

By the Committee on Comprehensive Planning, Local and Military
Affairs; and Senator Crist

316-1800-01

1 A bill to be entitled
2 An act relating to water supply policy;
3 amending s. 163.3167, F.S.; requiring that each
4 local government provide in its growth
5 management plan for the long-term availability
6 of water supplies for approved land
7 development; amending s. 163.3177, F.S.;
8 directing local government comprehensive plans
9 to coordinate with regional water supply plans;
10 directing future land use plans to be based on
11 data regarding the availability of sufficient
12 water supplies for present and future growth;
13 amending requirements for comprehensive plan
14 elements; amending s. 163.3180, F.S.; adding
15 concurrency requirements for water supply
16 availability; amending s. 373.0361, F.S.;
17 providing that incompatibility with a regional
18 supply plan must be considered in determining
19 if a proposed use of water is consistent with
20 the public interest; amending s. 373.223, F.S.;
21 providing additional requirements for obtaining
22 a permit; providing additional criteria for
23 evaluation of a potential use of ground or
24 surface waters; amending s. 373.246, F.S.;
25 revising requirements, procedures, and
26 limitations for declarations of a water
27 shortage or emergency; amending s. 373.414,
28 F.S.; revising criteria for certain mitigation
29 activities in granting or denying a permit;
30 providing an effective date.
31

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

2
3 Section 1. Subsection (13) is added to section
4 163.3167, Florida Statutes, to read:

5 163.3167 Scope of act.--

6 (13) Each local government shall provide in its growth
7 management plan for the availability of water supplies
8 necessary to meet the projected water use demands for the
9 established planning period.

10 Section 2. Paragraph (a) of subsection (4) and
11 paragraphs (a) and (c) of subsection (6) of section 163.3177,
12 Florida Statutes, are amended to read:

13 163.3177 Required and optional elements of
14 comprehensive plan; studies and surveys.--

15 (4)(a) Coordination of the local comprehensive plan
16 with the comprehensive plans of adjacent municipalities, the
17 county, adjacent counties, or the region; with the appropriate
18 water management district's regional water supply plans
19 pursuant to s. 373.0361 or with a regional water supplier's
20 plan, if applicable;with adopted rules pertaining to
21 designated areas of critical state concern; and with the state
22 comprehensive plan shall be a major objective of the local
23 comprehensive planning process. To that end, in the
24 preparation of a comprehensive plan or element thereof, and in
25 the comprehensive plan or element as adopted, the governing
26 body shall include a specific policy statement indicating the
27 relationship of the proposed development of the area to the
28 comprehensive plans of adjacent municipalities, the county,
29 adjacent counties, or the region and to the state
30 comprehensive plan, as the case may require and as such
31 adopted plans or plans in preparation may exist.

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

4 (a) A future land use plan element designating
5 proposed future general distribution, location, and extent of
6 the uses of land for residential uses, commercial uses,
7 industry, agriculture, recreation, conservation, education,
8 public buildings and grounds, other public facilities, and
9 other categories of the public and private uses of land. The
10 future land use plan shall include standards to be followed in
11 the control and distribution of population densities and
12 building and structure intensities. The proposed
13 distribution, location, and extent of the various categories
14 of land use shall be shown on a land use map or map series
15 which shall be supplemented by goals, policies, and measurable
16 objectives. Each land use category shall be defined in terms
17 of the types of uses included and specific standards for the
18 density or intensity of use. The future land use plan shall
19 be based upon surveys, studies, and data regarding the area,
20 including the amount of land required to accommodate
21 anticipated growth; the projected population of the area; the
22 character of undeveloped land; the availability of ground and
23 surface water resources for present and future water supplies
24 and the potential for development of alternative water
25 supplies;the availability of public services; the need for
26 redevelopment, including the renewal of blighted areas and the
27 elimination of nonconforming uses which are inconsistent with
28 the character of the community; and, in rural communities, the
29 need for job creation, capital investment, and economic
30 development that will strengthen and diversify the community's
31 economy. The future land use plan may designate areas for

1 future planned development use involving combinations of types
2 of uses for which special regulations may be necessary to
3 ensure development in accord with the principles and standards
4 of the comprehensive plan and this act. In addition, for rural
5 communities, the amount of land designated for future planned
6 industrial use shall be based upon surveys and studies that
7 reflect the need for job creation, capital investment, and the
8 necessity to strengthen and diversify the local economies, and
9 shall not be limited solely by the projected population of the
10 rural community. The future land use plan of a county may also
11 designate areas for possible future municipal incorporation.
12 The land use maps or map series shall generally identify and
13 depict historic district boundaries and shall designate
14 historically significant properties meriting protection. The
15 future land use element must clearly identify the land use
16 categories in which public schools are an allowable use. When
17 delineating the land use categories in which public schools
18 are an allowable use, a local government shall include in the
19 categories sufficient land proximate to residential
20 development to meet the projected needs for schools in
21 coordination with public school boards and may establish
22 differing criteria for schools of different type or size.
23 Each local government shall include lands contiguous to
24 existing school sites, to the maximum extent possible, within
25 the land use categories in which public schools are an
26 allowable use. All comprehensive plans must comply with the
27 school siting requirements of this paragraph no later than
28 October 1, 1999. The failure by a local government to comply
29 with these school siting requirements by October 1, 1999, will
30 result in the prohibition of the local government's ability to
31 amend the local comprehensive plan, except for plan amendments

1 described in s. 163.3187(1)(b), until the school siting
2 requirements are met. An amendment proposed by a local
3 government for purposes of identifying the land use categories
4 in which public schools are an allowable use is exempt from
5 the limitation on the frequency of plan amendments contained
6 in s. 163.3187. The future land use element shall include
7 criteria which encourage the location of schools proximate to
8 urban residential areas to the extent possible and shall
9 require that the local government seek to collocate public
10 facilities, such as parks, libraries, and community centers,
11 with schools to the extent possible.

12 (c)1. A general sanitary sewer, solid waste, drainage,
13 potable water, and natural groundwater aquifer recharge
14 element correlated to principles and guidelines for future
15 land use, indicating ways to provide for future potable water,
16 drainage, sanitary sewer, solid waste, and aquifer recharge
17 protection requirements for the area. The element may be a
18 detailed engineering plan including a topographic map
19 depicting areas of prime groundwater recharge. The element
20 shall describe the problems and needs and the general
21 facilities that will be required for solution of the problems
22 and needs. The element shall be based upon the relevant data
23 from the appropriate water management district concerning
24 water recharge areas, flood-prone areas, and minimum flows and
25 levels.The element shall also include a topographic map
26 depicting any areas adopted by a regional water management
27 district as prime groundwater recharge areas for the Floridan
28 or Biscayne aquifers, pursuant to s. 373.0395. These areas
29 shall be given special consideration when the local government
30 is engaged in zoning or considering future land use for said
31 designated areas. For areas served by septic tanks, soil

1 surveys shall be provided which indicate the suitability of
2 soils for septic tanks.

3 2. All comprehensive plan elements subject to this
4 paragraph which affect the use of water must address the
5 following impacts:

6 a. Any increase in the amount of use, density, or
7 intensity of use on land must be supported by data and
8 analysis that demonstrate that adequate potable water will be
9 available to the development. If there is a regional water
10 supply authority, it must provide data and projections on
11 water availability for these elements.

12 b. Whether the proposed use of water will adversely
13 affect the public health, safety, or welfare or the property
14 of others.

15 Section 3. Paragraph (a) of subsection (1) and
16 subsection (2) of section 163.3180, Florida Statutes, are
17 amended to read:

18 163.3180 Concurrency.--

19 (1)(a) Sanitary sewer, solid waste, drainage, potable
20 water and water supply availability, parks and recreation, and
21 transportation facilities, including mass transit, where
22 applicable, are the only public facilities and services
23 subject to the concurrency requirement on a statewide basis.
24 Additional public facilities and services may not be made
25 subject to concurrency on a statewide basis without
26 appropriate study and approval by the Legislature; however,
27 any local government may extend the concurrency requirement so
28 that it applies to additional public facilities within its
29 jurisdiction.

30 (2)(a) Consistent with public health and safety,
31 sanitary sewer, solid waste, drainage, and potable water

1 facilities shall be in place and available to serve new
2 development no later than the issuance by the local government
3 of a certificate of occupancy or its functional equivalent.

4 (b) Consistent with the public welfare, and except as
5 otherwise provided in this section, parks and recreation
6 facilities to serve new development shall be in place or under
7 actual construction no later than 1 year after issuance by the
8 local government of a certificate of occupancy or its
9 functional equivalent. However, the acreage for such
10 facilities shall be dedicated or be acquired by the local
11 government prior to issuance by the local government of a
12 certificate of occupancy or its functional equivalent, or
13 funds in the amount of the developer's fair share shall be
14 committed prior to issuance by the local government of a
15 certificate of occupancy or its functional equivalent.

16 (c) Consistent with the public welfare, and except as
17 otherwise provided in this section, transportation facilities
18 needed to serve new development shall be in place or under
19 actual construction no more than 3 years after issuance by the
20 local government of a certificate of occupancy or its
21 functional equivalent.

22 (d) Consistent with the public health, safety, and
23 welfare, water supply availability is sufficient to meet the
24 concurrency requirement for new development if one of the
25 following conditions is met:

26 1. At present, there is adequate ground or surface
27 water available to meet the projected water supply needs of
28 new development, in addition to the needs of existing legal
29 users and natural systems;

30 2. At present, there is a combination of ground or
31 surface water, and actual or proposed alternative water supply

1 sources, available to meet the projected water supply needs of
2 new development, in addition to the needs of existing legal
3 users and natural systems. Facilities necessary to provide the
4 alternative water supply sources must be permitted and under
5 construction no more than 5 years after the issuance by the
6 local government of a certificate of occupancy or its
7 functional equivalent; or

8 3. At present, there are adequate alternative water
9 supply sources available to meet the projected water supply
10 needs of new development.

11 Section 4. Subsection (6) of section 373.0361, Florida
12 Statutes, is amended to read:

13 373.0361 Regional water supply planning.--

14 (6) Nothing contained in the water supply development
15 component of the district water management plan shall be
16 construed to require local governments, government-owned or
17 privately owned water utilities, self-suppliers, or other
18 water suppliers to select a water supply development option
19 identified in the component merely because it is identified in
20 the plan. However, this subsection shall not be construed to
21 limit the authority of the department or governing board under
22 part II, and incompatibility with an approved regional water
23 plan shall be considered in the determination of public
24 interest pursuant to s. 373.223(1)(c).

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

28 373.223 Conditions for a permit.--

29 (1) To obtain a permit pursuant to the provisions of
30 this chapter, the applicant must establish that the proposed
31 use of water:

1 (a) Is a reasonable-beneficial use as defined in s.
2 373.019.~~†~~

3 (b) Will not interfere with any presently existing
4 legal use of water.~~†~~ and

5 (c) Is consistent with the public interest.

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

8 (e) Will include a mitigation plan, approved by the
9 governing board or the department, for avoiding or minimizing
10 adverse impacts.

11 (f) Can and will be reduced to levels specified by the
12 district during times of emergency conditions due to a water
13 shortage.

14 (g) Is consistent with the implementation of minimum
15 flows and levels for all impacted water bodies.

16 (h) Is consistent with the comprehensive plans of the
17 affected local governments.

18
19 No permit shall be issued for an amount of water that is not
20 consistent with this subsection.

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

30 (5) When evaluating whether a potential use of ground
31 or surface water is consistent with the public interest,

1 pursuant to paragraph (1)(c), the governing board or
2 department shall consider:

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

5 (b) Whether the activity will adversely affect the
6 conservation of natural resources, fish, and wildlife,
7 including species that are endangered, threatened, or of
8 special interest, or their habitats.

9 (c) Whether the activity will adversely affect
10 navigation or the flow of water.

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

13 (e) Whether the activity will be of a temporary or
14 permanent nature.

15 (f) Whether the activity will adversely affect or will
16 enhance significant historical and archaeological resources
17 under the provisions of s. 267.061.

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

20 (h) The impact to natural resources, including
21 incremental adverse impacts to any natural resource that
22 exists in a significantly degraded state due to past or
23 current individual or cumulative impacts.

24 (i) All economically and technically feasible
25 alternatives to the proposed source, including, but not
26 limited to, desalination, conservation, reuse of nonpotable
27 reclaimed water and stormwater, and aquifer storage and
28 recovery.

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

31 373.246 Declaration of water shortage or emergency.--

1 (1) The governing board or the department by
2 regulation shall formulate a plan no later than January 1,
3 2002, for implementation during periods of water shortage. As
4 a part of this plan the governing board or the department
5 shall adopt a reasonable system of water-use classification
6 according to source of water supply; method of extraction,
7 withdrawal, or diversion; or use of water or a combination
8 thereof. The plan may include provisions for variances and
9 alternative measures to prevent undue hardship and ensure
10 equitable distribution of water resources. The district shall
11 issue orders requiring any local government within the part of
12 the district subject to the water shortage order or, in the
13 case of a regional water supply authority, the entire area
14 served, whether or not the entire area is subject to the
15 order, to report to the governing board all development
16 permits that are for water usage of 100,000 gallons or more
17 per day, individually or cumulatively, so as not to be
18 inconsistent with efforts to mitigate the water shortage.

19 (2) The governing board or the department by order may
20 declare that a water shortage exists for a source or sources
21 within all or part of the district when insufficient water is
22 or will be available to meet the present and anticipated
23 requirements of the users or when conditions are such as to
24 require ~~temporary~~ reduction in total use within the area to
25 protect natural water resources from ~~serious~~ harm. The order
26 shall implement the plan adopted under subsection (1) and
27 shall constitute ~~Such orders will be~~ final agency action.

28 (3) In accordance with the plan adopted under
29 subsection (1), the governing board or the department may
30 impose such restrictions on one or more classes of water uses
31 as may be necessary to protect the natural water resources of

1 the area from ~~serious~~ harm and to restore them to their
2 previous condition.

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

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

22 (b) Notwithstanding paragraph (a), a permittee shall
23 submit a specific plan for assuring that the permittee can
24 meet specified water conservation goals designed to meet
25 emergency water conservation goals adopted by the district
26 during the duration of the requested permit.

27 Section 7. Paragraph (b) of subsection (1) of section
28 373.414, Florida Statutes, is amended to read:

29 373.414 Additional criteria for activities in surface
30 waters and wetlands.--

31

1 (1) As part of an applicant's demonstration that an
2 activity regulated under this part will not be harmful to the
3 water resources or will not be inconsistent with the overall
4 objectives of the district, the governing board or the
5 department shall require the applicant to provide reasonable
6 assurance that state water quality standards applicable to
7 waters as defined in s. 403.031(13) will not be violated and
8 reasonable assurance that such activity in, on, or over
9 surface waters or wetlands, as delineated in s. 373.421(1), is
10 not contrary to the public interest. However, if such an
11 activity significantly degrades or is within an Outstanding
12 Florida Water, as provided by department rule, the applicant
13 must provide reasonable assurance that the proposed activity
14 will be clearly in the public interest.

15 (b) If the applicant is unable to otherwise meet the
16 criteria set forth in this subsection and provided all
17 reasonable efforts to avoid and minimize the impact have been
18 exhausted, the governing board or the department, in deciding
19 to grant or deny a permit, shall consider measures proposed by
20 or acceptable to the applicant to mitigate adverse effects
21 that may be caused by the regulated activity. Such measures
22 may include, but are not limited to, onsite mitigation,
23 offsite mitigation, offsite regional mitigation, and the
24 purchase of mitigation credits from mitigation banks permitted
25 under s. 373.4136. It shall be the responsibility of the
26 applicant to choose the form of mitigation. The mitigation
27 must offset the adverse effects caused by the regulated
28 activity.

29 1. The department or water management districts may
30 accept the donation of money as mitigation only where the
31 donation is specified for use in a duly noticed environmental

1 creation, preservation, enhancement, or restoration project,
2 endorsed by the department or the governing board of the water
3 management district, which offsets the impacts of the activity
4 permitted under this part. However, the provisions of this
5 subsection shall not apply to projects undertaken pursuant to
6 s. 373.4137 or chapter 378. Where a permit is required under
7 this part to implement any project endorsed by the department
8 or a water management district, all necessary permits must
9 have been issued prior to the acceptance of any cash donation.
10 After the effective date of this act, when money is donated to
11 either the department or a water management district to offset
12 impacts authorized by a permit under this part, the department
13 or the water management district shall accept only a donation
14 that represents the full cost to the department or water
15 management district of undertaking the project that is
16 intended to mitigate the adverse impacts. The full cost shall
17 include all direct and indirect costs, as applicable, such as
18 those for land acquisition, land restoration or enhancement,
19 perpetual land management, and general overhead consisting of
20 costs such as staff time, building, and vehicles. The
21 department or the water management district may use a
22 multiplier or percentage to add to other direct or indirect
23 costs to estimate general overhead. Mitigation credit for
24 such a donation shall be given only to the extent that the
25 donation covers the full cost to the agency of undertaking the
26 project that is intended to mitigate the adverse impacts.
27 However, nothing herein shall be construed to prevent the
28 department or a water management district from accepting a
29 donation representing a portion of a larger project, provided
30 that the donation covers the full cost of that portion and
31 mitigation credit is given only for that portion. The

1 department or water management district may deviate from the
2 full cost requirements of this subparagraph to resolve a
3 proceeding brought pursuant to chapter 70 or a claim for
4 inverse condemnation. Nothing in this section shall be
5 construed to require the owner of a private mitigation bank,
6 permitted under s. 373.4136, to include the full cost of a
7 mitigation credit in the price of the credit to a purchaser of
8 said credit.

9 2. The department and each water management district
10 shall report to the Executive Office of the Governor by
11 January 31 of each year all cash donations accepted under
12 subparagraph 1. during the preceding calendar year for wetland
13 mitigation purposes. The report shall exclude those
14 contributions pursuant to s. 373.4137. The report shall
15 include a description of the endorsed mitigation projects and,
16 except for projects governed by s. 373.4135(6), shall address,
17 as applicable, success criteria, project implementation status
18 and timeframe, monitoring, long-term management, provisions
19 for preservation, and full cost accounting.

20 3. If the applicant is unable to meet water quality
21 standards because existing ambient water quality does not meet
22 standards, the governing board or the department shall
23 consider mitigation measures proposed by or acceptable to the
24 applicant that cause net improvement of the water quality in
25 the receiving body of water for those parameters which do not
26 meet standards.

27 4. If mitigation requirements imposed by a local
28 government for surface water and wetland impacts of an
29 activity regulated under this part cannot be reconciled with
30 mitigation requirements approved under a permit for the same
31 activity issued under this part, including application of the

1 uniform wetland mitigation assessment method adopted pursuant
2 to subsection (18), the mitigation requirements for surface
3 water and wetland impacts shall be controlled by the permit
4 issued under this part.

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

6

7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 SB 2064

10 Removes a new requirement that comprehensive plan amendments
11 that increase the density or intensity of land use must be
12 supported by data and analysis demonstrating that adequate
13 potable water will be available to the development without
14 contributing harm to water resources.

15 Requires local governments to incorporate into their
16 comprehensive plans water supply data and analysis based on
17 the regional water supply plans of the appropriate water
18 management district.

19 Adds water supply to the list of types of infrastructure and
20 services for which concurrency is required. To meet water
21 supply concurrency, applications for new development must
22 demonstrate that: there is adequate ground or surface water
23 available to meet the needs of the new development; a water
24 source is identified as available and any facilities necessary
25 to provide the alternative water supply must be permitted and
26 under construction no more than 5 years after issuance of the
27 certificate of occupancy; or there is currently adequate water
28 supply available to meet the projected water supply needs of
29 the new development.

30 Deletes a provision of the bill prohibiting local governments
31 from providing public facilities or services that
significantly impact natural resources.

Deletes a provision repealing a concurrency exception for
public transit facilities.

Deletes a change to the definition of reasonable beneficial
use in s. 373.019(13), F.S.

Substitutes a requirement that the appropriate water
management district, during a declared water shortage, approve
all development permits which may be inconsistent with efforts
to mitigate the water shortage with a requirement that local
governments notify the water management district of
development permits that would involve waste usage of 100,000
gallons or more per day.

31