SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2064

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Crist

SUBJECT: Water and land use relationships

DATE: April 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bowman	Yeatman	CA	Favorable/CS
2.			NR	
3.				
4.				
5.				
6.				

I. Summary:

The bill adds water supply to the list of types of infrastructure and services subject to concurrency and requires local government to incorporate water supply availability data and analysis into their comprehensive plans. The bill changes the permit criteria for consumptive use permits to add additional criteria related to minimizing impacts to natural resources, mitigation, consistency with minimum flows and levels and consistency with the local government comprehensive plan. The public interest test is specifically defined to require consideration of nine factors. Water management districts are required to adopt a water shortage plan no later than January 1, 2002, and local governments, during times of water shortage, are required to notify the governing board of the appropriate water management district of development permits that involve a water usage of 100,000 gallons or more per day.

This bill substantially amends ss. 163.3167, 163.3177; 163.3180; 373.0361, 373.223; 373.246; and 373.414, Florida Statutes.

II. Present Situation:

Local Comprehensive Plan

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, Florida Statutes, (F.S.), establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements. The plans must contain data, analyses, policies, goals, and objectives relating to eight mandatory elements on the following issues: capital improvements; future land use; traffic circulation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge;

conservation; recreation and open space; housing; and intergovernmental coordination. The capital improvements element must consider the need for, and the location of, public facilities. Further, general law requires that comprehensive plans of coastal local governments contain a coastal element.

Section 163.3177, F.S., requires local comprehensive plans to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use. This element provides for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. In addition, it may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge. The element must also describe the problems and needs and the general facilities that will be required for solution of the identified problems and needs. The element must also include a topographic map depicting any areas adopted by a regional water management district as prime groundwater recharge areas.

Local government comprehensive plans are also required to include a conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources. Local governments shall assess their current, as well as projected, water needs and sources for a 10-year period. This information shall be submitted to the appropriate agencies.

The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. This minimum criteria must require: that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.). In 1999, the department reviewed 12,000 local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Comprehensive Plan Amendment Process

Under chapter 163, F.S., the process for the adoption of a comprehensive plan and comprehensive plan amendments is essentially the same. A local government or property owner initiates the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes recommendations to the governing body regarding the amendments. The governing body then holds a transmittal public hearing at which the proposed amendment must be voted on affirmatively by a majority of the members of the governing body of the local government. Following the public hearing, the local government must "transmit" the amendment to the department, the appropriate regional planning council and water management district, the Department of Environmental Protection (DEP), the Florida Department of Transportation (FDOT) and any other local government or state agency that has requested a copy of the amendment.

Next, the decision is made whether or not to review the proposed amendment. If the local government does not request a review, the department requests that the appropriate water management district, FDOT and the DEP advise the department as to whether or not the amendment should be reviewed within 21 days after transmittal of the amendment by the local government. Based on this information, the department decides whether to review the amendment. The department must review the proposed amendment within 30 days after transmittal of the amendment if the local government transmitting the amendment, a regional planning council or an "affected person" requests review. Finally, even if a request by one of the above parties is not made, the department may elect to review the amendment by giving the local government notice of its intention to review the amendment within 30 days after receipt of the amendment.

If review is not requested by the local government, the regional planning council, or any affected person, and the department decides not to review it, the local government is notified that it may proceed immediately to adopt the amendment. If, however, review of the amendment is initiated, the department next transmits, pursuant to Rule 9J-1.009, F.A.C., a copy of the amendment to: the Department of State; the Fish & Wildlife Conservation Commission (FWCC); the Department of Agriculture and Consumer Affairs, Division of Forestry for county amendments; and the appropriate land planning agency. In addition, the department may circulate a copy of the amendment to other government agencies, as appropriate. Commenting agencies have 30 days from receipt of the proposed amendment to provide written comments to the department. In addition, written comments submitted by the public within 30 days after notice of transmittal by the local government are considered by the department as if they were submitted by governmental agencies.

Upon receipt of the comments described above, the department has 30 days to send its Objections, Recommendations and Comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, F.A.C., the State Comprehensive Plan, and the appropriate regional policy plan. In addition, the ORC makes recommendations to the local government on ways to bring the plan or plan amendment(s) into compliance.

After receiving the ORC report from the department, the local government has 60 days (120 days for amendments based on Evaluation and Appraisal "EAR" Reports or compliance agreements) to adopt the amendment, adopt the amendment with changes, or decide that it will not adopt the amendment. The decision must be made at a public hearing. Within 10 days after adoption, the local government transmits the adopted plan amendment to the department, the commenting agencies, the regional planning council and anyone else who has requested notice of the adoption.

Upon receipt of a local government's adopted comprehensive plan amendment, the department has 45 days (30 days for amendments based on compliance agreements) to determine whether the plan or plan amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act. This compliance determination is also required when the department has not reviewed the amendment under s. 163.3184(6), F.S. During this time period, the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish the notice of intent in a newspaper that has been designated by the local government.

If the department finds the comprehensive plan amendment in compliance with the Act, any affected person may file a petition for administrative hearing pursuant to ss. 120.569 and 120.57, F.S., within 21 days after publication of the notice of intent. An administrative hearing is conducted by the Division of Administrative Hearings where the legal standard of review is that the plan amendment will be determined to be in compliance if the local government's determination of compliance is fairly debatable. The hearing officer submits a recommended order to the department. If the department determines that the plan amendment is in compliance, it issues a final order. If the department determines that the amendment is not in compliance, it submits the recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearings in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government; and any affected person who intervenes. In the administrative hearing, the decision of the local government of the comprehensive plan amendment's compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance.

The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to

developments of regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

Concurrency

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, chapter 163, Florida Statutes) is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available for, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. See section 163.3180, F.S. Generally, these LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. The intent is to keep new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Implementation of concurrency requirements for potable water considers the ability of a potable water system to meet the projected demand of a specific development project or change in the land use designation. However, it may not consider the total maximum water use of such a system allowed under a consumptive use permit or the source of the water or impacts of the proposed demand upon natural systems, existing water sources, or the minimum flows and levels. To satisfy this requirement, sanitary water, solid waste, drainage and potable water facilities must be in place and available to serve the new development prior to the issuance of a certificate of completion.

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 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) that 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 s. 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.

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. The 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 minimum flows and levels (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.

In 1997, the Legislature defined "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 are "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.

Existing water planning language was clarified, and 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 were forged. The WMDs were 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 were directed to assure that water would be available to meet these needs during a 1-in-10 year drought event.

In addition, WMDs were 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.

Regional Water Supply Authorities

Article VIII, section 4 of the Florida Constitution allows local governments, by law or resolution, to transfer any function or power to a special district. Section 373.1962, F.S., allows the creation of regional water supply authorities to develop, recover, store and supply water for county and municipal purposes. It requires that such water supply and development be done in a manner that will reduce the adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. Section 373.1962(1), F.S., provides criteria for the DEP to follow in approving a regional water supply authority agreement. The powers and duties of the authorities include levying ad valorem taxes; acquiring water and water rights, and developing, storing and transporting water; collecting, treating and recovering wastewater; and exercising the power of eminent domain. Section 373.1962(5), F.S., mandates that counties where a regional water supply authority withdraws water shall retain their prior rights to the reasonable and beneficial use of water which is required to adequately supply the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.

III. Effect of Proposed Changes:

The bill adds water supply to the list of types of infrastructure and services subject to concurrency and requires local government to incorporate water supply availability data and analysis into their comprehensive plans. The bill changes the permit criteria for consumptive use permits to add additional criteria related to minimizing impacts to natural resources, mitigation, consistency with minimum flows and levels and consistency with the local government comprehensive plan. The public interest test is specifically defined to require consideration of nine factors. Water management districts are required to adopt a water shortage plan no later than January 1, 2002, and local governments, during times of water shortage, are required to notify the governing board of the appropriate water management district of development permits that involve a water usage of 100,000 gallons or more per day.

Section 1 of the bill amends s. 163.3167, F.S., regarding the scope of the Local Government Comprehensive Planning and Land Development Regulation Act to require each local

government to provide in its growth management plan for the availability of water supplies necessary to meet projected water use demands.

Section 2 amends s. 163.3177, F.S., regarding the required and optional elements of local government comprehensive plans to require that local governments coordinate their comprehensive plans with the appropriate water management district's regional water supply plans required by s. 373.0361, F.S., or with a regional water supplier's plan, if appropriate. In addition, the future land use plan element must address the availability of ground and surface water resources for present and future water supplies and the potential for development of alternative water supplies. The general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element must be based on data from the appropriate water management district concerning water recharge areas, flood-prone areas, and minimum flows and levels.

Comprehensive plan elements that affect the use of water must address the following impacts:

- Any increase in the amount of use, density or intensity of use on land must be supported by data and analyses that demonstrate adequate potable water will be available to the development.
- Whether the proposed use of water will adversely affect the public health, safety, or welfare of others.

As comprehensive plan amendments set the allowable use, density or intensity of land, the reference to "any increase" does not make sense without having a reference point against which one is measuring the increase.

Section 3 amends s. 163.3180, F.S., to add water supply availability to the list of infrastructure facilities and services for which concurrency is required. The standard against which water supply availability for new development is measured is whether one of the following conditions is met.

- There is adequate ground or surface water availability to meet the projected water supply needs of new development, in addition to the needs of existing legal users and natural systems;
- There is a combination of ground or surface water, and actual or proposed alternative water supply sources available to meet the projected water supply needs of new development. Facilities necessary to provide the alternative water supply sources must be permitted and under construction no more than 5 years after the issuance by the local government of a certificate of occupancy; or
- There are adequate alternative water supply sources available to meet the projected water needs of new development.

If an application for a proposed comprehensive plan amendment or development order cannot meet the above conditions, the application must be denied based on the lack of water capacity.

Section 4 amends subsection (6) of s. 373.0361, F.S., regarding the applicability of water supply development plans to provide that incompatibility with an approved regional water supply plan

must be considered in the determination of public interest that occurs in the evaluation of a consumptive use water permit.

Section 5 amends s. 373.0361, F.S., to add new conditions that must be met to obtain a consumptive use permit. The criteria under existing law require the applicant to show that the proposed use of water:

- Is a reasonable-beneficial use.
- Will not interfere with any presently existing legal use of water and
- Is consistent with the public interest.

Six additional criteria are added to the consumptive use permit criteria, including whether the proposed use of water:

- First avoids and then minimizes impacts to natural resources to the extent reasonable and practicable.
- Will include a mitigation plan, approved by the governing board of the water management district or the Department of Environmental Protection, for avoiding or minimizing adverse impacts.
- Will include reasonable efforts to mitigate past impacts related to water use.
- Can and will be reduced to levels specified by the district during times of mandatory water conservation requirements.
- Is consistent with the implementation of minimum flows and levels for all impacted water bodies.
- Is consistent with the comprehensive plans of the affected local governments.

No permit shall be issued for an amount of water that is not consistent with these criteria.

In addition, when evaluating whether a potential use of ground or surface water is consistent with the public interest, the governing board of the water management district or department must consider the following new factors:

- Whether the activity will adversely affect the public health, safety or welfare or the property of others.
- Whether the activity will adversely affect the conservation of natural resources, fish and wildlife, including endangered or threatened species or their habitats.
- Whether the activity will adversely affect navigation or the flow of water.
- Whether the activity will adversely affect the fishing or recreational values or marine productivity.
- Whether the activity will be of a temporary or permanent nature.
- Whether the activity will adversely affect or will enhance significant historical and archaeological resources.
- The current condition and relative value of the water resource being affected by the proposed activity.

- The impact to natural resources, including incremental adverse impacts to any natural resource which exists in a significantly degraded state due to past or current individual or cumulative impacts.
- All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.

Section 6 amends s. 373.246, F.S., to require the governing board of each water management district to prepare a water shortage plan by January 1, 2002, if they have not yet prepared such a plan. The bill requires the water management districts to, during a time of water shortage, order local governments to report to the governing board all development permits that are for water usage of 100,000 gallons or more per day, either individually or cumulatively, so as not to be inconsistent with efforts to mitigate the water shortage.

Where the governing board by order declares a water shortage, the order must implement the water shortage plan. During an emergency, the plan must be implemented. A permittee must submit a specific plan for assuring that the permittee meets emergency water conservation goals adopted by the district during the duration of the permit.

If this is requirement is intended to impose a new permit condition on new or existing consumptive use permits, the language should cross-reference s. 373.223, F.S., the conditions for a consumptive use permit.

Section 7 amends s. 373.414, F.S., regarding mitigation that may be considered in granting a permit to limit the governing boards or the Department of Environmental Protection's ability to consider mitigation until all reasonable efforts to avoid and minimize the impact of the project on the wetlands have been exhausted.

Section 8 provides an effective date of October 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill imposes new planning requirements associated with water supply, that will require municipalities and counties to spend money in order to implement, the bill constitutes a mandate as defined in Article VIII, section 18(a):

> No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 *…the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature…*

For purposes of legislative application of Article VII, section 18, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate of in excess of $1,598,238 would be characterized as a mandate. As close to 400 municipalities and 67 counties will have to revise their comprehensive plans to comply with the requirements of the bill, and assuming each unit of government spends $40,000 to comply with the requirements of the bill, the cost will likely exceed the threshold figure for significant impact.

As the bill does not provide an additional revenue source or appropriations to fund compliance with its terms, the bill must have a two-third vote of the membership of each house of the Legislature and a legislative finding of an important state interest in order to require compliance of local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Tax/Fee Issues:

None.

C. Private Sector Impact:

Applicants for comprehensive plan amendments will have to demonstrate that their amendment is consistent with the new water concurrency standards. This may increase the expense of development application and result in application denials where the applicant cannot demonstrate water availability under the standards set forth in the bill. In addition, the additional criteria added to the consumptive use permit review process may lead to increase cost of applying for such permits.

D. Government Sector Impact:

The bill would require local governments to revise their comprehensive plans to include water supply data and analysis based on the appropriate water management district's regional water supply plan and to consider water. The five water management districts and the Department of Environmental Protection will incur administrative expenses associated

with conforming their rules and application review procedures to comply with the terms of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some concern has been raised regarding whether a conflict arises if a local government denies development approval based on water availability when the applicable water management district has issued a consumptive use permit. This may cause a conflict between chs. 163 and 373, F.S. Chapter 373, F.S., confers to Water Management District the sole authority to regulate consumptive use of water. See *City of Cocoa v. Holland Properties, Inc*. 625 So. 2d 17 (Fla. 5th DCA 1993).

Although this issue does not arise often, the Attorney General is currently reviewing a request for a formal opinion from St. Johns County. St. Johns County inquired as to whether it may under existing law, deny a development application based on water availability (or unavailability) even though the applicant had already received a consumptive use permit. Although the St. Johns River Water Management District has taken the position that the county is preempted by ch. 373, F.S., the Attorney General has not yet issued an opinion.

A similar conflict arises if water management districts are able to veto local government land use decisions based on the unavailability of water. Local governments are granted broad home rule powers to regulate land use. While the exercise of that authority must be consistent with state law, specifically chapter 163, F.S., municipalities and counties ultimately make the decision whether to grant or deny comprehensive plan, zoning and development permit requests. Accordingly, the veto power granted a water management district over local land use decisions seriously undermines the home rule authority of such local governments.

VIII. Amendments:

None.