

II. Present Situation:

The Local Government Comprehensive Planning and Land Development Regulation Act set forth in ss. 163.3164- 163.3245, F.S., requires each local government in Florida to develop and adopt a comprehensive land use plan to guide their future development and growth.

Chapter 163, F.S., Provisions

Local governments are required in their local government comprehensive plans to address a number of issues related to water supply. First, s.163.3177(6)(c), F.S., requires local governments to prepare: “A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste and aquifer recharge protection requirements for the area.” The element must include a topographic map showing groundwater recharge areas for the Floridian or Biscayne aquifers. Local governments are required to give special consideration to aquifer recharge areas. Where an area is served by septic tanks, the plan must include soil surveys.

Local governments must prepare a conservation element addressing: “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 are also required to assess their current, and projected water needs and sources for a 10-year period. In addition, the land use map in the future land use element must identify existing and planned waterwells and cones of influence as well as other water resources such as surface water bodies and wetlands.

Local government comprehensive plans must contain a capital improvements element to address the availability of public facilities, and “which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan” (s. 163.3177(3)(b), F.S.) The capital improvements element must cover at least a 5-year period.

Concurrency

The provision of potable water is one of the services subject to concurrency. Potable water, along with sanitary sewer, solid waste, and drainage must be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its equivalent. In order to implement concurrency, the local government must adopt level of service standards by which to evaluate whether adequate potable water service necessary to support new development is available concurrent with the impacts of such development.

Rule 9J-5 Criteria

Chapter 9J-5, Florida Administrative Code (F.A.C.), establishes the minimum criteria for the Department of Community Affairs’ review of local government comprehensive plans, plan amendments, evaluation and appraisal reports and land development regulations. The rule specifically requires that all goals, objectives, policies, standards, findings and conclusions

within the comprehensive plan or amendments must be based on data and analysis applicable to each element. The data used shall be the best available existing data, unless the local government “desires original data or special studies.” Moreover, the data must be taken from professionally accepted sources, “such as the United States Census, State Data Center, State University System of Florida, regional planning councils, water management districts or existing technical studies.” Several provisions in this chapter affect the treatment of water supply issues by local governments in their comprehensive plans.

Future Land Use Element (9J-5.006, F.A.C.):

1. Requires an analysis of the availability of facilities and services as identified in potable water and natural groundwater aquifer recharge elements to accommodate existing development, land for which development orders have been issued, and an analysis of the amount of land needed to accommodate the projected population.
2. Requires that existing and planned potable waterwells and wellhead protection areas be shown on the existing land use map or map series.
3. Provides that facilities and services meet locally established level of service standards, and are available concurrent with the impacts of development.
4. Protection of potable water wellfields by designating appropriate activities and land uses within wellhead protection areas, and environmentally sensitive land.

Sanitary Sewer, Solid Waste, Stormwater Management, Potable Water and Natural Groundwater Aquifer Recharge Element (9J-5.011, F.A.C.):

1. The local government must identify facilities that provide service within the local government’s jurisdiction, including the design capacity, current demand and level of service provided by the facility. Potable water facilities are defined as “a system of structures designed to collect, treat, or distribute potable water, and includes water wells, treatment plants, reservoirs and distribution mains.” (9J-5.003(93), F.A.C.)
2. A facility capacity analysis, for a planning period of at least 5 years in length, based on the projected demand at the current level of service for the facility, the projected population, land use distributions depicted in the future land use element, and available surplus capacity. The element must also address correcting existing facility deficiencies.
3. The element must address conserving potable water resources and protecting the functions of natural groundwater recharge areas and natural drainage features.
4. The element must establish level of service standards; for example, minimum design flow, storage capacity, and pressure for potable water facilities.
5. A strategy for regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer recharge areas.

Conservation Element (Rule 5.013, F.A.C.)

Current and projected water needs and sources for the next ten-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands. “The analysis shall consider existing levels of water conservation, use and protection and applicable policies of the regional water management district.”

1. “Protection of water quality by restriction of activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas and surface waters used as a source of public water supply.”
2. Emergency conservation of water sources in accordance with the plans of the regional water management district.

Concurrency Management System (Rule 9J-5.0055, F.A.C.)

1. For potable water facilities, in order to demonstrate concurrency, a local government must demonstrate either: a) at the time a development order or permit is issued, that at the time a certificate of occupancy is issued that the necessary facilities and services are available to serve the new development, or b) the necessary facilities and services are guaranteed in an enforceable development agreement (under s. 163.3220, F.S.) or development order (pursuant to chapter 380) such that the service will be available to serve new development at the time of the issuance of the certificate of occupancy.
2. Level of service standards are adopted, such as the minimum design flow, storage capacity, and pressure for potable water facilities.

Strategic Regional Policy Plans

Section 186.507, F.S., requires regional planning councils to adopt strategic regional policy plans (SRPPs) that identify and address significant regional resources. The purpose of the SRPPs is to provide guidance to their region and local governments within the region on multijurisdictional issues, including natural resources of regional significance. In addition, the SRPPs must be consistent with the State Comprehensive Plan. The SRPPs cannot establish binding level of service standards for public facilities and services provided or regulated by local governments.

Role of the Water Management Districts in Reviewing Comprehensive Plan Amendments

Pursuant to s. 163.3184, F.S., the water management districts along with other agencies, including DEP, the Department of Transportation and the Regional Planning Councils, are required to provide comments to the Department of Community Affairs on certain comprehensive plans and plan amendments. If review of a proposed comprehensive plan amendment is requested by a regional planning council, affected person, the local government transmitting the plan amendment, or DCA elects to review an amendment, the appropriate water management district is required to provide comments to the Department of Community Affairs within 30 days of receipt of the proposed plan amendment.

Chapter 373, F.S., Provisions

Chapter 373, F.S., contains a comprehensive framework for water supply planning in Florida. First, s. 373.036, F.S., requires the development of a Florida Water Plan by DEP. The Florida Water Plan includes: a) the programs and activities of DEP related to water supply, water quality, flood protection, and natural systems; b) the water quality standards of DEP; c) the district water management plans; d) guidance for the development of programs and rules related to water resources.

Each water management district is required to adopt a water management plan for water resources within its region, which addresses water supply, water quality, flood protection and floodplain management, and natural systems. The plan is based on a 20-year planning horizon and must be updated every 5 years. The plan must include:

1. Methodologies for adopting minimum flows and levels, and any established minimum flows and levels;
2. Identification of one or more water supply planning regions;
3. Required technical data;
4. A districtwide water supply assessment to be completed no later than July 1, 1998 which determines for each water supply planning region whether “existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for all existing legal uses and reasonably anticipated future needs and to sustain the water resources and related natural systems,” (s. 373.036 (2)(b), F.S.); and
5. Any completed regional water supply plans.

In 1997, chapter 97-160, Laws of Florida, was enacted which requires the five water management districts to prepare regional water supply plans for each water supply planning region identified in the district water management plan, “where it determines the sources of water are not adequate for the planning period to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems.” Regional water supply planning is required to be conducted in coordination with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected parties.

A regional water supply must cover at least a 20-year planning period and must include a water supply development and a water resource development component. The water supply component must include:

- A quantification of water supply needs for all existing and “reasonable projected” future uses within the planning horizon, including meeting water supply needs for a 1-in-10-year drought event.
- A list of water source options for water supply development, including alternative sources.
- For each identified water source options, the estimated amount of water available for use and the estimated costs and funding for water supply development.
- A list of water supply development projects which receive priority consideration for state or water management district funding assistance; for example, projects that implement reuse, storage, recharge or conservation of water, or limits adverse water resource impacts.

The water resource development component of a regional water supply plan must include:

- A listing of water resource development projects that support water supply development.

- For each water resource development project listed an estimate of the amount of water to become available through the project; the timetable and costs of constructing and maintaining the project; sources of funding and who will construct the project.
- The recovery and prevention strategy for water bodies expected to fall below an established minimum flow and level.
- A funding strategy for water resource development.
- How the options identified serve the public interest or save costs by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development.
- Technical data to support the regional water supply plan.
- Minimum flows and levels established for water resources within the planning regions.

Section 373.036, F.S., contains several important limitations on the applicability of regional water supply plans. First, the adoption of a regional water supply plan by the governing board of a water management district is not subject to chapter 120, F.S. Second, s. 373.0391(6), F.S., contains the disclaimer that nothing in the water supply component of the district water management plan requires local governments, government-owned or privately owned water utilities, or other water suppliers to select a water supply development option because it is in the plan.

Chapter 373, F.S., also contains several requirements that water management districts provide technical information and assistance to local governments. First, water management districts are required, pursuant s. 373.0391, F.S., to assist local governments in the development and future revision of local government comprehensive plan elements or public facilities required of independent special districts. Second, each water management district is required to develop a groundwater basin resource availability inventory and provide each affected municipality, county and regional planning agency with the inventory. (s. 373.3095, F.S.) Local governments are required to review the inventory for consistency with the local government comprehensive plan and consider the inventory in future revisions of the plan.

Following the requirements of s. 373.0361, F.S., the water management districts have adopted the following regional water supply plans:

The Northwest Florida Water Management District adopted a Regional Water Supply plan for Santa Rosa, Okaloosa and Walton Counties on February 22, 2001. The determination was made by the district in 1998 that existing and reasonably anticipated sources of water were not considered adequate to supply water for all existing legal users and reasonable anticipated future needs in Water Supply Planning Region II, composed of Santa Rosa, Okaloosa and Walton counties. Further, water withdrawals from the Floridan Aquifer in the coastal area of Region II have formed a large cone of depression in the aquifer centered at Ft. Walton Beach, and the region is at risk for saltwater encroachment. Because of the threat of saltwater intrusion, increased withdrawals from the Floridan aquifer may not be an option to satisfy increased demand. Accordingly, the plan evaluates the use of alternative water supply options, including” use of the Florida Aquifer from inland locations, Sand and Gravel Aquifer, Conservation, Reclaimed Water, Aquifer Storage and Recovery, Surface Water and Desalination.

The Southwest Florida Water Management District (SWFWMD) adopted a Regional Water Supply Plan for a ten-county area that extends from Pasco County at its northern boundary to Charlotte County at its southern boundary. In June 1998, the Governing Board of SWFWMD identified four water supply planning regions: northern, west-central, east-central and southern. Three of the four planning regions correspond to the jurisdictional boundaries of the regional water supply authorities (RWSA): Withlacoochee RWSA for the Northern Region, Tampa Bay Water for the west-central region and Peace River Manasota RWSA for the southern region. The SWFWMD concluded that regional water supply planning was necessary for the west-central, east-central and southern planning regions because “sources of water are not adequate for the planning period to supply water for all reasonable beneficial uses and to sustain the water resources and related natural systems.”

The plan projects that the total additional increase in water demand by the year 2020 will be 364.1 million gallons per day (mgd.) An additional 68 mgd is needed to replace wellfield cutbacks; hence, the total additional water demand through 2020 will be approximately 432 mgd. To meet this demand, the district identifies possible sources as: 1) surface water and storm water, 2) reclaimed water, 3) agricultural water conservation, 4) non-agricultural water conservation, 5) brackish ground water and 6) seawater desalination. The plan relies on water conservation as an alternative water source to meet a significant portion of the increased demand. Finally, SWFWMD is in the process of developing a computer information system, called the Comprehensive Watershed Management Decision Support System containing water supply information that can be accessed by local governments and other users.

The South Florida Water Management District (SFWM) has adopted four regional water supply plans: Kissimmee Basin, Lower West Coast, Upper East Coast and Lower East Coast. The Kissimmee Basin includes those portions of Orange, Osceola, Polk, Highlands, Okeechobee, and Glades County that lie within the SFWM. Major issues of concern identified in the plan include the continued use of ground water to supply the projected population growth in Orange and Osceola Counties and increased surface water use in the Lake Istokpoga-Indian Prairie Basin resulting from proposed agricultural expansion.

The Upper East Coast Water Supply Plan, addressing most of St. Lucie and Martin Counties, as well as a small portion of Okeechobee County, concludes that portions of historically used sources of water, especially the Surficial Aquifer System in the coastal portions of the region, are not sufficient to meet projected water demands during a 1-in-10-year drought. Water source options considered for the region include surface water storage, aquifer storage and recovery and the Floridan Aquifer.

The Lower East Coast Regional Water Supply Plan includes all of Miami-Dade, Broward and Palm Beach Counties as well as parts of seven other counties. The plan is linked closely to Comprehensive Review Study of the Central & South Florida Project, or Everglades Restudy. The plan focuses on \$187 million in projects to increase the available storage and recharge of water in the region.

The Lower West Coast Regional Water Supply Plan includes all of Lee County, most of Collier and Hendry County and portions of Charlotte, Glades and Monroe County counties. While the plan concludes that with appropriate management and diversification of water supply sources,

there is adequate water supply to meet the needs of the region through 2020, the assessment finds that the traditional source of water, from the surficial and intermediate aquifers, has limited potential for expansion due to potential impacts to wetlands.

The St. Johns River Water Management District (SJRWMD) adopted a District Water Supply Plan in 2000 that treats the entire district as the planning region. The population within the SJRWMD is projected to increase by 50%, to 5.2 million people in 2020. Total water demand for the district is projected to increase from 1,371 million gallons per day (mgd) in 1995 to between 1,679 to 1,863 mgd in 2020, or an increase of 22-36 percent. Public supply demand is projected to increase by 52 percent.

The district identifies in its plan five work group areas for purposes of evaluating water supply sources and water supply development plans: East-Central Florida; Brevard County; Volusia County Area; East-Central Flagler County; and Southwestern St. Johns County and Eastern Putnam County; and Northern St. Johns County and Southern Duval County. For some of these areas, current individual utility plans to increase withdrawals from the Florida aquifer through 2020 will not be sustainable without causing unacceptable adverse impacts to water quality, wetland and aquatic systems, and existing legal uses.

The 1998 Water Supply Assessment conducted by the Suwannee River Water Management District concluded that Regional Water Supply Plans were not necessary at that time; however, the Suwannee River Water Management District Water Management Plan for 2000 predicts that consumptive water use is projected to increase by 20% by the year 2020, with population projections for the district indicating a 32% increase. The plan projects 2020 water use by county and per capita. The Floridan aquifer is the primary source of water for consumptive use in the district

Section 403.064, F.S., requires that all applicants for permits to construct or operate a wastewater treatment facility located within, or servicing a population located within a water resource caution area must prepare a reuse feasibility study as part of their permit application. The reuse feasibility study must include:

- Evaluation of costs and benefits for different types of reuse.
- Evaluation of water savings if reuse is implemented.
- Evaluation of rates and fees necessary to implement reuse.
- Evaluation of environmental and water resource benefits associated with reuse.
- Evaluation of economic, environmental, and technical constraints.
- A schedule for the implementation of reuse.

In addition, the applicant's determination of feasibility is final if the study includes the required contents. DEP has adopted Rule 62.610, Florida Administrative Code, providing guidelines for the preparation of reuse feasibility studies.

Section 403.1835, F.S., creates a water pollution control financial assistance program, administered by DEP, to fund projects eligible under the Federal Water Pollution Control Act, including the planning, design, construction, and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems, and

estuary conservation and management. Under the program, the department may make grants and loans, provide loan guarantees, purchase loan insurance or other credit enhancements, and buy or refinance local debt.

Section 403.804(3), F.S., provides that the Environmental Regulation Commission shall establish priorities and have final state approval on applications for federal and state grants for the construction of wastewater or water treatment works. According to DEP, action on these grants has been nothing but a formality for over a decade.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3177, F.S., to require local governments to consider information from regional water supply plans throughout their local government comprehensive plan. The bill:

- Requires the coordination of the local comprehensive plan with the appropriate water management district's water supply plan in the intergovernmental coordination element.
- Requires that by January 1, 2005, or the deadline established by the Department of Community Affairs for the local government to adopt its Evaluation and Appraisal Report, whichever occurs first, the potable water element must be based on data and analysis, including, but not limited to, the appropriate water management district's regional water supply plan. In addition, the element must include a workplan, covering at least a 10-year planning period, for building new water supply facilities that are necessary to serve existing and new development and over which the local government has control.
- Provides that a local government's assessment of their current, and projected water needs and sources for a 10-year period in its conservation element take into consideration the appropriate regional water supply plan, or if no regional water supply plan has been developed, for the appropriate regional water supply plan.

Section 2 amends s. 163.3191, F.S., to provide that the evaluation and appraisal report prepared by a local government shall include consideration of the appropriate water management district's regional water supply plan. In addition, the section requires that as part of the EAR, the potable water element must be revised to include a work plan, covering at least a 10-year planning period, for building any water supply facilities that are identified in the potable water element as necessary to serve existing and new development and for which the local government is responsible.

Section 3 amends s. 403.064, F.S., regarding the reuse of reclaimed water. The section states legislative intent that the reuse of reclaimed water is critical to meeting the state's existing and future water supply needs, while "sustaining natural systems." The bill adds to the existing requirement that all applicants for permits to construct a domestic water treatment facility within a water caution area prepare a reuse feasibility study, by requiring the applicant to first prepare a plan of study for the reuse feasibility study that is submitted to DEP for approval.

Under existing law, the applicant's determination of the feasibility of using reuse is final if the applicant has conducted a reuse study that contains the components listed in s. 403.064(2), F.S.

The bill removes language providing that the applicant's determination of feasibility is final to provide that the applicant shall determine the feasibility of reuse based on the results of the study, if the study complies with the requirements of subsections (2) and (3).

The section makes several conforming to changes to reflect that the decision of whether reuse is feasible is to be based on the applicant's feasibility study.

Section 4 states legislative intent that the water management districts undertake a public service program that depicts the current status of major surface and ground water sources, and that the districts develop partnerships with local media to disseminate this information. The program is to be developed and made available no later than December 31, 2002. In addition, beginning, January 1, 2003, and at least every 6 months thereafter, the water management districts are to provide information developed under this program to legislative committees with substantive jurisdiction over water management districts.

Section 5 authorizes DEP to assist financial institutions to make below-market interest rate loans to entities qualified to receive loans under s. 403.1835, F.S., to make deposits to financial institutions which earn less than the prevailing rate for United States Treasury securities with corresponding maturities.

Section 6 exempts from regulation by the Public Service Commission as a utility, any person providing only nonpotable water for fireflow purposes in a geographic area where potable water service is available from a governmentally or privately owned utility or a private well.

Section 7 repeals s. 373.498 and subsection (3) of s. 403.804, F.S. Section 373.498, F.S., refers to a Water Resources Development Account and provides that there shall be available to any flood control district, out of the Water Resources Development Account upon approval of DEP, a sum of money required to cover the costs allocated to the district for the constructing the works of the district, for the acquisition of lands for water storage, and highway bridge construction. According to staff from DEP, this account no longer exists.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As this bill imposes new planning requirements associated with water supply that will require cities and counties to spend money in order to implement, the bill may constitute a mandate as defined in Article VIII, Section 18(a) of the Florida Constitution:

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 of the Florida Constitution, 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. Because the new planning requirements associated with water supply would be implemented over time, the total fiscal impact of these changes is difficult to calculate. However, 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 400 municipalities and 67 counties will have to comply with these increased planning requirements, and to the extent each unit of government spends \$40,000 to comply with the requirements of the bill, the cost could exceed the threshold figure for significant impact.

As the bill does not provide an additional revenue source or an appropriation to fund compliance with its terms, the bill must have a two-thirds vote of the membership of each house of the Legislature and must be found to fulfill 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. Private Sector Impact:

Private wastewater facility permit applicants will have to conduct a plan of study to be approved by DEP prior to preparing a reuse feasibility plan. The preparation of the plan of study will increase the cost of obtaining a wastewater facility permit. Provisions of the bill which allow private lending institutions to administer certain water pollution control loans may make it easier for farmers and other individuals to obtain loans.

C. Government Sector Impact:

Local governments will incur additional expense in complying with the water supply planning provisions of the bill. Local governments operating wastewater treatment

facilities will incur additional expense in preparing a plan of study as part of a reuse feasibility study.

VI. Technical Deficiencies:

On page 4, line 8, the word “adopted” should be replaced by “approved” as water management district governing boards approve rather than adopt district water management plans.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:

Technical change to correct a reference to water management district governing board action on water management district plans from “adopted” to “approved.”

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
