

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1459 Water Legislation
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:** SB 2369

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	_____	<u>McKinnon</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) <u>Appropriations</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1459 provides for the following:

- Directs the Department of Environmental Protection (DEP) to develop a water conservation guidance manual for water utilities for use in consumptive use permitting;
- Prohibits regulation of reclaimed water under Ch. 373, F.S., and provides that the conclusions of a reuse feasibility study are binding under both Ch. 403 and 373., F.S.;
- Provides additional criteria for water management district (WMD) regional water supply plans;
- Provides requirements for WMD budget submittals, and provides for long term consumptive use permits and funding priority for certain water supply development projects;
- Promotes WMD implementation of revolving loan programs for water supply development, and provides additional exemptions for the transport of water across county boundaries;
- Provides for long term consumptive use permits for applicants implementing certain water conservation measures, and prohibits consideration of an applicants' ability to meet future water shortage orders in the consumptive use permitting process;
- Provides variances from mine reclamation and environmental resource permit requirements for reclamation that achieves water supply or resource development;
- Authorizes deposits of DEP revolving loan program with certain financial institutions under certain circumstances, clarifies water resource development project eligibility for Florida Forever funds, and requires a study of possible beneficial uses of the discharge of reclaimed water into canals.

According to DEP, there is an estimated fiscal impact of \$100,000 to implement the reuse feasibility study.

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

STORAGE NAME: h1459.nr.doc
DATE: March 27, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Issue – Water conservation

In their consumptive use permitting (CUP) programs under Part II of ch. 3373, the water management districts (WMD) may require, on a case-by-case basis, the use of various water conservation measures in their evaluation of permit applications. However, there is no state-wide standard for such water conservation measures.

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 – 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 under Part II of Ch. 373, F.S. 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.

The construction and operation of wastewater treatment plants are regulated by the Department of Environmental Protection (DEP) under Ch. 403, F.S. Section 403.064, F.S, contains provisions for when a wastewater treatment plant will be required to provide reclaimed water, including criteria for the applicant to conduct a reuse feasibility study. If the study finds reuse to be feasible, the applicant shall “strongly consider” implementing it. For a utility that conducts both public water supply and wastewater treatment, the study also serves to satisfy any requirements for a feasibility analysis by utilities under Ch. 373, F.S.

Issue – Regional Water Supply Plans

The 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 (see s. 373.0361, F.S.). Each water supply plan is to be based on a 20-year planning period, and is required to contain a *water supply development* component and a *water resource development* component.

Water supply development is defined to include the design and construction of facilities for the collection, production, treatment, and distribution of water to the end user.

Water resource development is defined to include the formulation and implementation of regional water resource management strategies and the development of regional water resource implementation programs.

The *water supply development* component of the plan is required to include a quantification of the existing and future water supply needs for the region, a list of the water source options to provide those needs, the amount of water available from each of the options, and a list of water supply development projects that meet the criteria for priority funding from state and WMD funding sources. The *water resource development* component of the plan must include a list of the water resource development projects that support water supply development, and for each such project, an estimate of the water that the project will provide, the timetable for implementing the project, sources for funding the project, and identification of the entity that will implement the project and how it will be implemented.

There is no requirement that the regional water supply plan address water reservations. Currently, under ss. 373.223(4), F.S., the DEP or a WMD may reserve from use by applicants for consumptive use permit water in quantities and at locations and during seasons “as in its judgment may be required for the protection of fish and wildlife or the public health and safety.” Any such reservation must be accomplished by “regulation.” The statute provides that reservations shall not affect existing legal uses of water “so long as such use is not contrary to the public interest.” Water reservations are required to be periodically reviewed and revised in light of changed conditions. Once water is reserved, a WMD may not allocate it to consumptive use permittees.

Issue – Water Resource Development

Funding

As noted above, the water resource development component of the regional water supply plan must include information relating to the development of water resource development projects. The WMDs are required to submit their budgets annually to the Governor for review, and those budgets are required to include the amount needed for the fiscal year to implement the water resource development projects (see ss. 373.0831(3), F.S.). The WMDs are required to provide these amounts as grants or loans for alternative water supply development.

Those water resource development projects that are consistent with the regional water supply plan and meet certain other criteria are entitled to priority consideration for funding. Included in these criteria are that the project establishes a dependable sustainable supply of water, the project provides environmental benefits, and the project implements reuse, storage, recharge, or conservation of water in a way that contributes to the sustainability of the regional water sources.

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.). In their annual budgets submitted to the Governor, WMDs which have water resource caution areas within their boundaries are required to include 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.

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.).

Issue – Transport of Water

The law currently provides that in evaluating a potential transport of water across county boundaries, a WMD must consider certain factors (see S. 373.223(3), F.S.). The statute contains a list of entities and circumstances that are exempt from this evaluation.

Issue – Declaration of Water Shortage

Current law provides that a WMD may declare that a water shortage exists when insufficient water exists to meet the present and anticipated requirements of the users. The WMD is required to notify the holder of each CUP of any change to the conditions to the permit, any suspension of the permit, or any other restrictions on the use of water for the duration of the water shortage.

Issue – Water Pollution Control Financial Assistance

Current law authorizes the DEP to provide financial assistance for the construction of water pollution control projects including the construction of wastewater, stormwater, and nonpoint source management systems. The DEP may do this through grants, loans, loan guarantees, etc. Currently, DEP is prohibited from depositing funds in financial institutions that earn less than the prevailing rate for U.S. Treasury Securities.

Issue - Florida Forever Funding

Currently, funds from the Florida Forever program may be used for certain water resource development projects (see s. 259.105, F.S.). However, the current definition of “water resource development project” would not allow funding for those water resource development projects that involve the construction of treatment, transmission, or distribution facilities.

Effect of Proposed Changes

Issue - Water Conservation

The bill directs the DEP to develop a *water conservation guidance manual* of water conservation options from which local governments may choose to meet WMD permitting criteria. The manual is required to be adopted by the WMDs by reference in their rules. After the manual is adopted by rule, each public water supply utility is required to develop a water conservation program from the options contained in the manual. The utility’s water conservation program would then be used to satisfy the water conservation requirements imposed in its CUP.

The bill also provides that permits of a longer duration than 20 years would be available to applicants who implement conservation measures that exceed the industry average and who demonstrate that data exists to provide reasonable assurance that the conditions for the issuance of the longer duration permit will be met for the duration of the permit.

Issue - Reclaimed water

The bill provides that the reclaimed water is not subject to regulation under ch. 373, F.S., and that a WMD cannot require a utility to provide reclaimed water.

The bill also clarifies that the conclusions of a reuse feasibility study conducted under s. 403.064, F.S, are binding on an applicant for determining the feasibility of providing reclaimed water for reuse under part II of ch. 373, F.S.

Issue – Regional Water Supply Plans

The bill provides that regional water supply plans are required to contain two additional items: (1) water reservations that have been adopted by rule, and (2) an analysis of those instances where the variance provisions for phosphate mine reclamation have been used to create water supply or water resource development projects.

The bill also prohibits the use of a regional water supply plan as part of the criteria for reviewing a CUP application unless the plan has been adopted by rule by the WMD.

Issue – Water Resource Development

Funding

The bill encourages the WMDs to expeditiously implement water resource development projects in those areas that are subject to regional water supply plans, and requires WMDs to include in their annual budgets submitted to the Governor an explanation of how each water resource development project will produce additional water for consumptive use and how much water will be produced.

The bill also provides that alternative water supply development projects which are identified in the regional water supply plans are entitled to receive a 20-year permit and priority funding by the WMD.

The bill encourages WMDs to consider establishing revolving loan programs for alternative water supply development, without reducing other sources of funding provided for this purpose.

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.

Issue – Transport of Water

The bill provides an exemption from evaluation by WMDs and DEP for the transport of water across county boundaries by: (1) a utility that is implementing one of the options of an approved regional water supply plan, (2) a utility that is implementing interconnections, and (3) a utility that owns or operates facilities in more than one county.

Issue – Declaration of Water Shortage

The bill provides that a permittee must comply with any order of a WMD with regard to a declared water shortage, subject to the right to challenge any such order. The bill further provides that an applicant for a CUP is not required to demonstrate his ability to comply with future potential orders relating declared water shortages as a condition to obtaining a CUP.

Issue – Water Pollution Control Financial Assistance

The bill provides that under its water pollution control financial assistance programs the DEP may make deposits with financial institutions that earn less than the prevailing rate for U.S. Treasury securities in order to allow those institutions to make low interest loans to qualifying individuals.

Issue - Florida Forever Funding

The bill clarifies that funds from the Florida Forever program may not be used for the construction of potable water treatment, transmission and distribution facilities.

Issue - Southeast Florida Canal Reuse Study

The bill requires the DEP, in conjunction with others to conduct a study to examine the use of discharge of reclaimed water to canals as a means of augmenting groundwater supplies, restoring natural systems, and conveying reuse water within enclosed conduits in canal rights of way. The bill requires the issuance of a preliminary report for comment by November 1, 2003 and the submittal of a final report by January 31, 2004 to the Governor and the substantive committees of the House of Representatives and the Senate.

C. SECTION DIRECTORY:

Section 1. Requires the DEP to develop a water conservation manual.

Section 2. Amends s. 373.023, F.S., to provide that water produced by domestic wastewater treatment plants regulated under s. 403.064 is not subject to regulation under Chapter 373.

Section 3. Amends s. 373.0361, F.S., to provide additional requirements and restrictions relating to WMDs regional water supply plans.

Section 4. Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.

Section 5. Amends s. 373.1961, F.S., to encourage the WMD to administer revolving loan programs for alternative water supply development.

Section 6. Amends s. 373.223, F.S., to provide an exemption for certain utilities for the transport of water across county boundaries.

Section 7. Amends s. 373.236, F.S., to provide for the issuance of long term permits.

Section 8. Amends s. 373.246, F.S., relating to water shortage declaration requirements.

Section 9. Amends s. 373.250, F.S., to provide that WMDs have no authority to require a utility to provide reclaimed water.

Section 10. Amends s. 378.212, F.S., to provide authority to DEP to issue a variance to accommodate reclamation that provides water supply or resource development.

Section 11. Amends s. 403.064, F.S., to provide that a reuse feasibility study governs permitting decisions for CUPs.

Section 12. Amends s. 403.1835, F.S., relating to DEP water pollution control financial assistance.

Section 13. Amends s. 259.03, F.S., to clarify that Forever Funds can not be used for the construction of potable water treatment, transmission and distribution facilities.

Section 14. Requires the DEP to conduct a study to examine the use of discharge of reclaimed water to canals as a means of augmenting groundwater supplies, restoring natural systems, and conveying reuse water.

Section 15. Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Non-recurring Effects: The cost of the study and report required in section 14 could be substantial, perhaps on the order of \$100,000; no appropriation has been identified to cover this cost.

Recurring Effects: None to DEP. There are a number of potential recurring costs to the WMDs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires WMDs to adopt the water conservation guidance manual by reference by rule. It also requires that water reservations be adopted by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES