STORAGE NAME: h1757s2.gg
DATE: April 24, 2000

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS

BILL #: CS/CS/HB 1757

RELATING TO: Water resources

SPONSOR(S): Committee on General Government Appropriations, Committee on Environmental Protection, Committee on Water & Resource Management, Representative Alexander and others

TIED BILL(S): None

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

(1) WATER & RESOURCE MANAGEMENT YEAS 10 NAYS 1
(2) ENVIRONMENTAL PROTECTION YEAS 10 NAYS 1
(3) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
(4) GENERAL GOVERNMENT APPROPRIATIONS YEAS 7 NAYS 1

I. SUMMARY:

CS/CS/HB 1757 makes numerous changes and revisions to s. 403.0882, F.S., relating to the permitting of demineralization and reverse/osmosis facilities. It directs the Department of Environmental Protection (DEP) to draft rules addressing the mechanics of the permitting process for demineralization and to establish a technical advisory committee to assist with the rule development. The bill addresses the evaluation of toxicity tests in relation to permitting these facilities, and states that the failure of these tests due to the presence of specific, naturally occurring source water constituents (e.g. calcium, potassium, sodium, etc.) cannot be used as the basis to deny a permit. It also provides a narrowly defined exemption from the mixing zone prohibition in Outstanding Florida Waters (OFWs) for those demineralization discharges that contain specific, naturally occurring source water constituents and can be sufficiently diluted. These discharges must be clearly in the public interest.

CS/CS/HB 1757 also creates s. 403.065, F.S., requiring classification and permitting of aquifer storage and recovery (ASR) wells, consistent with the Federal Safe Drinking Water Act. It authorizes DEP to adopt rules for ASR regulation and to implement the provisions of s. 403.065, F.S. Conditions are specified that must be met in order for ASR wells to qualify for or be granted a zone of discharge for sodium, fecal coliform, or secondary drinking water standards. Requirements include conditions intended to protect existing or future public or private drinking water supplies, ground water monitoring, and a demonstration of environmental benefits. DEP is authorized to specify by permit condition the limits of the approved zone of discharge.

The bill includes a number of provisions related to creating incentives for property owners or others to clean up and redevelop brownfield sites. It also allows DEP to extend risk-based corrective action (or RBCA) principles and cleanup thresholds to contaminated sites, with the agreement of property owners, other than drycleaning, underground petroleum storage tank and brownfield sites. DEP also is directed to take the lead in ranking contaminated sites on state-owned property, and establishing cleanup criteria.

A number of other provisions are included in CS/CS/HB 1757. Water management district (WMD) governing boards are able to delegate, under certain conditions, responsibilities to staff, and can require bid protesters to post bonds, as other agencies can. DEP is directed to develop a process by which wastewater treatment plants and similarly permitted facilities notify the proper authorities when unexpected spills occur. The Lake Weir Aquatic Preserve designation is repealed; counties no longer would have to choose between getting the deed to reclaimed mined land and getting a share of phosphate excise taxes; existing provisions related to regulation of drinking water systems are updated to comply with federal law; and DEP is directed to work with the Santa Rosa Shores Homeowners Association to develop a dredging plan.

The bill has an indeterminate fiscal impact. According to Revenue Estimating Conference projections, the brownfield tax incentive provisions would result in a $5.3 million reduction in General Revenue Funds in Fiscal Year 2000-2001. It raises no apparent constitutional or other legal concerns. The bill provides that the act shall take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Demineralization of Non-potable Water

With water supplies growing more precious in the state of Florida, options other than traditional groundwater withdrawals are being explored. One example of such an alternative water supply source is demineralization of non-potable water. Demineralization removes salts, minerals, and other constituents from sources such as seawater or brackish water aquifers to give two products: fresh, potable water and a demineralization concentrate. Examples of demineralization processes include electrodialysis, which uses an electrical current to move salts selectively through a membrane, and reverse osmosis (R/O). Reverse osmosis subjects water on one side of a semi-permeable, plastic-like membrane to pressure which causes fresh water to diffuse through the membrane. Left behind is the concentrate. Whether the resulting concentrate is toxic is a function of the source water for demineralization and the disposal method for the concentrate either by surface water discharge or deep well injection.

Current difficulties encountered in the demineralization industry in Florida include:

- uncertainty and inconsistency in permitting these types of facilities due to the lack of a clearly defined permitting process and misinterpretation of existing law (in s. 403.0882, F.S.) regarding demineralization facilities both by the DEP and industry; and

- how to deal with the disposal of the resulting demineralization concentrate, particularly if testing indicates that the concentrate may be toxic.

Aquifer Storage And Recovery (ASR)

ASR represents a cost-effective way to store excess water accumulated during the wet season for eventual use during the dry season. By treating and storing excess water through ASR, water utilities can reduce capital costs by relying on smaller water treatment plants. Typically, utilities over-size water treatment plants in order to handle seasonal peaks in water demand, where demand often increases by 20 to 40 percent, rather than build plants sized for normal demand. Because any excess water can be treated prior to storage, water utilities can handle peak demand from underground storage without routing the water through a treatment plant.

Besides potential costs savings, ASR offers potential environmental benefits. ASR reduces demand on shallow aquifers, rivers, lakes, and other surface water bodies during the dry season, which helps to avoid saltwater intrusion or other environmental damage. In addition, ASR allows water utilities to use aquifers already contaminated by saltwater for storage. The potential for ASR to effectively and cheaply store excess water also makes it useful for environment restoration.

ASR facilities obtain freshwater from a variety of sources, ranging from reclaimed water to groundwater (although the better the quality of the source water, the less expensive the treatment of the injected water). Regarding proper aquifer characteristics, an ASR facility needs a confined aquifer with high salinity levels. However, even an aquifer meeting these requirements may not be suitable if it is highly transmissive (i.e., the pores of the water-bearing rock allow the easy movement of water), subject to excessive groundwater flow, or filled with extremely saline water.

For reasons unique to Florida, ASR appears to be a sound water-storage option. Florida's subtropical climate, for example, causes significant water loss in surface-water storage through evapotranspiration and seepage. Moreover, with topography like a pancake, Florida lacks readily available valleys and hills to build effective and affordable surface water reservoirs. By storing water underground, ASR overcomes these limitations of climate and topography. Florida's first ASR facility opened in Manatee county in 1983 for the purpose of providing water storage. Currently, there are six fully permitted and operating ASR facilities in the state with another 34 additional facilities planned or under construction.

Despite the current use of ASR, this technology still faces some outstanding legal and regulatory questions concerning public health, efficient use of water, and environmental impact. Primarily, these questions arise in the context of permitting ASR facilities under the federal 1974 Safe Drinking Water Act and Ch. 373, F.S. The 1974 federal Safe Drinking Water Act requires the adoption of primary drinking water standards in order to protect existing and potential underground sources of drinking water (USDWs). As an aspect of protecting public water supplies, the act established the Underground Injection Control (UIC) Program to regulate the disposal and injection of fluids into USDWs. Under UIC regulations, any groundwater in an aquifer containing total dissolved solids (TDS) of less than 10,000 milligrams/liter (mg/l) constitutes a USDW, regardless of whether the aquifer currently serves a public water system. Because EPA has historically interpreted this language to include both injection wells designed for disposal and those wells designed for water storage, ASR is subject to the UIC regulations. Thus, ASR facilities must treat all water to primary drinking water standards prior to injection in any USDWs, which, given the broad definition of USDWs, means virtually any aquifer.

The permitting of ASR facilities treating water to primary standards before injection remains uncontroversial. However, to expand the utility of ASR, certain water utilities and natural resource agencies advocate ASR as a means to store untreated surface water or groundwater -- again, a concept that EPA has historically opposed. Up to this point, the only regulatory relief from the requirement that all injected water meet drinking water standards is either a major or minor aquifer exemption. A major aquifer exemption applies in USDWs with less than 3,000 mg/l of TDS whereas a minor aquifer exemption applies in USDWs with a mg/l TDS in the range of 3,000 to 10,000. But the conditions of the exemptions are difficult to meet. In order to qualify for these exemptions, the permittee must demonstrate that groundwater in the storage zone is neither currently used as a drinking water source nor would it be reasonably expected to be used as a drinking water source in the future.

Region IV of the EPA proposed an alternative exemption to the UIC regulations. Termed a "limited aquifer exemption (LAE)," this exemption would exempt an applicant from the drinking water standards that apply to specific parameters (e.g., coliform bacteria) rather than a blanket exemption to UIC regulations. Under the emerging test for LAEs, an applicant must meet the following conditions:

- Concentrations of certain parameters (primarily coliform bacteria) can exceed drinking water standards, provided that the storage aquifer is neither currently used nor reasonably expected to be used as a USDW;
- Storage aquifer is saline (3,000 mg/l or above of TDS); and
- Proposed ASR facility results in significant benefits.

As the above test makes clear, the LAE conceptually functions as a subset of the minor aquifer exemption with one notable exception. Whereas the minor aquifer exemption removes an entire USDW (or at least a portion thereof) from the requirement to meet primary drinking water standards, the LAE exempts a USDW from primary drinking water standards for certain parameters only.

The ASR projects that are part of the Everglades Restudy provide an example of the potential benefits of ASR as well as the costs of regulatory requirements related to ASR. The Comprehensive Plan for the Restudy includes three ASR projects that together will provide up to 1.6 billion gallons per day of water storage with a projected recovery rate of 70 percent when that water is needed. Among the benefits of these projects is the ability to better manage the level of surface waters including Lake Okeechobee, the reduction of damaging releases to estuaries, increased water supply availability, and enhanced flood control. The combined projected cost of these projects is $1.7 billion. Of that amount, $700 million represents the costs of treating waters to primary drinking water standards before injection underground. As a result, if such waters could be injected without such costly treatment, substantial savings in projected Restudy costs could be realized. EPA has indicated that it is willing to consider a flexible approach to constructing and operating the ASR wells proposed in the Restudy. However, it has also indicated that the approach taken must be incremental and that there must be a clear demonstration that several conditions are satisfied in order for untreated water to be injected underground.

Brownfields Issues

In 1997, the Legislature passed the Brownfields Redevelopment Act to provide incentives for the private sector to redevelop abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination. (See ss. 376.77-376.85, F.S.)

The stated intent of the act was that the reduction of public health and environmental hazards on existing commercial and industrial sites is vital to use and reuse and that there should be incentives to encourage voluntary cleanups. Further, minority and low-income communities are disproportionately impacted by targeted environmentally hazardous sites and that environmental justice considerations should be inherent in meaningful public participation elements of a brownfields program. Cooperation among federal, state, and local agencies, local redevelopment organizations, current owners, and prospective purchasers of brownfield sites is required to accomplish timely cleanup activities and the redevelopment and reuse of brownfield sites (s. 376.78, F.S.).

In 1998, the Brownfields Redevelopment Act was amended to address several glitches that had been identified since the passage of the 1997 act in addition to other changes intended to enhance the usage and success of the program (ch. 98-75, L.O.F.).

According to DEP's 1999 Annual Report, which describes the department's progress in implementing the Brownfields Redevelopment Act, some of the highlights in 1999 were:

- The number of designated brownfield areas in Florida increased from three to 25 in 1999.

- The creation of 1,298 direct jobs and 1,546 indirect jobs can be attributed to the "Brownfield Redevelopment Bonus Refund," which is administered by the Office of Tourism, Trade, and Economic Development. Additionally, the inducement of $41 million in new capital investments is attributable to the "Brownfield Redevelopment Bonus Refund." (See s. 288.107, F.S.)

- Discussions with local governments during the fourth quarter of 1999 indicate that approximately 22 potential brownfield area designations are forthcoming in the first quarter of 2000.

- The U.S. Environmental Protection Agency (EPA) and the Department of Environmental Protection executed a Superfund Memorandum of Agreement (MOA) for the Brownfields Program. The MOA specifies the criteria under which the EPA would forgo oversight at brownfield sites within a designated brownfield area that are cleaned up or are undergoing a cleanup in accordance with Florida's Brownfields Redevelopment Act.

Pursuant to the Brownfields Redevelopment Act, a local government must designate a brownfield area through the passage of a local resolution. The local government must notify DEP and attach a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or, alternatively, provide a detailed legal description. A property owner within the proposed designated area may request in writing that the owner's property be removed from the proposed designation. The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield rehabilitation agreement with DEP or an approved local program (s. 376.80, F.S.).

Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee to improve public participation and receive public comments on rehabilitation and redevelopment of the brownfield area. Local governments are also encouraged to use the full range of economic and tax incentives available to facilitate and promote the rehabilitation of brownfield areas (s. 376.80, F.S.).

Pursuant to s. 376.81, F.S., DEP developed a cleanup criteria rule to incorporate, to the maximum extent feasible, risk-based corrective action (RBCA) principles to achieve protection of human health and safety and the environment in a cost-effective manner. The rule includes protocols for the use of natural attenuation and the issuance of "no further action" letters and was adopted with an effective date of July 6, 1998. Subsequently, in 1999 the rule was amended, along with the petroleum contamination site and dry-cleaning solvent cleanup criteria rules, to provide for consistency within the three programs.

Using RBCA principles, DEP established a cleanup process and default cleanup target levels for a brownfield site within a designated brownfield area that are protective under actual circumstances of exposure.

Section 376.82, F.S., provides that any person who has not caused or contributed to the contamination of a brownfield site after July 1, 1997, is eligible to participate in the brownfield rehabilitation program. Certain specified sties are not eligible. Immunity and liability protection for further future remediation is provided under certain circumstances, and additional liability protection for lenders is provided. This provision does not impair third party rights for damages.

Section 376.86, F.S., provides for a Brownfield Areas Loan Guarantee Council to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. The council may enter into an investment agreement with DEP and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund. Not more than $5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or loan loss reserves. Of the $5 million, 15 percent shall be reserved for the investment agreements involving predominantly minority-owned businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period longer than five years.

Section 376.875, F.S., created the Brownfield Property Ownership Clearance Assistance Revolving Loan Trust Fund to be administered by the Office of Tourism, Trade, and Economic Development in the Executive Office of the Governor for the purpose of funding low-interest loans for the purchase of outstanding, unresolved contractor liens, tax certificates, or other liens or claims on brownfield sites designated as part of a brownfield area by a local government.

In order to provide additional economic incentives for brownfields redevelopment, the Legislature in 1998 created a tax credit against either the intangible personal property tax or corporate income tax for taxpayers that voluntarily participate in the cleanup of a designated brownfield site. A tax credit of 35 percent is allowed for the costs of voluntary cleanup activity that is integral to site rehabilitation, with a maximum of $250,000 per site per year. The total amount of the tax credits is $2 million annually. The total tax credits issued for 1999 were $30,228.13. As of December 1999, one tax credit application was submitted for $44,549.07 worth of tax credits. Two more applications were anticipated by the application deadline of December 31, 1999.

In the interim preceding the 2000 legislative session, a series of workshops were organized by a senator to determine what legislative measures would be needed to continue or improve brownfield rehabilitation efforts. As a result, two comprehensive bills dealing with brownfields redevelopment issues have been introduced: one bill (SB 1406) provides for additional financial incentives, and the other bill (SB1408) addresses various administrative provisions of the program administered by DEP and addresses economic development activities related to brownfields.

Other Issues

A number of other water resource protection and management issues are in CS/CS/HB 1757. Background on the key issues follows:

- Unlike DEP and other state agencies, where the secretary or executive director can delegate certain decisionmaking to staff, the WMD governing boards, comprised of citizens, have no choice but to approve permits, land acquisition contracts, hirings and terminations, purchase orders, and a plethora of other administrative actions, regardless of dollar amount, the number of persons, or the acreage involved. That is because Florida statutes has given the WMD governing boards very limited delegation authority. The WMD governing boards this past summer expressed their concerns to the Governor and to key legislators that having to approve the day-to-day decisionmaking of their districts detracted them from focusing on major water policy issues, unnecessarily lengthened their monthly meetings, and slowed down district business, at times angering permit and license applicants who needed a quick decision on minor authorizations. The governing boards promised to seek authority from the Legislature this session to delegate certain duties to staff.

- Independence Day weekend 1999 in Escambia County was marred by an accidental sewage spill. The wastewater treatment plant had notified the local health department, as required, but because the office was closed for the holiday weekend, the message was not timely received. Legislators had asked DEP and other staff to develop a more effective process whereby the appropriate health and emergency management agencies are notified, even on weekends, holidays and at night, when accidental spills occur.

- One of the provisions of chapter 99-245, Laws of Florida, was the repeal of the 1988 designation of Lake Weir as an aquatic preserve. A lawsuit has been filed challenging the repeal; one of its claims is that the repeal was not advertised prior to it being introduced to the Legislature, as provided in s. 258. 41(6), F.S. For the 2000 legislative session, the repeal's supporter has published notification of the proposed de-designation of Lake Weir as an aquatic preserve in a Marion County newspaper 30 days prior to the proposal's inclusion in legislation.

- Santa Rosa Shores is a residential community in Northwest Florida that is built upon six finger canals connected by three larger channels. All channels are considered to be shallow (i.e. less than 3 feet) and some are very narrow. The channels are too shallow to provide adequate access by the residents' vessels (i.e. 25 ft. range) to the larger water body.

  The channels also provide a valuable habitat to seagrass. Seagrasses provide food for fish, waterfowl, manatees and green sea turtle and are a essential habitat for shell fish and finfish. They also affect nutrient cycling, sediment stability and water turbidity. Seagrass is vulnerable to reduced water clarity and their distribution is a good indicator of water quality. If the sediment is released, and the sunlight cannot access the seagrass. The residents have applied to DEP for permits and sovereign submerged land authorizations to deepen and extend the channels across the seagrass bed through the Santa Rosa Sound. All such applications were denied, primarily due to: the environmental impacts that are expected to result from the requested work, and the failure of the applicants to provide sufficient information needed to complete the applications.

  The Santa Rosa Shores Homeowners Association has contacted its legislative delegation seeking assistance in working with DEP and other permitting agencies for a resolution of the situation. DEP has agreed to work with the homeowners assocation to develop a dredging proposal with minimal adverse environmental impacts.

C. EFFECT OF PROPOSED CHANGES:

A discussion of the effect of the proposed changes wrought by CS/CS/HB 1757 are described in the Section-by-Section Analysis below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Substantially amends s. 403.0882, F.S. Establishes legislative intent regarding water supplies and their conservation through promotion of brackish water demineralization as an alternative to freshwater ground and surface water withdrawals. Provides definitions, classifies demineralization concentrate as a potable water byproduct and removes the statement from the existing statute that this discharge shall be permitted according to industrial wastewater requirements. Requires DEP to promulgate rules (rulemaking shall be entered into by October 1, 2000) and establishes a technical advisory committee to assist in the development of rules relating to permit application forms for desalination facilities; specific options and requirements for demineralization concentrate disposal; specific requirements and methods for evaluating mixing of effluent in receiving waters; and specific toxicity provisions.

Specifies that the technical advisory committee will be comprised of members from the water management districts, an expert in sea grasses from the Florida Marine Research Institute, the demineralization industry, local government, and environmental organizations. Provides that permits may not be denied as a result of the failure of toxicity tests for demineralization concentrate due predominantly to specific naturally occurring substances in the source water as long as water quality standards can be achieved within a particular area of the discharge. Provides for the blending of demineralization concentrate with reclaimed water according to DEP rules.

Reorganizes existing statutory provisions for small water-utility businesses into one subsection to prevent confusion about their applicability, but does not change existing law. Requires toxicity testing for small water-utility businesses only at the time of permit application, renewal, or modification. Additional tests are mandated only if these requisite tests do not meet toxicity requirements. Provides that small water-utility businesses are not required to obtain a water-quality-based effluent limitation determination. Reauthorizes existing rulemaking to allow DEP to adopt rules for the regulation of demineralization and to implement the provisions of this section.

Section 2: Amends s. 403.061, F.S., to include an additional exception to the “no mixing zone” provision for OFWs. Provides that mixing zones are allowable in OFWs for discharges of demineralization concentrate if the discharge meets the provisions of s. 403.0882(4), F.S. (i.e., if the discharge is toxic predominantly due to specific naturally occurring substances in the source water), is clearly in the public interest.

Section 3: Creates s. 403.065, F.S., providing for the classification and permitting of ASR wells according to DEP rules and authorizes DEP to adopt such rules. Provides that ASR wells that inject untreated surface waters or groundwater shall be allowed a zone of discharge for total coliform bacteria if the following conditions are met:

- Ground water affected by the zone of discharge contains no less than 1,500 milligrams per liter total dissolved solids;

- Ground water within the zone of discharge is not currently being used nor is it reasonably expected to be used as a drinking water supply by anyone other than the applicant for the ASR well permit applicant;

- The presence of stored water does not cause anyone other than the permit applicant to treat water beyond what would be required in the absence of such water;

- DEP has approved a monitoring plan;

- Total coliform bacteria is the only primary drinking water standard other than sodium that will not be met prior to injection;

- The permit applicant demonstrates that biological contaminants will experience die-off to the extent that they do not pose an adverse risk to human health and primary drinking water standards will be met at the edge of the zone of discharge;

- Environmental benefits are documented;

- Use of the recovered water is consistent with its intended purpose;

- Drinking water sources are not endangered; and

- The zone of discharge does not intersect or include any part of a 500-foot radius surrounding any well using the injection zone as a source of drinking water.

Provides that DEP may allow a zone of discharge for sodium, total coliform bacteria, and secondary drinking water standards if the total dissolved solid concentration in the affected groundwater is less than 1,500 milligrams per liter if the following conditions are met:

- The presence of stored water does not cause anyone other than the permit applicant to treat water beyond what would be required in the absence of such water;

- DEP has approved a monitoring plan;

- Total coliform bacteria is the only primary drinking water standard other than sodium that will not be met prior to injection;

- The permit applicant demonstrates that biological contaminants will experience die-off to the extent that they do not pose an adverse risk to human health and primary drinking water standards will be met at the edge of the zone of discharge;

- Environmental benefits are documented;

- Use of the recovered water is consistent with its intended purpose;

- Drinking water sources are not endangered;

- The zone of discharge does not intersect or include any part of a 500-foot radius surrounding any well using the injection zone as a source of drinking water;

- The permit applicant demonstrates that round water within the zone of discharge is not currently being used and cannot be used as a drinking water supply by anyone other than the applicant; and

- The applicant provides written notice to each landowner whose property overlies the zone of discharge.

Provides that DEP shall specify the limit of the approved zone of discharge. Requires the applicant to demonstrate through groundwater monitoring that the required biological die-off occurs once the ASR well begins operation or otherwise the zone of discharge is revoked. Provides that additional monitor wells may be required if drinking water supply wells are located within 2.5 miles of the edge of the zone of discharge. Requires monthly sampling of monitor wells and allows DEP to modify monitoring requirements to assure that underground drinking water sources are protected.

Requires an aquifer exemption to be obtained prior to injection if the injected fluid exceeds any primary drinking water standard other than total coliform bacteria or sodium, or contains constituents that may adversely affect the health of persons. Requires DEP to make a reasonable effort to issue or deny an ASR well permit application within 90 days after determining that the application is complete. Gives DEP authority to adopt rules to implement this act.

Section 4: Amends s. 287.042, F.S., to add WMDs to the list of agencies that may require persons who file bid protests to post a bond equal to 1 percent of the total contract price or $5,000, whichever is less.

Section 5: Amends s. 197.432, F.S., to correct a cross-reference.

Section 6: Amends s. 197.502, F.S., to provide that when a tax certificate, 2 years old or older, exists against a parcel that is located within a designated brownfield area, the municipality or county may file a tax deed application in the same manner in which an application on a county-held tax certificate is filed and processed under ch. 197, F.S. Is expected to assist in clearing up outstanding liens on property and in solving problems relating to accumulating adjacent parcels of land into usable tracts of land available for redevelopment of the brownfield area.

Section 7: Amends s.197.522, F.S., to correct a cross-reference.

Section 8: Amends s. 199.1055, F.S., to broaden the intangible tax credit for contaminated site rehabilitation to include other contaminated sites for which cleanup is undertaken under a voluntary rehabilitation agreement approved by the department. If the tax credits allowed for eligible contaminated sites do not exceed the maximum allowable credits for the year, a credit may be granted for petroleum contaminated sites which are being cleaned up pursuant to the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. The total combined amount of credits allowed per year for both the intangible personal property tax and the corporate income tax cannot exceed $2 million.

Section 9: Amends s. 212.08, F.S., to extend a sales tax exemption for building materials used in the rehabilitation of real property located in designated brownfield areas, as is currently available for building materials used in enterprise zones.

Section 10: Amends s. 212.096, F.S., to provide for a brownfields area jobs credit against the sales and use tax, as is currently available for enterprise zones. Expands the category of employees who count toward the 20% of residents who are residents of an enterprise zone to include residents of a brownfield area.

Section 11: Amends s. 220.181, F.S., to provide for a brownfields area jobs credit against the corporate income tax, as is currently available for enterprise zones. Modifies the requirement for businesses located within an enterprise zone, so that employees who are residents of either an enterprise zone or a brownfield areas designated under s. 376.80, F.S., would count toward calculating the 20 percent.

Section 12: Amends s. 220.182, F.S., to provide for a brownfields area property tax credit against the corporate income tax, as is currently available for enterprise zones. Expands the category of employees who count toward the 20% of residents who are residents of an enterprise zone, in order for the business to qualify for up to $50,000 of property tax credit, to include residents of a brownfield area.

Section 13: Amends s. 220.183, F.S., to provide for partial credit against the corporate income tax to corporations that contribute resources to public redevelopment organizations for the revitalization of designated brownfield areas. Currently, there is a similar provision for enterprise zones.

Section 14: Amends s. 220.1845, F.S., to broaden the corporate income tax credit for contaminated site rehabilitation to include other contaminated sites for which cleanup is undertaken under a voluntary rehabilitation agreement approved by the department. If the tax credits allowed for eligible contaminated sites do not exceed the maximum allowable credits for the year, a credit may be granted for petroleum contaminated sites which are being cleaned up pursuant to the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. The total combined amount of credits allowed per year for both the intangible personal property tax and the corporate income tax cannot exceed $2 million.

Section 15: Amends s. 290.007, F.S., to include designated brownfield areas in the list of various state tax incentives currently available to enterprise zones.

Section 16: Creates s. 376.30702, F.S., to provide for a State-Owned-Lands Cleanup Program to be administered by the DEP. Directs DEP to implement a cleanup program to provide state-funded and state-managed site rehabilitation for all state-owned property contaminated by discharges of pollutants or hazardous substances that are reported to the agency. Directs DEP to establish a priority ranking system and cleanup criteria for these sites. Encourages use of innovative cleanup technologies.

Section 17: Amends s. 376.30781, F.S., to broaden the partial tax credit language to include any contaminated site which is being cleaned up under a voluntary rehabilitation agreement approved by the DEP. Provides that if the credits granted do not exceed the maximum allowable under s. 199.1055, F.S., or s. 220.1845, F.S., for the year, then a credit may be granted for a petroleum-contaminated site at which cleanup is being conducted under the Preapproved Advanced Cleanup Program, but only up to the amount of private funding involved in the site cleanup activity. Specifies that any person who receives partial state-funded site rehabilitation under the Preapproved Advanced Cleanup Program is ineligible to receive tax credit for the portion of site rehabilitation costs paid by the state.

Section 18: Amends s. 376.84, F.S., to provide that a financial incentive to encourage redevelopment of brownfield areas may include tax increment financing and special assessments. Allows any local government with a designated brownfield area to issue revenue bonds and employ tax increment financing for the purpose of financing the implementation of a brownfield site rehabilitation agreement.

Section 19: Amends s. 376.86, F.S., to increase the limited state loan guaranty of primary lender loans for redevelopment projects in brownfield areas from 10 percent to 20 percent and decreases the duration of the loan guarantees from 5 years to 4 years.

Section 20: Creates s. 376.876, F.S., the "Brownfield Redevelopment Grants Program." Directs DEP to administer the program to make grants to local governments that have designated brownfield areas and need financial assistance for site assessment and cleanup activities to make the redevelopment project financially feasible. Specifies the uses of the grant funds. Provides criteria for the DEP to consider when reviewing an application for a grant. Provides that the applicant must provide 20-percent matching funds, either in cash or in-kind services. Specifies that no single grant may be greater than $300,000 during each state fiscal year, and no more than $100,000 may be used for site-assessment activities, with the remainder of the grant amount used for cleanup activities at the brownfield site. Authorizes DEP to adopt rules to implement the grant program.

Section 21: Repeals subsection (9) of s. 211.3103, F.S., deleting the requirement for a county that accepts real property of mined or reclaimed land from phosphate mining companies to forfeit a portion of its share of severance tax equal to the value of property donated.

Section 22: Amends s. 288.047, F.S., to provide that businesses located in brownfield areas are included, along with enterprise zone businesses, in a provision setting aside 30 percent of the appropriated Quick Response Training funds, for the first six months of each fiscal year, for instructional programs for these businesses.

Section 23: Amends s. 288.107, F.S., to broaden the brownfield redevelopment bonus tax refund provisions for qualified target industry businesses to include a business that can demonstrate a fixed capital investment of at least $2 million in mixed use activities, including multi-unit housing, commercial, retail, and industrial in brownfield areas and which pays wages that are at least 80 percent of the average of all private sector wages and salaries in the county in which the business is located.

Section 24: Amends s. 288.905, F.S., to require Enterprise Florida, Inc., to develop a comprehensive marketing plan for the redevelopment of designated brownfield areas. Specifies that the plan must include strategies to distribute information about current designated brownfield areas and the available economic incentives for redevelopment of brownfield areas. These strategies are to be used in the promotion of business formation, expansion, recruitment, retention, and workforce development programs.

Section 25: Amends s. 376.301, F.S., to define "risk reduction" and to redefine "antagonistic effects," "discharge," "institutional controls," "natural attenuation," and "site rehabilitation."

Section 26: Creates s. 376.30701, F.S., to apply risk-based corrective action (RBCA) principles to all contaminated sites resulting from a discharge of pollutants or hazardous substances, to the extent the sites are not subject to RBCA cleanup criteria established for the petroleum, brownfields, and dry-cleaning programs. (This is the so-called "Global

RBCA.") Specifies that this section would apply to contaminated sites resulting from a discharge of pollutants or hazardous substances where legal responsibility for site rehabilitation exists pursuant to other provisions of chs. 376 or 403, F.S., except for those contaminated sites subject to the RBCA cleanup criteria established for the petroleum, brownfields, and dry-cleaning programs. Specifies that this section would apply to a variety of site rehabilitation scenarios including, but not limited to, site rehabilitation conducted voluntarily under DEP's enforcement authority or as a state-managed cleanup by DEP, and would apply retroactively to all existing contaminated sites where legal responsibility for site rehabilitation exists pursuant to other provisions of chs. 376 or 403, F.S., except those sites for which as of March 1, 2000, a report has been submitted to DEP which documents that a cleanup has been completed; except those sites for which cleanup target levels have been accepted by DEP in an approved technical document, current permit, or other written agreement; and except at those sites that have received a No Further Action Order or a Site Rehabilitation Completion Order from the department.

Specifies that the Global RBCA cleanup criteria shall apply as Applicable or Relevant and Appropriate Requirements (ARARs) to all contaminated sites in Florida that have been identified to qualify for listing on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended.

Provides that the property owner must provide information regarding institutional controls to the local government for mapping purposes, which must then note the existence of the institutional control on any relevant local land use and zoning maps with a cross-reference to the department's site registry. Directs DEP to prepare and maintain a registry of all contaminated sites subject to institutional and engineering controls.

Section 27: Amends s. 376.3078, F.S., to clarify that DEP may set alternative cleanup target levels for dry-cleaning sites based on the person responsible for site rehabilitation demonstrating that public health and safety and the environment are protected.

Section 28: Amends s. 376.79, F.S., to define "risk reduction" and "contaminant," and to redefine the terms "natural attenuation," "institutional controls," and "source removal."

Section 29: Amends s. 376.80, F.S., to require the local government or persons responsible for rehabilitation and redevelopment of a brownfield area to establish an advisory committee or use an existing advisory committee that has expressed its intent to address redevelopment of the specific brownfield area. Requires the person responsible for brownfield site rehabilitation to notify the advisory committee of the intent to rehabilitate and redevelop the site prior to executing the brownfield site rehabilitation agreement and provide the advisory committee with a copy of the draft plan for site rehabilitation, which addresses certain required elements, such as disclosing potential reuse of the property as well as site rehabilitation activities if any are to be performed. Specifies duties of the advisory committee. Specifies that when an environmental assessment or remediation document is submitted to DEP or the local pollution control program for review, the person responsible for brownfield site rehabilitation must hold a meeting or attend a regularly scheduled meeting to inform the advisory committee of the findings and recommendations in the site assessment report or the technical document containing the proposed course of action following site assessment. Requires the person responsible for brownfield site rehabilitation to enter into a brownfield site rehabilitation agreement with DEP or the local pollution control program if actual contamination exists at the brownfield site.

Section 30: Amends s. 376.81, F.S., to provide further guidance to DEP in establishing the brownfield RBCA rule, by July 1, 2001. Directs DEP in establishing the cleanup criteria to apply, to the maximum extent feasible, RBCA processes to achieve protection of human health and safety and the environment in a cost-effective manner. Specifies that the rule must prescribe a phased risk-based corrective action process that is iterative and that tailors site rehabilitation tasks to site-specific conditions and risks. Directs DEP to provide an early decision, when requested, regarding applicable exposure factors and a risk management approach based on the current and future land use at the site. Requires rules to address the use of natural attenuation, the use of institutional and engineering controls, and the issuance of "no further action" letters.

In establishing the applicable cleanup target levels for contaminants in groundwater, DEP is directed to consider, as appropriate, calculations using a lifetime cancer risk of $1.0E^{-6}$; a hazard index of 1 or less; the best achievable detection limit; and nuisance, organoleptic, and aesthetic considerations. However, the department shall not require site rehabilitation to achieve a cleanup target level for any individual contaminant which is more stringent than the site-specific, naturally occurring background concentration for that contaminant. Requires DEP to approve alternative cleanup target levels in conjunction with institutional and engineering controls, if needed under certain conditions. Specifies conditions when alternative cleanup target levels at a brownfield are used, then institutional controls are not required. Specifies that removal of contaminated media from a site for offsite relocation or treatment must be in accordance with all applicable federal, state, and local laws.

Section 31: Amends s. 376.82, F.S., to provide that a person whose property becomes contaminated due to geophysical or hydrologic reasons, including the migration of contaminants onto the property from the operation of facilities and activities on a nearby designated brownfield site, and whose property has never been occupied by a business that utilized or stored the contaminants, is not subject to administrative or judicial action to compel rehabilitation of or pay the costs of rehabilitation of nearby sites, if certain conditions are met.

Section 32: Creates s. 376.88, F.S., the "Brownfield Program Review Advisory Council." Directs Council to provide for continuous review of the progress in the administration of Florida's Brownfield Program and make recommendations for its improvement. Specifies membership, term of service and duties.

Section 33: Amends s. 403.973, F.S., to provide that projects located in a designated brownfield area are eligible for the expedited permitting process.

Section 34: Amends s. 190.012, F.S.,to provide that Community Development Districts may finance investigation and remediation costs associated with the cleanup of actual or perceived environmental contamination within the district under the supervision or direction of a competent governmental authority unless the covered costs benefit any person who is a landowner within the district and who caused or contributed to such contamination.

Section 35: Amends s. 712.01, F.S., to redefine the term "covenant or restriction" to prohibit subsequent property owners from removing certain deed restrictions under other provisions of the Marketable Records Title Act, to be enforced by DEP.

Section 36: Amends s. 712.03, F.S., to provide an exception to title marketability for a restriction or covenant recorded under chapters 376 or 403, F.S.

Section 37: Repeals subsection (9) of s. 211.3103, F.S., which forced counties to choose between accepting a share of the phosphate mining excess tax and accepting reclaimed mining property.

Section 38: Repeals s. 258.398, F.S., 1997 edition, relating to the designation of Lake Weir as an aquatic preserve.

Section 39: Adds a subsection (5) to s. 373.083, F.S., giving the water management district governing boards the authority to delegate powers, duties and functions to a specific board member or members, the district's executive director, or to other district staff, under certain conditions.

Section 40: Amends s. 373.323, F.S., to add course work requirements for the licensure of water well contractors. Specifies that water well contractors licensed under this section shall be able to install, repair, or modify tanks and pumps in accordance with the Standard Plumbing Code, Section 613 -- Well Pumps and Tanks Used for Potable Water.

Section 41: Amends s. 373.324, F.S., to require course work for licensure renewal of water well contractors.

Section 42: Amends s. 373.406, F.S., to clarify that DEP and the WMDs may implement exemptions to environmental resource permits under rules or orders, as long the agencies determine the activity will have minimal or insignificant individual or cumulative impacts. Grandfathers-in exemptions to wetlands permitting rules existing prior to October 3, 1995.

Section 43: Adds a subsection (5) to s. 403.088, F.S., to create a notification process whereby NPDES permittees alert the appropriate public health and emergency management authorities when spills occur. Gives DEP authority to promulgate rules detailing this notification process. Directs DEP to notify all affected permittees about the existing emergency management notification process until rule is implemented.

Section 44: Amends s. 403.813(2)(b), F.S., to specify that except for regulations governing dock structures in aquatic preserves or associated with undeveloped barrier islands or condominiums, neither DEP nor the Board of Trustees of the Internal Improvement Trust Fund shall restrict the number of vessels moored at private, single-family residential docks exempted under the provisions of this paragraph.

Section 45: Amends s. 403.852, F.S., to add definitions of new terms or to modify existing definitions related to drinking water systems, in order to reflect changes in the federal Safe Drinking Water Act.

Section 46: Amends s. 403.853, F.S., to add or clarify references to "nontransient noncommunity water systems" and "transient noncommunity water systems," in order to reflect requirements of the federal Safe Drinking Water Act.

Section 47: Amends s. 403.8532, F.S., to add "transient noncommunity water systems" to those eligible to receive loans from the State Wastewater Revolving Loan Trust Fund.

Section 48: Amends s. 403.854, F.S., to specify that DEP may, on a case-by-case basis, waive disinfection requirements applicable to "transient noncommunity water systems" only, rather than all noncommunity water systems, if certain conditions are met.

Sections 49-54: Amends ss. 403.866, 403.867, 403.872, 403.875, 403.88, F.S., to include the term "water distribution system" among facilities that must meet DEP licensure and classification requirements, pursuant to the federal Safe Drinking Water Act.

Section 55: Directs DEP to work with the Santa Rosa Shores Homeowners Association to develop a proposal to dredge a single access channel connected to the existing channels and canals within Santa Rosa Shores and extending to navigable depths in Santa Rosa Sound. Specifies that the proposal must address: mitigation of any adverse impacts caused by the dredging; disposal of the spoil; protection of water quality and sea grass habitat; long-term maintenance; and an inspection and monitoring plan for the project. Directs the Homeowners Association to pay the costs of the dredging project and to obtain all necessary authorizations. Directs DEP to expedite the necessary authorizations.

Section 56: Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to Revenue Estimating Conference projections, the brownfield tax incentive provisions would result in a $5.3 million reduction in General Revenue Funds in Fiscal Year 2000-2001.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impacts of CS/CS/HB 1757 to state and local governments, and to the private sector, are largely indeterminate. There will be costs associated with initiating and implementing rulemaking, for example, but these are likely minimal.

There is potentially a significant fiscal impact is Section 3, which provides for the ASR injection of untreated surface and ground waters, under certain conditions. Based on federal and WMD estimates of the costs of ASR projects associated with the

implementation of the Everglades Restudy, pre-treating the flood waters skimmed from Lake Okeechobee and other area waterbodies would cost $700,000 of the total $1.7 billion cost. So, passage of CS/CS/HB 1757 would save local, state and federal taxpayers $700,000, which could be used to pay for land acquisition or other Restudy projects.

Less certain are the costs savings for state and local governments, utilities, and water consumers, if Sections 1 and 2 of the bill become law. Passage of CS/CS/HB 1757 could allow for decreased expenditures for permitting, construction and operation of demineralization facilities.

Also unknown are the costs to be borne by the Santa Rosa Shores Homeowners Association in dredging the access channel discussed in Section 55 of the bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/CS/HB 1757 does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/CS/HB 1757 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

CS/CS/HB 1757 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

CS/CS/HB 1757 authorizes DEP to adopt and implement rules for: the regulation of demineralization facilities; regulation of ASR wells that meet conditions qualifying them for injecting untreated surface waters and groundwater; changes and clarifications to the brown fields rule; and emergency notification requirements for wastewater facilities when unexpected spills occur.

C. OTHER COMMENTS:

Section 21 and Section 37 of the bill are identical. They repeal subsection (9) of s. 211.3103, F.S., and thus allow counties to accept a share of the phosphate mining excise fee and donations of reclaimed mined land.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 23, 2000, the Committee on Environmental Protection adopted an amendment to HB 1757 providing for the regulation of certain ASR wells. The bill was then reported favorably as a committee substitute.

On April 19, 2000, the General Government Appropriations Committee adopted a lengthy strike-everything-after-the-enacting clause amendment and three amendments to the amendment. The amendment added: the brownfields and Global RBCA provisions; the various WMD provisions; the sections updating the state's water systems statutes to bring them in compliance with the federal Safe Drinking Water Act; the repeal of the Lake Weir Aquatic Preserve designation; the emergency notification provision; and the repeal of the provision requiring counties to forfeit their share of phosphate excise tax revenues if they accept reclaimed mined land. The three amendments to the amendment deleted the appropriations provisions related to the brownfields language; allowed the WMDs to require bid protestors to post bonds; and directed DEP to work with the Santa Rosa Shores Homeowners Association on the dredging project. The amendments were adopted, the bill made a committee substitute, and then reported favorably by the committee, on a 7-1 vote.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:	Staff Director:
Kellie R. Ralston	Joyce Pugh

AS REVISED BY THE COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:	Staff Director:
W. Ray Scott	Wayne S. Kiger

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:	Staff Director:
Shari Z. Whittier	David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:	Staff Director:
Cynthia P. Kelly	Cynthia P. Kelly