

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1069 Water Resources

**SPONSOR(S):** Russell

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands and Water Resources</u>	_____	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1069 addresses several issues related to enhancing the linkage between growth management and the available water supplies. The bill also addresses the need for increased water conservation, the need for the development of additional alternative water supplies, and the need for increased use of reclaimed water.

Specifically, the bill:

- Requires local governments to strengthen their comprehensive plans to plan for the future availability of water supplies;
- Provides additional authority to the Public Service Commission (PSC) to promote water conservation;
- Provides additional guidance and process for development of water management district (WMD) regional water supply plans;
- Provides additional WMD budget reporting criteria;
- Encourages land use ordinances that provide more efficient landscape irrigation;
- Requires individual water meters for new commercial and residential construction;
- Mandates certain WMDs to fund alternative water supply development at \$20 million per year;
- Exempts the use of reclaimed water from the need for a consumptive use permit;
- Adds additional consumptive use permitting criteria for utilities to promote water conservation;
- Prohibits the sale of water rights;
- Expands the cumulative impact review of water use;
- Provides for long term permits for applicants who conserve water;
- Requires the linkage of environmental resource permit (ERP) and consumptive use permit (CUP) applications for projects that require both;
- Provides for mine reclamation variances under certain circumstances;
- Requires utilities to develop reuse metering and rate reports; and
- Mandates state agencies to use reclaimed water.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1069.nr.doc  
**DATE:** March 23, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill increases the ability of a local government to limit future development when and where the development is not compatible with the affected water management district’s regional water supply plan.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Issue – Linkage between growth management and water supplies**

Under current law, local governments are required to include in their comprehensive plans an element addressing sanitary sewer, solid waste, drainage, **potable water**, and natural groundwater aquifer recharge (see paragraph 163.3177(6)(c), F.S.). By January 1, 2005, the statutorily mandated periodic evaluations and appraisals by local governments of their comprehensive plans are required to “consider the appropriate water management district’s regional water supply plan approved pursuant to s. 373.0361.” The potable water element of the plan must be revised to include a work plan for building any water supply facilities necessary to serve existing and new development for a 10 year planning period. (See also ss. 163.3191(2)(l), F.S.)

##### **Issue – Water conservation**

The water management districts’ (WMDs) are currently required to prepare regional water supply plans where it has been determined that sources of water are not adequate for the planning period to supply water for all the existing and projected uses, and to sustain the natural systems. Each water supply plan is to be based on a 20-year planning period (see s. 373.0361, F.S.).

WMDs currently consider conservation as a way to meet future water demands to varying degrees. The WMDs are required to develop their regional water supply plans in an open public process. They share the data and modeling tools with all effected parties during this process and consider input and comments.

In their consumptive use permitting (CUP) programs, the WMDs may require, on a case-by-case basis, the use of conservation rate structures, drought rate structures, or informative billing. However, these measures are not required of every utility applicant.

The Public Service Commission (PSC) can only allow full recovery on reuse facilities, and not on other alternative water supply projects. The PSC currently feels it has authority to authorize conservation and drought rate structures, but feels the authority could be clearer. Utilities with a gross annual revenue of less than \$150,000 can request PSC staff assistance on rate changes.

There are no statewide standards for design of irrigation systems, but some counties have adopted ordinances regulating landscaping and irrigation system design.

Individual metering of water use is not currently required for new construction.

### **Issue – Alternative water supply development**

The Legislature has determined that there is a need for the development of alternative water supplies (such as desalination and reclaimed water) to supplement the existing supplies of drinking water (see ss. 373.1961(2), F.S.). The WMDs are required to submit their budgets annually to the Governor for review. WMDs which have water resource caution areas within their boundaries are required to include in their annual budgets an amount designated for the development of alternative water supplies. The WMDs are required to provide these amounts as grants or loans for alternative water supply development.

### **Issue – Reclaimed water**

For many years the state has encouraged the use of treated effluent from domestic wastewater treatment facilities primarily for irrigation purposes. This treated effluent is known as “reclaimed water.”

The WMDs do not currently require a separate CUP to use reclaimed water. When reviewing an application for use of ground or surface water, a WMD will review whether or not all or part of the need can be met with reclaimed water. If use of reclaimed water is feasible, the WMDs require such use, and will not approve a permit for ground or surface water withdrawal.

Over the last several years there has been a significant increase in the use of reclaimed water. In some areas of the state there are times when there is insufficient reclaimed water to meet the demand for it. Some of the water management districts are considering incentives for conserving reclaimed water in order to meet the growing demand. There are concerns by some water and wastewater utilities that water management districts may require permits for the use of reclaimed water as an incentive for conservation.

The Governor has directed his agencies to conserve water whenever possible, and to report their water use on a periodic basis.

### **Issue – Water rights and cumulative impacts from water use**

Currently there are no legal restrictions on an entity’s ability to sell water rights that it may be able acquire.

In their consumptive use permitting process, the WMDs currently consider the cumulative effect of the requested use along with other existing legal uses. However, they do not include future projected uses of water in this analysis.

### **Issue – Consumptive use permit duration**

CUPs are currently required to be issued for 20 years, if requested and if the applicant can demonstrate that the conditions for issuance can be met for this duration (see s. 373.236, F.S.).

### **Issue – Environmental Resource Permit and Consumptive Use Permit concurrent review**

An Environmental Resource Permit (ERP) is required under s. 373.413 and s. 373.414, F.S., for activities that impact surface waters and wetlands. A CUP is required under 373.219, F.S. for the withdrawal of water from surface waters and groundwater. The South Florida Water Management District (SFWMD) and the Southwest Florida Water Management District (SWFWMD) currently link the processing of ERP and

CUP applications for projects that require both. The St. Johns River Water Management District (SJRWMD) is currently pursuing rulemaking on this issue.

### **Issue – Variances**

The Secretary of the Department of Environmental Protection (DEP) is currently authorized to issue variances from certain statutory and rule provisions under certain circumstances for phosphate mine reclamation activities (see s. 378.212, F.S.).

### **Effect of Proposed Changes**

#### **Issue – Linkage between growth management and water supplies**

The bill requires that local government comprehensive plans address the availability of water supplies to meet projected water use demands for the planning period. This is to be “compatible” with a WMD regional water supply plan. The bill requires that each comprehensive plan include a component in the capital improvement element that outlines the plans for the construction of potable water facilities. This component is required to be compatible with the WMD’s regional water supply plan. The bill also requires that the future land use plan element be based upon the availability of ground and surface water resources for present and future water supplies and the potential for development of alternative water supplies.

#### **Issue – Water conservation**

The bill requires the WMDs to consider conservation measures as a potential new water source. The WMD is required to form a technical committee to review data and tools used in the development of their regional water supply plans.

The bill also requires the WMDs in their budget reviews to quantify the amount of water made available for consumptive use by each proposed water resource development project.

The bill authorizes the PSC to allow full recovery of the costs of alternative water supplies, and to establish conservation and drought rate structures designed to promote water conservation. Utilities with gross annual revenues below \$250,000 will be able to request PSC staff assistance on rate changes.

Utilities that apply to WMDs for a CUP are required to have conservation rate structures, drought structures, and informative billing.

The bill encourages local governments to develop and adopt landscape irrigation standards for new construction that incorporates a landscape irrigation system.

The bill requires individual metering of water use for all new commercial and residential construction.

The bill sets forth the intent of the legislature that each utility that receives grant funding pursuant to s. 403.1835 (water pollution control financial assistance) shall: (1) develop rate structures for all water, wastewater, and reclaimed water which provides meaningful implementation of alternative water supply systems; (2) promote conservation of fresh water withdrawn from natural systems; (3) provide an appropriate distribution of costs among all water users; and (4) prohibit rate discrimination within classes of users. The bill also requires that loans for reuse systems include conditions related to metering of reclaimed water use, volume-based rate structures, and education programs.

### **Issue – Alternative water supply development**

The bill requires the three larger WMDs (SJRWD, SFWMD, and the SWFWMD) to allocate at least \$20 million annually for grants and loans for alternative water supply development. Funding priority is to be given to projects in water resource caution areas, projects consistent with the regional water supply plan, and projects featuring efficient and effective use of reclaimed water. The bill requires that the funding assistance provided by WMDs include certain conditions, such as metering of reclaimed water, the implementation of reclaimed water rate structures, and water conservation education programs.

### **Issue – Reclaimed water**

The bill prohibits the WMDs from requiring a permit for the use of reclaimed water.

The bill also encourages metering and volume-based rates for use of reclaimed water, and provides that, beginning January 1, 2004, a domestic wastewater utility that provides reclaimed water shall include in its annual report to the DEP, a summary of its metering and rate structure. The bill also requires that each such utility prepare a plan to implement metering and volume-based rates and submit such plan for review and approval by the DEP by January 1, 2006.

The bill mandates that state agencies use reclaimed water whenever possible and report annually to DEP.

### **Issue – Water rights and cumulative impacts from water use**

The bill prohibits the sale of water rights granted under a CUP.

The bill requires the WMDs to consider future demands which are included in the regional water supply plans as part of the cumulative impact analysis of a proposed use.

### **Issue – Consumptive use permit duration**

The bill requires the WMDs to establish rules for long term permits for applicants that exceed the industry average for water conservation.

### **Issue – Environmental Resource Permit and Consumptive Use Permit concurrent review**

The bill requires DEP to adopt a rule that requires concurrent processing and review of ERP and CUP permits for projects that require both.

### **Issue – Variances**

The bill allows the consideration by the Secretary of DEP of variances from statutory and rule provisions that address mine reclamation in order to accommodate water resource or supply development which is consistent with a regional water supply plan if regional water resources would not be adversely affected.

## **C. SECTION DIRECTORY:**

Section 1. Adds subsection (13) to s. 163.3167, F.S., to require comprehensive plans to address the availability of water supplies.

Section 2. Amends s. 163.3177, F.S., to require that the capital improvements element of a comprehensive plan include plans for construction of potable water facilities.

Section 3. Amends s. 367.081, F.S., to authorize the PSC to allow the recovery of costs of alternative water supply facilities.

Section 4. Amends s. 367.0814, F.S., to change the eligibility of utilities to request and obtain staff assistance for rate changes.

Section 5. Amends s. 367.0818, F.S., to authorize the PSC to establish conservation or drought rates to promote water conservation.

Section 6. Amends s. 373.016, F.S., to conform a cross-reference.

Section 7. Amends s. 373.0361, F.S., to add conservation measures as a possible water source option in a regional water supply plan and provide for a technical committee.

Section 8. Amends s. 373.0831, F.S., to require WMDs to explain in their annual budgets how each water resource development project will produce additional water for consumptive uses and estimate how much.

Section 9. Creates s. 373.186, F.S., to encourage local governments to develop and adopt landscape irrigation design standards for new construction.

Section 10. Creates s. 373.190, F.S., to provide for individual water meters at specified new commercial and residential construction.

Section 11. Amends s. 373.1961, F.S., to require that the SJRWMD, SFWMD and the SWFWMD provide at least \$20 million in their annual budgets for alternative water supply development.

Section 12. Amends s. 373.1962, F.S., to conform a cross-reference.

Section 13. Amends s. 373.217, F.S., to conform a cross-reference.

Section 14. Amends s. 373.219, F.S., to provide an exemption from permitting for consumption or use of domestic wastewater effluent.

Section 15. Amends s. 373.223, F.S., to provide that a proposed use of water by a water utility will not be deemed a reasonable-beneficial use under certain circumstances; and amends s. 373.223, F.S., to prohibit the sale of water rights granted under a permit.

Section 16. Creates s. 373.2231, F.S., to require WMDs to consider the potential cumulative impact of any proposed use of water.

Section 17. Amends s. 373.229, F.S., to conform a cross-reference.

Section 18. Amends s. 373.236, F.S., to direct the DEP or WMDs to adopt rules for the issuance of longer duration permits.

Section 19. Creates s. 373.4271, F.S., to require DEP to adopt rules requiring concurrent application submittal and review of CUP and ERP applications.

Section 20. Amends s. 378.212, F.S., to authorize DEP to issue variances.

Section 21. Amends S. 403.064, F.S., to encourage metering and volume-based rates for use of reclaimed water.

Section 22. Creates s. 403.0645, F.S., to promote use of reclaimed water at state facilities.

Section 23. Amends s. 403.1835, F.S., to provide legislative intent with regard to the development of alternative water supplies and water conservation.

Section 24. Provides that the act will take effect upon being a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

The bill requires that \$20 million be allocated annually by the SJRWMD, SWFWMD, and SFWMD for alternative water supply development.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures:

Local governments will incur additional indeterminate costs associated with the required revisions to their comprehensive plans.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners and developers of new commercial and residential developments will incur additional indeterminate costs associated with the required water metering of these developments.

### D. FISCAL COMMENTS: None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires local governments to amend specific provisions of their comprehensive plans to address the availability of water for existing and future development; however an exemption applies since the additional costs associated with this required actions of local governments will have an insignificant impact.

2. Other: None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the WMDs to establish rules for long term permits for applicants that exceed the industry average for water conservation and requires DEP to adopt a rule that requires concurrent processing and review of ERP and CUP permits for projects that require both.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**