

By Senator Crist

13-1158A-01

See HB 1119

1 A bill to be entitled
2 An act relating to water and land use
3 relationships; amending s. 163.3177, F.S.;
4 providing additional criteria and requirements
5 for comprehensive plan amendments; amending s.
6 163.3180, F.S.; providing additional
7 limitations on concurrency requirements;
8 deleting a public transit facilities exception
9 to certain concurrency requirements; amending
10 s. 373.019, F.S.; revising a definition;
11 amending s. 373.223, F.S.; providing additional
12 requirements for obtaining a permit; providing
13 additional criteria for board evaluation of use
14 of ground or surface waters; amending s.
15 373.229, F.S.; requiring board approval of
16 permit applications during water shortages or
17 emergencies; amending s. 373.246, F.S.;
18 revising requirements, procedures, and
19 limitations for declarations of a water
20 shortage or emergency; amending s. 373.414,
21 F.S.; revising criteria for certain mitigation
22 activities in granting or denying a permit;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (c) of subsection (6) of section
28 163.3177, Florida Statutes, is amended to read:
29 163.3177 Required and optional elements of
30 comprehensive plan; studies and surveys.--
31

1 (6) In addition to the requirements of subsections
2 (1)-(5), the comprehensive plan shall include the following
3 elements:

4 (c) A general sanitary sewer, solid waste, drainage,
5 potable water, and natural groundwater aquifer recharge
6 element correlated to principles and guidelines for future
7 land use, indicating ways to provide for future potable water,
8 drainage, sanitary sewer, solid waste, and aquifer recharge
9 protection requirements for the area. The element may be a
10 detailed engineering plan including a topographic map
11 depicting areas of prime groundwater recharge. The element
12 shall describe the problems and needs and the general
13 facilities that will be required for solution of the problems
14 and needs. The element shall also include a topographic map
15 depicting any areas adopted by a regional water management
16 district as prime groundwater recharge areas for the Floridan
17 or Biscayne aquifers, pursuant to s. 373.0395. These areas
18 shall be given special consideration when the local government
19 is engaged in zoning or considering future land use for said
20 designated areas. For areas served by septic tanks, soil
21 surveys shall be provided which indicate the suitability of
22 soils for septic tanks. All comprehensive plan amendments that
23 would increase the amount of use, density, or intensity of use
24 on land shall be supported by data and analysis which
25 demonstrates that adequate potable water will be available to
26 the development without contributing to harm to water
27 resources or wetlands, increasing the extent of water
28 shortages, or compromising the ability of a water management
29 district to establish and implement a minimum flow and level
30 for any water body. All comprehensive plan amendments that
31 would increase the amount of use, density, or intensity of use

1 on land shall be based upon the relevant data from the
2 appropriate water management district concerning water
3 recharge areas, floodprone areas, and minimum flows and
4 levels.

5 Section 2. Paragraphs (d) and (e) are added to
6 subsection (2) of section 163.3180, Florida Statutes, and
7 subsection (4) of that section is amended, to read:

8 163.3180 Concurrency.--

9 (2)

10 (d) No local government shall provide public
11 facilities or services that significantly impact natural
12 resources or contribute further to incrementally impact any
13 natural resource which exists in a significantly degraded
14 state due to past or current individual or cumulative impacts.

15 (e) No local government shall issue a development
16 permit for other than facilities deemed critical by the state
17 for public health, safety, and welfare, without satisfying the
18 requirements of paragraph (d).

19 ~~(4)(a)~~ The concurrency requirement as implemented in
20 local comprehensive plans applies to state and other public
21 facilities and development to the same extent that it applies
22 to all other facilities and development, as provided by law.

23 ~~(b) The concurrency requirement as implemented in~~
24 ~~local comprehensive plans does not apply to public transit~~
25 ~~facilities. For the purposes of this paragraph, public~~
26 ~~transit facilities include transit stations and terminals,~~
27 ~~transit station parking, park-and-ride lots, intermodal public~~
28 ~~transit connection or transfer facilities, and fixed bus,~~
29 ~~guideway, and rail stations. As used in this paragraph, the~~
30 ~~terms "terminals" and "transit facilities" do not include~~

31

1 ~~airports or seaports or commercial or residential development~~
2 ~~constructed in conjunction with a public transit facility.~~

3 Section 3. Subsection (13) of section 373.019, Florida
4 Statutes, is amended to read:

5 373.019 Definitions.--When appearing in this chapter
6 or in any rule, regulation, or order adopted pursuant thereto,
7 the following words shall, unless the context clearly
8 indicates otherwise, mean:

9 (13) "Reasonable-beneficial use" means the use of
10 water in such quantity as is necessary for economic and
11 efficient utilization for a purpose and in a manner which is
12 ~~both~~ reasonable and consistent with the public interest, is
13 the subject of a binding drought management plan, and will not
14 cause or contribute to a cumulative, significant impact.

15 Section 4. Subsections (1) and (4) of section 373.223,
16 Florida Statutes, are amended, and subsection (5) is added to
17 that section, to read:

18 373.223 Conditions for a permit.--

19 (1) To obtain a permit pursuant to the provisions of
20 this chapter, the applicant must establish that the proposed
21 use of water:

22 (a) Is a reasonable-beneficial use as defined in s.
23 373.019. ~~+~~

24 (b) Will not interfere with any presently existing
25 legal use of water. ~~+~~ ~~and~~

26 (c) Is consistent with the public interest.

27 (d) First avoids and then minimizes impacts to natural
28 resources to the extent reasonably practicable.

29 (e) Will include a mitigation plan, approved by the
30 governing board or the department, for avoiding or minimizing
31 adverse impacts.

1 (f) Will include reasonable efforts to mitigate past
2 impacts related to water use.

3 (g) Can and will be reduced to levels specified by the
4 district during times of mandatory water conservation
5 requirements.

6 (h) Is consistent with the implementation of minimum
7 flows and levels for all impacted water bodies.

8 (i) Is consistent with the comprehensive plans of the
9 affected local governments.

10
11 No permit shall be issued for a development or land use, or
12 for an amount of water, that is not consistent with this
13 subsection.

14 (4) The governing board or the department, by
15 regulation, may reserve from use by permit applicants, water
16 in such locations and quantities, and for such seasons of the
17 year, as in its judgment may be required for the protection of
18 natural resources, fish and wildlife, or the public health and
19 safety. Such reservations shall be subject to periodic review
20 and revision in the light of changed conditions. However, all
21 presently existing legal uses of water shall be protected so
22 long as such use is not contrary to the public interest.

23 (5) When evaluating whether a potential use of ground
24 or surface water is consistent with the public interest,
25 pursuant to paragraph (1)(c), the governing board or
26 department shall consider:

27 (a) Whether the activity will adversely affect the
28 public health, safety, or welfare or the property of others.

29 (b) Whether the activity will adversely affect the
30 conservation of natural resources, fish, and wildlife,
31 including endangered or threatened species or their habitats.

1 (c) Whether the activity will adversely affect
2 navigation or the flow of water.

3 (d) Whether the activity will adversely affect the
4 fishing or recreational values or marine productivity.

5 (e) Whether the activity will be of a temporary or
6 permanent nature.

7 (f) Whether the activity will adversely affect or will
8 enhance significant historical and archaeological resources
9 under the provisions of s. 267.061.

10 (g) The current condition and relative value of the
11 water resource being affected by the proposed activity.

12 (h) The impact to natural resources, including
13 incremental adverse impacts to any natural resource which
14 exists in a significantly degraded state due to past or
15 current individual or cumulative impacts.

16 (i) All economically and technically feasible
17 alternatives to the proposed source, including, but not
18 limited to, desalination, conservation, reuse of nonpotable
19 reclaimed water and stormwater, and aquifer storage and
20 recovery.

21 Section 5. Subsection (4) of section 373.229, Florida
22 Statutes, is amended to read:

23 373.229 Application for permit.--

24 (4) If the proposed application is for less than
25 100,000 gallons per day, the governing board or the department
26 may consider the application and any objections thereto
27 without a hearing. If the proposed application is for 100,000
28 gallons per day or more and no objection is received, the
29 governing board or the department, after proper investigation
30 by its staff, may, at its discretion, approve the application
31 without a hearing. Notwithstanding the provisions of this

1 subsection, all applications shall require approval by the
2 governing board during any water shortage or emergency.

3 Section 6. Subsections (1), (2), (3), and (7) of
4 section 373.246, Florida Statutes, are amended to read:

5 373.246 Declaration of water shortage or emergency.--

6 (1) The governing board or the department by
7 regulation shall formulate a plan, if not in effect on the
8 effective date of this act, no later than January 1, 2002, for
9 implementation during periods of water shortage. As a part of
10 this plan the governing board or the department shall adopt a
11 reasonable system of water-use classification according to
12 source of water supply; method of extraction, withdrawal, or
13 diversion; or use of water or a combination thereof. The plan
14 may include provisions for variances and alternative measures
15 to prevent undue hardship and ensure equitable distribution of
16 water resources. The district shall issue orders requiring any
17 local government within the part of the district subject to
18 the water shortage order or, in the case of a regional water
19 supply authority, the entire area served, whether or not the
20 entire area is subject to the order, to obtain approval from
21 the governing board for all development permits which
22 individually or cumulatively have the potential to be
23 inconsistent with efforts to mitigate the water shortage.

24 (2) The governing board or the department by order may
25 declare that a water shortage exists for a source or sources
26 within all or part of the district when insufficient water is
27 or will be available to meet the present and anticipated
28 requirements of the users or when conditions are such as to
29 require ~~temporary~~ reduction in total use within the area to
30 protect natural water resources from ~~serious~~ harm. The order
31

1 shall implement the plan adopted under subsection (1) and
2 shall constitute ~~Such orders will be~~ final agency action.

3 (3) In accordance with the plan adopted under
4 subsection (1), the governing board or the department may
5 impose such restrictions on one or more classes of water uses
6 as may be necessary to protect the natural ~~water~~ resources of
7 the area from ~~serious~~ harm and to restore them to their
8 previous condition.

9 (7) If an emergency condition exists due to a water
10 shortage within any area of the district, and if the
11 department, or the executive director of the district with the
12 concurrence of the governing board, finds that the exercise of
13 powers under subsection (1) is not sufficient to protect the
14 public health, safety, or welfare; the health of animals,
15 fish, ~~or~~ aquatic life, or other natural resources; a public
16 water supply; or recreational, commercial, industrial,
17 agricultural, or other reasonable uses, the department ~~it~~ or
18 the executive director shall ~~he or she may~~, pursuant to the
19 provisions of s. 373.119, issue emergency orders reciting the
20 existence of such an emergency and requiring that such action,
21 including, but not limited to, apportioning, rotating,
22 limiting, or prohibiting the use of the water resources of the
23 district, be taken as the department or the executive director
24 deems necessary to meet the emergency.

25 (a) During an emergency, the plan shall be
26 automatically implemented to assure the availability of water
27 for the health and safety of existing residents.

28 (b) Notwithstanding the provision for variances and
29 prevention of undue hardship, no new permit shall be issued,
30 nor shall any expansion of an existing permit be granted,
31 during the emergency within all or part of a district or the

1 part thereof served by a regional water supply authority,
2 except permits necessary to assure availability of water for
3 the health and safety of existing residents.

4 (c) Notwithstanding paragraphs (a) and (b), a
5 permittee shall submit a specific plan for assuring that the
6 permittee can meet specified water conservation goals designed
7 to meet emergency water conservation goals reasonably expected
8 to be adopted by the district during the duration of the
9 requested permit.

10 Section 7. Paragraph (b) of subsection (1) of section
11 373.414, Florida Statutes, is amended to read:

12 373.414 Additional criteria for activities in surface
13 waters and wetlands.--

14 (1) As part of an applicant's demonstration that an
15 activity regulated under this part will not be harmful to the
16 water resources or will not be inconsistent with the overall
17 objectives of the district, the governing board or the
18 department shall require the applicant to provide reasonable
19 assurance that state water quality standards applicable to
20 waters as defined in s. 403.031(13) will not be violated and
21 reasonable assurance that such activity in, on, or over
22 surface waters or wetlands, as delineated in s. 373.421(1), is
23 not contrary to the public interest. However, if such an
24 activity significantly degrades or is within an Outstanding
25 Florida Water, as provided by department rule, the applicant
26 must provide reasonable assurance that the proposed activity
27 will be clearly in the public interest.

28 (b) If the applicant is unable to otherwise meet the
29 criteria set forth in this subsection and provided all
30 reasonable efforts to avoid and minimize the impact have been
31 exhausted, the governing board or the department, in deciding

1 to grant or deny a permit, shall consider measures proposed by
2 or acceptable to the applicant to mitigate adverse effects
3 that may be caused by the regulated activity. Such measures
4 may include, but are not limited to, onsite mitigation,
5 offsite mitigation, offsite regional mitigation, and the
6 purchase of mitigation credits from mitigation banks permitted
7 under s. 373.4136. It shall be the responsibility of the
8 applicant to choose the form of mitigation. The mitigation
9 must offset the adverse effects caused by the regulated
10 activity.

11 1. The department or water management districts may
12 accept the donation of money as mitigation only where the
13 donation is specified for use in a duly noticed environmental
14 creation, preservation, enhancement, or restoration project,
15 endorsed by the department or the governing board of the water
16 management district, which offsets the impacts of the activity
17 permitted under this part. However, the provisions of this
18 subsection shall not apply to projects undertaken pursuant to
19 s. 373.4137 or chapter 378. Where a permit is required under
20 this part to implement any project endorsed by the department
21 or a water management district, all necessary permits must
22 have been issued prior to the acceptance of any cash donation.
23 After the effective date of this act, when money is donated to
24 either the department or a water management district to offset
25 impacts authorized by a permit under this part, the department
26 or the water management district shall accept only a donation
27 that represents the full cost to the department or water
28 management district of undertaking the project that is
29 intended to mitigate the adverse impacts. The full cost shall
30 include all direct and indirect costs, as applicable, such as
31 those for land acquisition, land restoration or enhancement,

1 perpetual land management, and general overhead consisting of
2 costs such as staff time, building, and vehicles. The
3 department or the water management district may use a
4 multiplier or percentage to add to other direct or indirect
5 costs to estimate general overhead. Mitigation credit for
6 such a donation shall be given only to the extent that the
7 donation covers the full cost to the agency of undertaking the
8 project that is intended to mitigate the adverse impacts.
9 However, nothing herein shall be construed to prevent the
10 department or a water management district from accepting a
11 donation representing a portion of a larger project, provided
12 that the donation covers the full cost of that portion and
13 mitigation credit is given only for that portion. The
14 department or water management district may deviate from the
15 full cost requirements of this subparagraph to resolve a
16 proceeding brought pursuant to chapter 70 or a claim for
17 inverse condemnation. Nothing in this section shall be
18 construed to require the owner of a private mitigation bank,
19 permitted under s. 373.4136, to include the full cost of a
20 mitigation credit in the price of the credit to a purchaser of
21 said credit.

22 2. The department and each water management district
23 shall report to the Executive Office of the Governor by
24 January 31 of each year all cash donations accepted under
25 subparagraph 1. during the preceding calendar year for wetland
26 mitigation purposes. The report shall exclude those
27 contributions pursuant to s. 373.4137. The report shall
28 include a description of the endorsed mitigation projects and,
29 except for projects governed by s. 373.4135(6), shall address,
30 as applicable, success criteria, project implementation status
31

1 and timeframe, monitoring, long-term management, provisions
2 for preservation, and full cost accounting.

3 3. If the applicant is unable to meet water quality
4 standards because existing ambient water quality does not meet
5 standards, the governing board or the department shall
6 consider mitigation measures proposed by or acceptable to the
7 applicant that cause net improvement of the water quality in
8 the receiving body of water for those parameters which do not
9 meet standards.

10 4. If mitigation requirements imposed by a local
11 government for surface water and wetland impacts of an
12 activity regulated under this part cannot be reconciled with
13 mitigation requirements approved under a permit for the same
14 activity issued under this part, including application of the
15 uniform wetland mitigation assessment method adopted pursuant
16 to subsection (18), the mitigation requirements for surface
17 water and wetland impacts shall be controlled by the permit
18 issued under this part.

19 Section 8. This act shall take effect October 1, 2001.
20

21 *****

22 LEGISLATIVE SUMMARY

23 Revises comprehensive plan and concurrency provisions and
24 consumptive use of water permit provisions to require
25 greater coordination of uses of land and water resources
26 to protect natural resources, surface and ground waters,
27 and wetlands.
28
29
30
31