrative
26 proceeding under s. 120.54(3), s. 120.56, s. 120.569, or s.
27 120.57. However, pending resolution of the administrative
28 proceedings, the district may continue evaluating the permits
29 of participants in the pilot program as authorized by
30 subsections (6) and (7), if the district substantiates those
31 actions using the underlying bases for the minimum flows and

1 level rules without the benefit of any legal presumption
2 favoring or in deference to the challenged rules or orders.

3 (5) From the water available in the region, the
4 district shall account for the needs of the natural systems,
5 as determined under subsection (4), and the estimated amount
6 of water necessary to supply domestic users. The amount of
7 water in excess of that amount is the baseline by which the
8 district evaluates the water-use permits whose holders seek to
9 participate in the pilot program.

10 (6) Beginning January 3, 2001, most water-use
11 permittees within the Southern Water Use Caution Area shall
12 have the opportunity to participate in a voluntary program by
13 which the district evaluates their permitted quantities and
14 amount of actual water use. Prohibited from participation in
15 the pilot program are aquifer transfers of water where the
16 potential lessor's withdrawal point is outside the
17 most-impacted area and the potential lessee's withdrawal point
18 is within the most-impacted area, because this would create a
19 currently prohibited new groundwater withdrawal within the
20 most-impacted area and potentially increase the risk of
21 saltwater intrusion.

22 (a) Agricultural water-use permittees who decide to
23 participate in the pilot program may lease to third parties
24 all or part of their 3-year-average actual usage, as
25 determined by the district, to be at or above the source
26 waterbody's minimum flow or level.

27 (b) Public supply water-use permittees who decide to
28 participate in the pilot program may lease to third parties
29 all or part of their 3-year-average actual usage, as
30 determined by the district.

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1 (c) Industrial water-use permittees who decide to
2 participate in the pilot program may lease to third parties
3 all or part of their 3-year-average actual usage, as
4 determined by the district.

5 (d) Existing permittees under paragraphs (a)-(c) whose
6 3-year-average actual usage is determined by the district to
7 exceed the source waterbody's minimum flow or level may not
8 participate in the water-use lease program unless they
9 implement measures within 1 year after joining the program to
10 reduce their actual use so that it complies with the minimum
11 flow or level of the appropriate source waterbody. Permittees
12 in these categories may not lease to a third party more water
13 than is sustainable under the source waterbody's minimum flow
14 or level.

15 (e) 1. Existing permittees who apply to participate in
16 this program shall notify the district within 90 days after
17 receiving its evaluation of their allocations and actual usage
18 as to whether they wish to pursue contractual leases for the
19 use of their allocated water. The district shall adjust the
20 water-use permits of each participant to designate the
21 3-year-average use as the maximum permitted quantity.

22 2. Those permittees who choose not to participate
23 shall continue to operate under the terms and conditions of
24 their existing water-use permits until time for renewal or
25 modification or unless the district exercises its authority
26 under ss. 373.243 and 373.246.

27 (f) Only those permittees who apply to participate in
28 this program may enter into water-use lease contracts with
29 third parties under this section.

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1 (g) By April 3, 2001, the district shall begin issuing
2 its determinations and notifying permittees who have applied
3 to participate in the pilot program.

4 (7)(a) In addition, persons or entities who develop
5 new water supplies through techniques including, but not
6 limited to, aquifer recharge, aquifer storage and recovery,
7 and surface water reservoirs, must be given the opportunity to
8 participate in the pilot program under the same procedures and
9 guidelines as those afforded by subsection (6), and may enter
10 into contractual arrangements to lease the use of all or part
11 of the new water quantities.

12 (b) The persons or entities specified in paragraph (a)
13 may include existing water-use permittees who either obtain
14 separate water-use permits from the district to withdraw the
15 additional water or are allowed to modify their current
16 permits, or they may be first-time applicants for water-use
17 permits within the Southern Water Use Caution Area.

18 (8)(a) Notwithstanding s. 373.236(1), the duration of
19 the water-use permits for those permittees who participate in
20 the pilot program shall be extended by an additional 20 years
21 from the date of the first notarized lease, subject to the
22 provisions of ss. 373.243 and 373.246. For those
23 participating permittees under subsection (7), the minimum
24 duration of their new water-use permits is 20 years.

25 (b) The district shall modify the extended permit of
26 any existing or new permittee choosing not to participate in
27 the pilot program through nonrenewal of an existing lease, or
28 failure to execute a lease agreement with a new lessee upon
29 expiration of the initial lease, by revoking the 20-year
30 permit extension.

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1 (c) Water-use permittees who participate in the pilot
2 program are not subject to the competing-applications
3 provisions of s. 373.233 or the local-sources-first
4 considerations of s. 373.223(3) at the time of permit renewal,
5 if they meet all other statutory requirements. However,
6 participants' renewal applications that are filed after the
7 pilot program has expired are subject to ss. 373.233 and
8 373.223(3).

9 (9) Water-use permittees participating in the program
10 may enter into contracts with third parties to lease all or a
11 portion of their water usage, as determined under subsection
12 (6), or new water created under subsection (7), for
13 consumption within the Southern Water Use Caution Area. Each
14 contract may be in force for a period not to exceed 5 years
15 and may be renewed. A contract may not be executed or renewed
16 for a term that exceeds the duration of the underlying permit.
17 Each contract must include the following information:

18 (a) Name, mailing address, and business phone number
19 of the lessor and the lessee;

20 (b) The location of the water whose use is to be
21 leased and the daily average amount;

22 (c) The purposes for which the lessee intends to use
23 the water;

24 (d) The financial consideration to be paid by the
25 lessee for the use of the water;

26 (e) A statement that the lease amount contracted for
27 does not adversely affect domestic or existing water users;

28 (f) A statement that the district has the authority to
29 fine permittees who violate the terms of their water-use
30 permits or to modify or revoke the underlying permit under ss.
31 373.243 and 373.246;

1 (g) A requirement that the lessor and the lessee
2 install meters to monitor the actual water usage and that
3 quarterly metering reports be submitted to the district by
4 both parties;

5 (h) A statement notifying the lessee that he or she
6 may be required to obtain environmental resource permits, or
7 other permits or licenses, depending on the method of
8 withdrawing and transporting the water; and

9 (i) A statement that the holder of the underlying
10 permit is subject to legal action by the district if his or
11 her lessees withdraw more water than allowed under the
12 water-use permit.

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14 The lessor shall forward a copy of each contract to the
15 Southwest Florida Water Management District before it is
16 executed.

17 (10)(a) Before executing any lease involving aquifer
18 transfer, the district has 30 days with which to evaluate the
19 lessee's proposed use in the context of its impact on existing
20 users, its impact on local environmental conditions, and
21 whether it is a reasonable-beneficial use. If the district
22 determines the proposed aquifer transfer would create adverse
23 impacts on existing users or adverse localized environmental
24 impacts, or is not a reasonable-beneficial use, the district
25 shall notify the proposed lessor and the lessee by certified
26 mail by the 30th day. The lease may not be executed until the
27 district's concerns are addressed.

28 (b) If the proposed lessor and lessee are not notified
29 by the district within the 30-day period, the lease is
30 presumed to meet the evaluation criteria and may be executed.

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1 (11) If a water-use permittee participating in the
2 program or a lessee, individually or in combination, withdraws
3 more water than allowed by the terms of the underlying
4 water-use permit, the permittee is subject to the following
5 penalties:

6 (a) Upon a first violation of the permitted water
7 withdrawal amount, the underlying permittee shall be issued a
8 warning by the district.

9 (b) Upon a second violation of the permitted water
10 withdrawal amount within a period of 36 months from the date
11 of the first violation, the underlying permittee is subject to
12 a fine of \$1,000 or \$1 for every 1,000 gallons of water
13 overpumped, whichever is greater. These fines shall be
14 collected by the district and deposited into funds for permit
15 enforcement.

16 (c) Upon a third violation of the permitted water
17 withdrawal amount within a period of 36 months from the date
18 of the first violation, the underlying permittee shall be
19 subject to a fine of \$2,000 or \$2 for every 1,000 gallons of
20 water overpumped, whichever is greater. These fines shall be
21 collected by the district and deposited into funds for permit
22 enforcement.

23 (d) Upon a fourth or subsequent violation of the
24 permitted water withdrawal amount within a period of 36 months
25 from the date of the first violation, the underlying permittee
26 shall be subject to modification or revocation of the existing
27 water-use permit by the district under ss. 373.243 and
28 373.246.

29 (12) Legal action may not be brought against the
30 district or the state by a lessor or lessee because of breach
31 of contract in a water-transfer lease.

1 (13)(a) A lessee may not transfer outside the Southern
2 Water Use Caution Area the water obtained under a contract
3 pursuant to this section.

4 (b) A lessee may not enter into an agreement to
5 further sublease the use of water to another party.

6 (14) To reduce the possibility that under this program
7 water will be stored in order to artificially create
8 shortages, lessees must begin using the water within 12 months
9 after the contract is executed.

10 (15) This section expires March 3, 2015.

11 Section 2. Subsection (1) of section 373.219, Florida
12 Statutes, is amended to read:

13 373.219 Permits required.--

14 (1) The governing board or the department may require
15 such permits for consumptive use of water and may impose such
16 reasonable conditions as are necessary to assure that such use
17 is consistent with the overall objectives of the district or
18 department and is not harmful to the water resources of the
19 area. However, a no permit is not shall be required for
20 domestic consumption of water by individual users or for
21 lessees of water contracted from permittees under s. 373.2705.

22 Section 3. Subsection (1) of section 373.236, Florida
23 Statutes, is amended to read:

24 373.236 Duration of permits; compliance reports.--

25 (1)(a) With the exception of permits for participants
26 in the water-use leasing pilot program under s. 373.2705, all
27 permits shall be granted for a period of 20 years, if
28 requested for that period of time, if there is sufficient data
29 to provide reasonable assurance that the conditions for permit
30 issuance will be met for the duration of the permit;
31 otherwise, permits may be issued for shorter durations which

1 reflect the period for which such reasonable assurances can be
2 provided. The governing board or the department may base the
3 duration of permits on a reasonable system of classification
4 according to source of supply or type of use, or both.

5 (b) Permits of participants in the water-use leasing
6 pilot program shall initially be extended for an additional 20
7 years. Subsequent renewals of permits of participants in the
8 program shall be for a duration of 20 years.

9 Section 4. Every March 1, beginning in the year 2002,
10 the Southwest Florida Water Management District shall submit a
11 report to the Governor, the President of the Senate, and the
12 Speaker of the House of Representatives detailing the status
13 of the water-use transfer program. The report shall specify,
14 without limitation, the number of participants in the program,
15 the amount of water being transferred, and the environmental
16 effects of the program.

17 Section 5. This act shall take effect upon becoming a
18 law.

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21 SENATE SUMMARY

22 Creates a pilot program in the Southern Water Use Caution
23 Area of the Southwest Florida Water Management District
24 allowing water-use permittees to lease their allocations
25 of water to third parties who would not be required to
26 obtain individual use permits. Provides criteria for
27 participation in the pilot program. Provides penalties
28 for overpumping. Requires the water management district
29 to annually report on the pilot program.
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