

By Senator Campbell

33-1393-02

See HB

1 A bill to be entitled

2 An act relating to facilities affecting

3 Florida's water supply; creating s. 403.5205,

4 F.S.; providing legislative findings; providing

5 additional conditions for the location of

6 simple cycle turbine electric power plants;

7 providing eligibility for cooperative funding

8 assistance for plants designed to promote

9 alternative water supplies; creating ss.

10 403.54, 403.541, 403.542, 403.543, 403.544,

11 403.545, 403.5451, 403.5452, 403.5453, 403.546,

12 403.547, 403.5472, 403.5475, 403.548, 403.549,

13 403.551, 403.5515, 403.552, 403.553, 403.556,

14 403.5565, 403.559, F.S.; creating the

15 "Desalination Facility Siting Act"; providing

16 legislative intent; providing definitions;

17 providing powers and duties of the Department

18 of Environmental Protection; providing

19 applicability; providing for certification of

20 desalination facilities under the act;

21 providing for appointment of an administrative

22 law judge; providing for scheduling of the

23 certification process; providing for

24 distribution of copies of the certification

25 application and amendments thereto; providing

26 for a determination of completeness; providing

27 for contesting such determination; providing

28 for a determination of sufficiency; providing

29 for contesting such determination; providing

30 for preliminary statements of issues and for

31 reports and studies; providing requirements for

1 notice of the application and proceedings with
2 respect thereto; providing for department
3 rules; providing for conduct of the
4 certification hearing; providing for issuance
5 of a recommended order; providing for parties
6 and participants in the proceeding; requiring
7 payment of hearing expenses and costs by the
8 applicant; authorizing local governments to
9 hold informational public meetings; providing
10 procedure for amendment of the certification
11 application; providing conditions for
12 alteration of time limitations; providing for
13 final disposition of the application by the
14 Governor and Cabinet sitting as the
15 Desalination Facility Siting Board; specifying
16 the effect of certification; providing
17 procedures for modification of a certification
18 after issuance; specifying conditions for
19 suspension or revocation of a certification;
20 providing for enforcement of compliance by
21 application of existing penalties; providing
22 that conflicting laws, regulations, and
23 certification powers are superseded;
24 authorizing the siting board to adopt rules;
25 providing for fees and specifying the use
26 thereof; providing admissibility of
27 certification in eminent domain proceedings;
28 amending ss. 367.111, 381.0062, 381.0067, F.S.;
29 conforming cross-references; providing an
30 effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 403.5205, Florida Statutes, is
4 created to read:

5 403.5205 Permitting requirements for simple cycle
6 turbine electric power plants.--

7 (1) The Legislature finds that the recent rapid
8 expansion of proposed electric power plants that use simple
9 cycle turbine processes are not subject to the regulatory
10 review requirements of the Florida Electrical Power Plant
11 Siting Act. The continued proliferation of these types of
12 plants will result in growth management problems for the
13 counties in which they are located and affect the patterns of
14 urban development and demands on water resources.

15 (2)(a) Simple cycle turbine electric power plants are
16 encouraged to locate in coastal counties where they can be
17 combined with reverse osmosis facilities or other similar
18 technologies to desalinate water resources to help meet
19 potable water supply needs.

20 (b) Simple cycle turbine electric power plants that
21 are proposed to be combined with reverse osmosis facilities or
22 other similar desalination technologies are eligible to
23 receive cooperative funding assistance from water management
24 districts created under chapter 373 for those that have
25 cooperative funding assistance programs for activities
26 designed to promote alternative water supplies.

27 (3) Notwithstanding other requirements for permitting
28 required by law, the construction permit application for a
29 simple cycle turbine electric power plant located in a Water
30 Caution Area must demonstrate that the sole source of cooling
31 water will be provided by a nonpotable water source.

1 management district, or other regional or local governmental
2 entity.

3 (2) "Amendment" means a material change in information
4 provided by the applicant to the application for certification
5 made after the initial application filing.

6 (3) "Applicant" means any entity that applies for
7 certification pursuant to the provisions of this part.

8 (4) "Application" means the documents required by the
9 department to be filed to initiate a certification proceeding.

10 (5) "Board" or "siting board" means the Governor and
11 Cabinet sitting as the Desalination Facility Siting Board.

12 (6) "Certification" means the approval by the siting
13 board of the location, construction, maintenance, and
14 operation of a desalination facility. Certification shall be
15 evidenced by a written order of the siting board, which shall
16 be entered within 10 days after siting board approval.

17 (7) "Completeness" means that the application has
18 addressed all applicable sections of the prescribed
19 application format but does not mean that those sections are
20 sufficient in comprehensiveness of data or in the quality of
21 information provided.

22 (8) "Department" means the Department of Environmental
23 Protection.

24 (9) "Desalination facility" means a facility that
25 withdraws water from ground or surface water for the primary
26 purpose of removing chlorides to render the water suitable for
27 potable use or other productive purposes. The removal of
28 other constituents from the source water does not prevent a
29 facility from qualifying as a desalination facility under this
30 part, so long as the facility's primary purpose is to remove
31 chlorides.

1 (10) "License" means a franchise, permit,
2 certification, registration, charter, comprehensive plan
3 amendment, development order, or permit as defined in chapters
4 163 and 380, or similar form of authorization required by law,
5 but does not include a license required primarily for revenue
6 purposes when issuance of the license is merely a ministerial
7 act.

8 (11) "Local government" means a municipality or county
9 in the jurisdiction of which the desalination facility project
10 is proposed to be located.

11 (12) "Modification" means any change in the
12 certification order after issuance, including a change in the
13 conditions of certification.

14 (13) "Nonprocedural requirements of agencies" means
15 any agency's regulatory requirements established by statute,
16 rule, ordinance, or comprehensive plan, excluding any
17 provisions prescribing forms, fees, procedures, or time limits
18 for the review or processing of information submitted to
19 demonstrate compliance with such regulatory requirements.

20 (14) "Person" means an individual, partnership, joint
21 venture, private or public corporation, association, firm,
22 public service company, political subdivision, municipal
23 corporation, government agency, public utility district, or
24 any other entity, public or private, however organized.

25 (15) "Preliminary statement of issues" means a listing
26 and explanation of those issues within the agency's
27 jurisdiction that are of major concern to the agency in
28 relation to the proposed desalination facility.

29 (16) "Sufficiency" means that the application is not
30 only complete but that all sections are adequate in the
31 comprehensiveness of data and in the quality of information

1 provided to allow the department to determine whether the
2 application provides the reviewing agencies adequate
3 information to prepare the reports required by s. 403.546.

4 (17) "Water management district" means a water
5 management district created pursuant to chapter 373 in the
6 jurisdiction of which the desalination facility is proposed to
7 be located.

8 403.543 Department of Environmental Protection; powers
9 and duties.--The department shall have the following powers
10 and duties:

11 (1) To adopt procedural rules pursuant to ss.
12 120.536(1) and 120.54 to implement the provisions of this
13 part.

14 (2) To prescribe the form and content of the public
15 notices and the form, content, and necessary supporting
16 documentation, and any required studies, for certification
17 applications. All such data and studies shall be related to
18 the jurisdiction of the agencies relevant to the application.

19 (3) To receive applications for desalination facility
20 certification and initially determine the completeness and
21 sufficiency thereof.

22 (4) To make or contract for studies of certification
23 applications. All such studies shall be related to the
24 permitting or licensing jurisdiction of the agencies relevant
25 to the application. For studies in areas outside the
26 jurisdiction of the department and in the jurisdiction of
27 another agency, the department may initiate such studies, but
28 only with the consent of such agency.

29 (5) To administer the processing of applications for
30 certification and ensure that the applications are processed
31 as expeditiously as possible.

1 (6) To require such fees as allowed by this part.

2 (7) To prepare a report and written analysis as
3 required by s. 403.546.

4 (8) To prescribe the means for monitoring the effects
5 arising from the construction and operation of desalination
6 facilities to ensure continued compliance with the terms of
7 the certification.

8 403.544 Applicability and certification.--

9 (1) The provisions of this part shall be voluntary.
10 An entity seeking to construct and operate a desalination
11 facility may choose to proceed under this part or may obtain
12 all permits and licenses needed for such facility as otherwise
13 provided by law. However, the provisions of this part shall
14 not apply to a desalination facility constructed and operated
15 as an associated facility of an electrical power plant
16 certified pursuant to the Florida Electrical Power Plant
17 Siting Act. As used in this subsection, "associated facility
18 of an electrical power plant" means a desalination facility
19 constructed and operated solely to provide water for power
20 plant purposes. Desalination facilities may be constructed and
21 operated as part of an electrical power plant certification or
22 recertification without undergoing an additional or separate
23 permitting process.

24 (2) If an entity chooses to obtain certification under
25 this part, the desalination facility that is the subject of
26 the certification application may not be constructed or
27 operated without first obtaining such certification. The
28 provisions of this part shall not apply to desalination
29 facilities for which an application has been filed with the
30 department which application is deemed complete prior to the
31 effective date of this act.

1 403.545 Appointment of administrative law
2 judge.--Within 5 working days after receipt of an application
3 for certification under this part, whether complete or not,
4 the department shall request the Division of Administrative
5 Hearings to designate an administrative law judge to conduct
6 the hearings required by this part. The division director
7 shall, within 5 working days after receipt of the request from
8 the department, designate an administrative law judge to
9 conduct the hearings required by this part. Whenever
10 practicable, the division director shall assign an
11 administrative law judge who has had prior experience or
12 training in this type or other types of certification
13 proceedings. Upon being advised that an administrative law
14 judge has been designated, the department shall immediately
15 file a copy of the application and all supporting documents
16 with the administrative law judge, who shall docket the
17 application.

18 403.5451 Distribution of application; schedules.--
19 (1) Within 5 working days after the filing of an
20 application for certification under this part, the department
21 shall provide the applicant and the Division of Administrative
22 Hearings with the names and addresses of those affected and
23 other agencies entitled to notice and copies of the
24 application and any amendments.

25 (2) Within 5 working days after completeness has been
26 determined, the department shall prepare a schedule of dates
27 for submission of statements of issues, determination of
28 sufficiency, submittal of final reports from affected and
29 other agencies, and other significant dates to be followed
30 during the certification process, including dates for filing
31 notices of appearances to be a party pursuant to s.

1 403.547(4). This schedule shall be provided by the department
2 to the applicant, the administrative law judge, and the
3 agencies identified pursuant to subsection (1). The schedule
4 shall not exceed 90 days unless an extension beyond this
5 period is agreed to by the parties.

6 (3) Within 5 working days after completeness has been
7 determined, the applicant shall distribute copies of the
8 application to all agencies identified by the department
9 pursuant to subsection (1). Copies of changes and amendments
10 to the application shall be timely distributed by the
11 applicant to all agencies and parties who have received a copy
12 of the application.

13 403.5452 Determination of completeness.--Within 10
14 days after receipt of an application, the department shall
15 file a statement with the Division of Administrative Hearings
16 and with the applicant declaring its position with regard to
17 the completeness, not the sufficiency, of the application.

18 (1) If the department declares the application to be
19 incomplete, the applicant, within 15 days after the filing of
20 the statement by the department, shall file with the Division
21 of Administrative Hearings and with the department a
22 statement:

23 (a) Agreeing with the statement of the department and
24 withdrawing the application;

25 (b) Agreeing with the statement of the department and
26 agreeing to amend the application without withdrawing it. The
27 time schedules referencing a complete application under this
28 part shall not commence until the application is determined
29 complete; or

30 (c) Contesting the statement of the department.

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1 (2) If the applicant contests the department's
2 determination that an application is incomplete, the
3 administrative law judge shall schedule a hearing on the
4 statement of completeness. The hearing shall be held as
5 expeditiously as possible but not later than 30 days after the
6 filing of the statement by the department. The administrative
7 law judge shall render a decision within 10 days after the
8 hearing.

9 (a) If the administrative law judge determines that
10 the application was not complete as filed, the applicant shall
11 withdraw the application or make such additional submittals as
12 necessary to complete it. The time schedules referencing a
13 complete application under this part shall not commence until
14 the application is determined complete.

15 (b) If the administrative law judge determines that
16 the application was complete at the time it was filed, the
17 time schedules referencing a complete application under this
18 part shall commence upon such determination.

19 403.5453 Determination of sufficiency.--Within 30 days
20 after the distribution of the complete application or
21 amendment, the department shall file a statement with the
22 Division of Administrative Hearings and with the applicant
23 declaring its position with regard to the sufficiency of the
24 application or amendment. The department's statement shall be
25 based upon consultation with the affected agencies, which
26 shall submit to the department recommendations on the
27 sufficiency of the application or amendment within 20 days
28 after receipt of the complete application or amendment.

29 (1) If the department declares the application or
30 amendment insufficient, the applicant may withdraw the
31 application or amendment. If the applicant declines to

1 withdraw the application or amendment, the applicant may, at
2 its option:

3 (a) Within 15 days after the department filed its
4 statement of insufficiency, file additional information
5 necessary to make the application or amendment sufficient. If
6 the applicant makes its application or amendment sufficient
7 within this time period, the time schedules under this part
8 shall not be tolled by the department's statement of
9 insufficiency;

10 (b) Advise the department and the administrative law
11 judge that the information necessary to make the application
12 or amendment sufficient cannot be supplied within 15 days
13 after the notice of the insufficiency, in which case the time
14 schedules under this part shall be tolled from the date of the
15 statement of insufficiency until the application or amendment
16 is determined sufficient; or

17 (c) Contest the notice of insufficiency by filing a
18 request for hearing with the administrative law judge within
19 15 days after the filing of the statement of insufficiency. If
20 a hearing is requested by the applicant, all time schedules
21 under this part shall be tolled as of the date of the
22 department's statement of insufficiency, pending the
23 administrative law judge's decision concerning the dispute. A
24 hearing shall be held no later than 30 days after the filing
25 of the statement by the department, and a decision shall be
26 rendered within 10 days after the hearing, unless otherwise
27 agreed by the department and the applicant.

28 (2)(a) If the administrative law judge determines,
29 contrary to the department, that an application or amendment
30 is sufficient, all time schedules under this part shall resume
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1 as of the date of the administrative law judge's
2 determination.

3 (b) If the administrative law judge agrees that the
4 application or amendment is insufficient, all time schedules
5 under this part shall remain tolled until the applicant files
6 additional information and the application or amendment is
7 determined sufficient by the department or the administrative
8 law judge.

9 (3) If, within 30 days after receipt of the additional
10 information submitted pursuant to paragraph (1)(a), paragraph
11 (1)(b), or paragraph (2)(b), based upon the recommendations of
12 the affected agencies, the department determines that the
13 additional information supplied by an applicant does not
14 render the application or amendment sufficient, the applicant
15 may exercise any of the options specified in subsection (1) as
16 often as may be necessary to resolve the dispute.

17 403.546 Preliminary statements of issues; reports and
18 studies.--

19 (1) Each affected agency that received an application
20 in accordance with s. 403.5451(3) shall submit a preliminary
21 statement of issues to the department and the applicant no
22 later than 45 days after distribution of the complete
23 application. Such statement of issues shall be made available
24 to each local government for use as information for public
25 meetings pursuant to s. 403.5472.

26 (2)(a) The affected agencies shall prepare reports as
27 provided in this subsection and shall submit them to the
28 department and the applicant within 60 days after distribution
29 of the complete application.

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1 1. The department shall prepare a report as to the
2 impact of the proposed desalination facility as it relates to
3 matters within its jurisdiction.

4 2. The water management district in the jurisdiction
5 of which the proposed desalination facility is to be located
6 shall prepare a report as to the impact on water resources and
7 other matters within its jurisdiction.

8 3. If the construction of the desalination facility
9 requires an amendment to the local government's comprehensive
10 plan, the Department of Community Affairs shall prepare a
11 report containing recommendations that address the consistency
12 of the local government's comprehensive plan with the
13 applicable portions of the state comprehensive plan and other
14 matters within its jurisdiction. The Department of Community
15 Affairs may also comment on the consistency of the proposed
16 desalination facility with applicable strategic regional
17 policy plans or local comprehensive plans and land development
18 regulations.

19 4. The Fish and Wildlife Conservation Commission shall
20 prepare a report as to the impact of the proposed desalination
21 facility on fish and wildlife resources and other matters
22 within its jurisdiction.

23 5. Each local government that has jurisdiction over
24 the proposed desalination facility shall prepare a report as
25 to the impact of the proposed desalination facility on matters
26 within its jurisdiction, including the consistency of the
27 proposed desalination facility with all applicable local
28 ordinances, regulations, standards, or criteria that apply to
29 the proposed desalination facility, including local
30 comprehensive plans, zoning regulations, land development
31 regulations, and any applicable local environmental

1 regulations adopted pursuant to s. 403.182 or by other means.
2 No change by the applicable local government or local agency
3 in local comprehensive plans, zoning ordinances, or other
4 regulations made after the date of receipt by the local
5 government of the certification application shall be
6 applicable to the certification of the proposed desalination
7 facility unless the certification is denied or the application
8 is withdrawn.

9 (b) Each report shall contain the information on
10 variances required by s. 403.551(2)(b), if any, and proposed
11 conditions of certification on matters within the jurisdiction
12 of each agency. For each condition proposed by an agency, the
13 agency shall list the specific provisions of any statute,
14 rule, ordinance, or other authority, as applicable, that
15 authorize the proposed condition.

16 (c) Each reviewing agency shall initiate the
17 activities required by this section no later than 10 working
18 days after the complete application is distributed. Each
19 agency shall keep the applicant and the department informed as
20 to the progress of its studies and any issues raised thereby.

21 (3) The department shall prepare a written analysis
22 which contains a compilation of agency reports and summaries
23 of the material contained therein, and stipulations between
24 one or more agencies and the applicant, which shall be filed
25 with the administrative law judge and served on all parties no
26 later than 75 days after the complete application has been
27 distributed to the affected agencies, and which shall include:

28 (a) The studies and reports required by this section.

29 (b) Comments received from any other agency or person.

30 (c) The recommendation of the department as to the
31 disposition of the application, of variances, exemptions,

1 exceptions, or other relief identified by any party, and of
2 any proposed conditions of certification that the department
3 believes should be imposed.

4 (4) The failure of any agency to timely submit a
5 preliminary statement of issues or a report shall not be
6 grounds for the alteration of any time limitation in this part
7 pursuant to s. 403.548. Neither the failure to submit a
8 preliminary statement of issues or a report nor the inadequacy
9 of the preliminary statement of issues or report shall be
10 grounds to deny or condition certification.

11 403.547 Notice, proceedings, parties, participants.--

12 (1)(a) No later than 15 days after an application has
13 been determined complete, the applicant shall arrange for
14 publication of a notice of the application and of the
15 proceedings required by this part. Such notice shall give
16 notice of the opportunity for a certification hearing upon
17 request by a party and of the provisions of s. 403.5451(1) and
18 (2).

19 (b) The applicant shall arrange for publication of a
20 notice of the department's written analysis and
21 recommendation, notice of the opportunity for a certification
22 hearing to be requested by a party, or of the certification
23 hearing if one has already been requested by a party, and
24 notice of the deadline for filing of notice of intent to be a
25 party. Such notices shall be published no later than 5 days
26 after the department's written analysis is filed with the
27 administrative law judge.

28 (c) The applicant shall arrange for publication of a
29 reminder notice in the newspapers specified in paragraph (d)
30 no more than 10 days prior to the certification hearing, if
31 one is to be conducted, reminding the public of the date and

1 location of the hearing. This notice shall not constitute a
2 point of entry for intervention in the proceeding.

3 (d) Notices to be published by the applicant shall be
4 published in newspapers of general circulation in the county
5 in which the desalination facility is proposed to be located.

6 The required newspaper notices, other than the reminder
7 notice, shall be one-half page in size in a standard size
8 newspaper or a full page in a tabloid size newspaper, shall be
9 published in a section of the newspaper other than the legal
10 notices section, and shall include a map generally depicting
11 the proposed desalination facility location.

12 (e) The department shall publish in the Florida
13 Administrative Weekly notices of the application, of the
14 certification hearing if one is to be conducted, of the
15 hearing before the board, and of stipulations, proposed agency
16 action, or petitions for modification.

17 (f) The department shall adopt rules specifying the
18 content of notices required by this section. All notices
19 published by the applicant shall be paid for by the applicant
20 and shall be in addition to the application fee.

21 (2) No later than 12 days after the filing of the
22 department's written analysis, any party may request a
23 certification hearing to challenge the recommendation set
24 forth in the department's written analysis. No later than 105
25 days after receipt of a complete application by the
26 department, if a certification hearing has been timely
27 requested by a party, the administrative law judge shall
28 conduct a certification hearing pursuant to ss. 120.569 and
29 120.57 at a central location in proximity to the proposed
30 desalination facility.

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1 (3)(a) At the conclusion of the certification hearing,
2 if one is conducted, the administrative law judge shall, after
3 consideration of all evidence of record, issue a recommended
4 order disposing of the application no later than 30 days after
5 the transcript of the certification hearing is filed with the
6 Division of Administrative Hearings.

7 (b) In the event the administrative law judge fails to
8 issue a recommended order within 30 days after the filing of
9 the hearing transcript, the administrative law judge shall
10 submit a report to the board with a copy to all parties to the
11 proceeding within 30 days after the filing of the hearing
12 transcript to advise the board of the reason for the delay in
13 the issuance of the recommended order and of the date by which
14 the recommended order will be issued.

15 (4)(a) Parties to the proceeding shall be:

- 16 1. The applicant.
- 17 2. The department.
- 18 3. The Department of Community Affairs.
- 19 4. The Fish and Wildlife Conservation Commission.
- 20 5. The water management district.
- 21 6. The local government.

22 (b) Any party listed in paragraph (a), other than the
23 department or the applicant, may waive its right to
24 participate in the proceeding. If any listed party fails to
25 file a notice of its intent to be a party on or before the
26 12th day following the filing of the department's written
27 analysis, such party shall be deemed to have waived its right
28 to be a party unless its participation would not prejudice the
29 rights of any party to the proceeding.

30 (c) Notwithstanding the provisions of chapter 120 to
31 the contrary, upon the filing with the administrative law

1 judge of a notice of intent to be a party by an agency,
2 corporation, or association described in subparagraphs 1. and
3 2. or a petition for intervention by a person described in
4 subparagraph 3., no later than 12 days following the filing of
5 the department's written analysis, the following shall also be
6 parties to the proceeding: op> 1. Any agency not listed in
7 paragraph (a) as to matters within its jurisdiction.

8 2. Any domestic nonprofit corporation or association
9 formed, in whole or in part, to promote conservation of
10 natural beauty; to protect the environment, personal health,
11 or other biological values; to preserve historical sites; to
12 promote consumer interests; to represent labor, commercial, or
13 industrial groups; or to promote comprehensive planning or
14 orderly development of the area in which the proposed
15 desalination facility is to be located.

16 3. Any person whose substantial interests are affected
17 and being determined by the proceeding.

18 4. Any person who owns real property contiguous to the
19 site of the proposed desalination facility.

20 (d) Any agency whose properties or works may be
21 affected shall be made a party, upon the request of the agency
22 or of any party to the proceeding made no later than 12 days
23 following the filing of the department's written analysis.

24 (5) When appropriate, any person who is not a party
25 may be given an opportunity to present oral or written
26 communications to the administrative law judge. If the
27 administrative law judge proposes to consider such
28 communications, all parties shall be given an opportunity to
29 cross-examine, challenge, or rebut such communications.

30 (6) The administrative law judge shall have all powers
31 and duties granted to administrative law judges by chapter 120

1 and by the laws and rules of the department, including the
2 authority to resolve disputes over the completeness or
3 sufficiency of an application for certification.

4 (7) The order of presentation at the certification
5 hearing, if one is conducted, unless otherwise changed by the
6 administrative law judge to ensure the orderly presentation of
7 witnesses and evidence, shall be:

8 (a) The applicant.

9 (b) The department.

10 (c) Other state agencies.

11 (d) The water management district.

12 (e) Local governments.

13 (f) Other parties.

14 (8) The applicant shall pay those expenses and costs
15 associated with the conduct of the hearings and the recording
16 and transcription of the proceedings.

17 403.5472 Local governments; informational public
18 meetings.--

19 (1) Local governments may hold informational public
20 meetings in addition to the hearings specifically authorized
21 by this part on any matter associated with the desalination
22 facility proceeding. Such informational public meetings should
23 be held no later than 60 days after the application is filed.
24 The purpose of an informational public meeting is for the
25 local government to further inform the general public about
26 the proposed desalination facility, obtain comments from the
27 public, and formulate its recommendation with respect to the
28 proposed desalination facility.

29 (2) Informational public meetings shall be held solely
30 at the option of the local government. Parties to the
31 proceedings under this part shall be encouraged to attend.

1 However, no party shall be required to attend such
2 informational public meetings.

3 (3) The failure to hold an informational public
4 meeting or the procedure used for the informational public
5 meeting shall not be grounds for the alteration of any time
6 limitation in this part pursuant to s. 403.548 or grounds to
7 deny or condition certification.

8 403.5475 Amendment to the application.--

9 (1) Any amendment made to the application shall be
10 sent by the applicant to the administrative law judge and to
11 all parties to the proceeding.

12 (2) Any amendment to the application made prior to
13 certification shall be disposed of as part of the original
14 certification proceeding. Amendment of the application may be
15 considered good cause for alteration of time limitations
16 pursuant to s. 403.548.

17 403.548 Alteration of time limitations.--Any time
18 limitation in this part may be altered by the administrative
19 law judge upon stipulation between the department and the
20 applicant, unless objected to by any party within 5 days after
21 notice or for good cause shown by any party.

22 403.549 Final disposition of application.--

23 (1) If a certification hearing is conducted following
24 the timely request by a party, at its next regularly scheduled
25 meeting for which notice may be properly given occurring after
26 the receipt of the administrative law judge's recommended
27 order, the siting board shall act upon the application by
28 written order, approving in whole, approving with such
29 conditions as the board deems appropriate, or denying the
30 certification and stating the reasons for issuance or denial.
31 If no certification hearing is requested, the recommendation

1 of the department contained in the department's written
2 analysis issued pursuant to s. 403.546(3) shall be issued by
3 the department as the final order within 30 days after
4 issuance of the department's written analysis.

5 (2) The issues that may be raised in any hearing
6 before the board shall be limited to matters raised in the
7 certification proceeding before the administrative law judge.
8 The provisions of s. 120.57 shall apply to consideration of
9 the recommended orders under this part. All parties, or their
10 representatives, or persons who appear before the board shall
11 be subject to the provisions of s. 120.66.

12 (3) If certification is denied, the board or the
13 department, whichever issues the final order, shall set forth
14 in writing the action the applicant would have to take to
15 secure the approval of the application by the board.

16 (4) In determining whether an application should be
17 approved in whole, approved with modifications or conditions,
18 or denied, consideration shall be given to whether, and the
19 extent to which, the proposed desalination facility will:

20 (a) Provide a cost-effective, drought-resistant
21 alternative water supply.

22 (b) Comply with the nonprocedural requirements of
23 agencies.

24 (c) Effect a reasonable balance between the need for
25 the facility as a means of providing low-cost water and the
26 impact on the public and the environment.

27 (5) The issuance or denial of the certification
28 pursuant to this section shall be the final administrative
29 action required as to an application for certification.

30 (6) Upon approval of an application for certification,
31 it is in the public interest for the certified desalination

1 facility to be constructed in a timely manner to facilitate
2 the provision of cost-effective, drought-resistant alternative
3 water supplies in the state. Accordingly, in the event an
4 appeal of such approval is timely filed by any public officer
5 in an official capacity or by any board, commission, or other
6 public body and a motion is filed with the board to condition
7 or vacate the automatic stay effected upon appeal by such
8 public officer or public body, the board shall exercise its
9 discretion in acting on the motion, upon consideration of the
10 following:

11 (a) If it is determined that the public interest or
12 the applicant will suffer irreparable harm due to the delay in
13 the construction of the desalination facility affected by the
14 appeal, the stay shall be vacated; or

15 (b) If it is determined that any harm suffered by the
16 public interest or the applicant due to the delay in the
17 construction of the desalination facility affected by the
18 appeal can be remedied by money damages, the stay shall be
19 conditioned upon the posting of a good and sufficient bond or
20 other acceptable security in the amount of either \$2 million,
21 the value of the increased cost to the applicant of providing
22 a drought-resistant alternative water supply, or an amount
23 sufficient to cover the potential damage to be suffered by the
24 applicant and the public interest as a result of the delay in
25 construction of the desalination facility during the pendency
26 of the appeal, whichever is greater.

27 403.551 Effect of certification.--

28 (1) Subject to the conditions set forth therein,
29 certification shall constitute the sole license of the state
30 and any agency as to the approval of the location,
31 construction, maintenance, and operation of the desalination

1 facility. The certification shall be valid for the life of the
2 desalination facility, provided that construction is commenced
3 within 5 years after the date of certification or such later
4 date as may be authorized by the siting board.

5 (2)(a) The certification shall authorize the applicant
6 to locate, construct, maintain, and operate the desalination
7 facility subject only to the conditions of certification set
8 forth in such certification.

9 (b) The certification may include conditions that
10 constitute variances, waivers, or exemptions from
11 nonprocedural standards, rules, or regulations of the
12 department or any other agency, which were expressly
13 considered during the proceeding, unless waived by the agency
14 as provided in this paragraph and which otherwise would be
15 applicable to the location, construction, maintenance, or
16 operation of the proposed desalination facility. Each party
17 shall notify the applicant and other parties at the time
18 scheduled for the filing of the agency reports of any
19 nonprocedural requirements not specifically listed in the
20 application from which a variance, waiver, exemption, or other
21 relief is necessary in order for the siting board to certify
22 the proposed desalination facility. Failure of such
23 notification shall be treated as a waiver from the
24 nonprocedural requirements of that agency.

25 (3) The certification shall be in lieu of any license,
26 permit, certificate, or similar document required by any
27 agency pursuant to any other provision of state law. On
28 certification, any license, easement, or other interest in
29 state lands, except those the title of which is vested in the
30 Board of Trustees of the Internal Improvement Trust Fund,
31 shall be issued by the appropriate agency as a ministerial

1 act. The applicant shall be required to seek any necessary
2 interest in state lands the title to which is vested in the
3 Board of Trustees of the Internal Improvement Trust Fund from
4 the board of trustees before, during, or after the
5 certification proceeding, and certification may be made
6 contingent upon issuance of the appropriate interest in
7 realty. However, neither the applicant nor any party to the
8 certification proceeding may directly or indirectly raise or
9 relitigate any matter that was or could have been an issue in
10 the certification proceeding in any proceeding before the
11 Board of Trustees of the Internal Improvement Trust Fund
12 wherein the applicant is seeking a necessary interest in state
13 lands, but the information presented in the certification
14 proceeding shall be available for review by the board of
15 trustees and its staff.

16 (4) No term or condition of certification shall be
17 interpreted to preclude the postcertification exercise by any
18 party of whatever procedural rights it may have under chapter
19 120, including those related to rulemaking proceedings.

20 403.5515 Modification of certification.--A
21 certification may be modified after issuance in any one of the
22 following ways:

23 (1) The board may delegate to the department the
24 authority to modify specific conditions in the certification.

25 (2) The department may modify the terms and conditions
26 of the certification if no party objects in writing to such
27 modification within 45 days after notice by mail to the last
28 address of record in the certification proceeding, and if no
29 other person whose substantial interests will be affected by
30 the modification objects in writing within 30 days after
31 issuance of the proposed order of modification. If objections

1 are raised, the applicant may file a petition for modification
2 pursuant to subsection (3).

3 (3) The applicant or the department may file a
4 petition for modification with the department and the Division
5 of Administrative Hearings setting forth:

6 (a) The proposed modification.

7 (b) The factual reasons asserted for the modification.

8 (c) The anticipated additional environmental effects
9 of the proposed modification.

10
11 Petitions for modification shall be disposed of in the same
12 manner as an application but with time periods established by
13 the administrative law judge commensurate with the
14 significance of the modification requested.

15 403.552 Suspension or revocation of
16 certification.--Any certification may be suspended or revoked
17 for:

18 (1) Any material false statement in the application or
19 in the supplemental or additional statements of fact or
20 studies required of the applicant when a true answer would
21 have warranted the board's refusal to recommend a
22 certification in the first instance.

23 (2) Failure to comply with the terms or conditions of
24 the certification.

25 (3) Violation of the provisions of this part or rules
26 or orders issued under this part.

27 403.553 Enforcement of compliance.--Failure to comply
28 with the conditions of a certification or to comply with this
29 part shall constitute a violation of this chapter.

30 403.556 Superseded laws, regulations, and
31 certification power.--

1 (1) If any provision of this part is in conflict with
2 any other provision, limitation, or restriction under any law,
3 rule, regulation, or ordinance of this state or any political
4 subdivision, municipality, or agency, this part shall control
5 and such law, rule, regulation, or ordinance shall be deemed
6 superseded for the purposes of this part.

7 (2) The state hereby preempts the certification of
8 desalination facilities for which application is made under
9 this part.

10 (3) The board shall have the power to adopt reasonable
11 procedural rules to carry out its duties under this part and
12 to give effect to the legislative intent that this part
13 provide an expedited, efficient, centrally coordinated,
14 one-stop licensing process.

15 403.5565 Fees; disposition.--The department shall
16 charge the applicant the following fees, as appropriate, which
17 shall be paid into the Florida Permit Fee Trust Fund:

18 (1) An application fee of \$25,000.

19 (a) Sixty percent of the application fee shall go to
20 the department to cover any costs associated with reviewing
21 and acting upon the application and any costs for field
22 services associated with monitoring construction, maintenance,
23 and operation of the desalination facility.

24 (b) Twenty percent of the application fee shall be
25 transferred to the Administrative Trust Fund of the Division
26 of Administrative Hearings of the Department of Management
27 Services.

28 (c) Upon written request with proper itemized
29 accounting within 90 days after final agency action by the
30 siting board or withdrawal of the application, the department
31 shall reimburse the expenses and costs of the Department of

1 Community Affairs, the Fish and Wildlife Conservation
2 Commission, the water management district, and the local
3 government in the jurisdiction of which the desalination
4 facility is to be located. Such reimbursement shall be
5 authorized for the preparation of any studies required of the
6 agencies by this part, for agency travel and per diem to
7 attend any hearing held pursuant to this part, and for the
8 local government to participate in the proceedings. In the
9 event the amount available for allocation is insufficient to
10 provide for complete reimbursement to the agencies,
11 reimbursement shall be on a prorated basis.

12 (d) If any sums are remaining, the department shall
13 retain them for its use in the same manner as is otherwise
14 authorized by this section. However, if the certification
15 application is withdrawn, the remaining sums shall be refunded
16 to the applicant within 90 days after withdrawal.

17 (2) A certification modification fee of \$3,500.

18 403.559 Certification admissible in eminent domain
19 proceedings; attorney's fees and costs.--

20 (1) Certification pursuant to this part shall be
21 admissible as evidence of public need and necessity in
22 proceedings under chapter 73 or chapter 74.

23 (2) No party may rely on this section or any provision
24 of chapter 73 or chapter 74 to request the award of attorney's
25 fees or costs incurred as a result of participation in the
26 certification proceeding.

27 Section 3. Subsection (2) of section 367.111, Florida
28 Statutes, is amended to read:

29 367.111 Service.--

30 (2) Each utility shall provide to each person
31 reasonably entitled thereto such safe, efficient, and

1 sufficient service as is prescribed by part VII ~~VI~~ of chapter
2 403 and parts I and II of chapter 373, or rules adopted
3 pursuant thereto; but such service shall not be less safe,
4 less efficient, or less sufficient than is consistent with the
5 approved engineering design of the system and the reasonable
6 and proper operation of the utility in the public interest. If
7 the commission finds that a utility has failed to provide its
8 customers with water or wastewater service that meets the
9 standards promulgated by the Department of Environmental
10 Protection or the water management districts, the commission
11 may reduce the utility's return on equity until the standards
12 are met.

13 Section 4. Paragraph (c) of subsection (2) and
14 subsection (3) of section 381.0062, Florida Statutes, are
15 amended to read:

16 381.0062 Supervision; private and certain public water
17 systems.--

18 (2) DEFINITIONS.--As used in this section:

19 (c) "Florida Safe Drinking Water Act" means part VII
20 ~~VI~~ of chapter 403.

21 (3) SUPERVISION.--The department and its agents shall
22 have general supervision and control over all private water
23 systems, multifamily water systems, and public water systems
24 not covered or included in the Florida Safe Drinking Water Act
25 (part VII ~~VI~~ of chapter 403), and over those aspects of the
26 public water supply program for which it has the duties and
27 responsibilities provided for in part VII ~~VI~~ of chapter 403.
28 The department shall:

29 (a) Administer and enforce the provisions of this
30 section and all rules and orders adopted or issued under this
31 section, including water quality and monitoring standards.

1 (b) Require any person wishing to construct, modify,
2 or operate a limited use community or limited use commercial
3 public water system or a multifamily water system to first
4 make application to and obtain approval from the department on
5 forms adopted by rule of the department.

6 (c) Review and act upon any application for the
7 construction, modification, operation, or change of ownership
8 of, and conduct surveillance, enforcement, and compliance
9 investigations of, limited use community and limited use
10 commercial public water systems, and multifamily water
11 systems.

12 (d) Require a fee from the supplier of water in an
13 amount sufficient to cover the costs of reviewing and acting
14 upon any application for the construction, modification, or
15 operation of a limited use community and limited use
16 commercial public water system, of not less than \$10 or more
17 than \$90 annually.

18 (e) Require a fee from the supplier of water in an
19 amount sufficient to cover the costs of reviewing and acting
20 upon any application for the construction or change of
21 ownership of a multifamily water system, of not less than \$10
22 or more than \$90.

23 (f) Require a fee from the supplier of water in an
24 amount sufficient to cover the costs of sample collection,
25 review of analytical results, health-risk interpretations, and
26 coordination with other agencies when such work is not
27 included in paragraphs (b) and (c) and is requested by the
28 supplier of water, of not less than \$10 or more than \$90.

29 (g) Require suppliers of water to collect samples of
30 water, to submit such samples to a department-certified
31

1 drinking water laboratory for contaminant analysis, and to
2 keep sampling records as required by rule of the department.

3 (h) Require all fees collected by the department in
4 accordance with the provisions of this section to be deposited
5 in an appropriate trust fund of the department, and used
6 exclusively for the payment of costs incurred in the
7 administration of this section.

8 (i) Prohibit any supplier of water from, intentionally
9 or otherwise, introducing any contaminant which poses a health
10 hazard into a drinking water system.

11 (j) Require suppliers of water to give public notice
12 of water problems and corrective measures under the conditions
13 specified by rule of the department.

14 (k) Require a fee to cover the cost of reinspection of
15 any system regulated under this section, which may not be less
16 than \$25 or more than \$40.

17 Section 5. Section 381.0067, Florida Statutes, is
18 amended to read:

19 381.0067 Corrective orders; private and certain public
20 water systems and onsite sewage treatment and disposal
21 systems.--When the department or its agents, through
22 investigation, find that any private water system, public
23 water system not covered or included in the Florida Safe
24 Drinking Water Act (part VII ~~VI~~ of chapter 403) or onsite
25 sewage treatment and disposal system constitutes a nuisance or
26 menace to the public health, it may issue an order requiring
27 the owner to correct the improper condition.

28 Section 6. This act shall take effect upon becoming a
29 law.

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LEGISLATIVE SUMMARY

Provides additional conditions for the location of simple cycle turbine electric power plants. Provides eligibility for cooperative funding assistance for plants designed to promote alternative water supplies. Creates the "Desalination Facility Siting Act." Provides requirements and procedures for certification of desalination facilities. Provides powers and duties of the Department of Environmental Protection, administrative law judges appointed by the department to conduct certification application hearings, and the Governor and Cabinet sitting as the Desalination Facility Siting Board. Provides for notice, scheduling, and participation in proceedings, payment of expenses and costs, informational public meetings, amendments to certification applications, modification of a certification after issuance, fees and the uses thereof, suspension or revocation of a certification, and enforcement of the provisions of the act. Authorizes the department and the siting board to adopt certain rules. Provides that a desalination facility certification is admissible as evidence of public need in eminent domain proceedings. (See bill for details.)