

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1459 w/CS Water Legislation

SPONSOR(S): Machek

TIED BILLS: **IDEN./SIM. BILLS:** 2316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	<u>11 Y, 0 N</u>	<u>McKinnon</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>17 Y, 0 N w/CS</u>	<u>McKinnon</u>	<u>Lotspeich</u>
3) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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;
- Provides additional criteria for water management district (WMD) regional water supply plans;
- Provides that a regional water supply plan cannot be used by a WMD in the review of consumptive use permits (CUP) unless the plan has been adopted by rule;
- Provides that alternative water supply development projects identified in a regional water supply plan are entitled to a 20-year permit and priority funding;
- Promotes WMD implementation of revolving loan programs for alternative water supply development;
- Provides that WMDs cannot require a provider of reclaimed water to redirect that water from one user to another;
- Requires WMDs in their annual budget submittals to identify projects that will provide water and estimate the quantity to be produced;
- Provides variances from mine reclamation and environmental resource permit requirements for reclamation that achieves water supply or resource development;
- Provides that a reuse feasibility study will be given significant consideration by a WMD to satisfy the requirements for a CUP;
- Authorizes deposits of DEP revolving loan program with certain financial institutions under certain circumstances and removes the cap on Florida Water Pollution Control Financing Corporation for issuing bonds to finance water pollution control projects; 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 study to examine the discharge of reclaimed water to canals.

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

STORAGE NAME: h1459b.nr.doc

DATE: April 21, 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.

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 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 – 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.

The Florida Water Pollution Control Financing Corporation was created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of water pollution control projects. Currently, the Corporation may not issue bonds in excess of specific amounts (i.e. \$50 million in FY 2000-2001, \$75 million in FY 2001-2002, and \$100 million in FY 2002-2003) to finance such projects.

Effect of Proposed Changes

Issue - Water Conservation

The bill directs DEP to develop a *water conservation guidance manual* of water conservation options from which local governments may choose to meet WMD CUP permitting criteria. The manual is required to be adopted by rule by DEP. The WMDs may apply the manual in the review of water conservation requirements for obtaining a CUP. After the manual is adopted by rule, each public water supply utility may 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.

Issue - Reclaimed water

The bill prohibits the WMDs from requiring a provider of reclaimed water to redirect the reclaimed water from one user to another, and encourages the development of incentive-based programs for reuse implementation.

The bill provides that a reuse feasibility study completed to satisfy DEP for the construction and operation of a wastewater treatment plant will be given significant consideration by a WMD to satisfy the requirements for a CUP.

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 – 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. The bill also removes the cap on Florida Water Pollution Control Financing Corporation for issuing bonds to finance water pollution control projects.

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. Creates 373.227, F.S., to require the DEP to develop a water conservation manual.

Section 2. Amends s. 373.0361, F.S., to provide additional requirements and restrictions relating to WMDs regional water supply plans.

Section 3. Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.

Section 4. Amends s. 373.1961, F.S., to encourage the WMD to administer revolving loan programs for alternative water supply development.

Section 5. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 6. Amends s. 373.536, 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 7. Amends s. 378.212, F.S., to provide authority to DEP to issue a variance to accommodate mine reclamation that provides water supply or resource development.

Section 8. Amends s. 378.404, F.S., to authorize DEP to issue variances.

Section 9. Amends s. 403.064, F.S., to provide that a reuse feasibility study shall be given significant consideration in permitting decisions for CUPs.

Section 10. Amends s. 403.1835, F.S., relating to DEP water pollution control financial assistance.

Section 11. Amends s. 403.1837, F.S., relating to the issuance of bonds by the Florida Water Pollution Control Financing Corporation.

Section 12. 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 13. 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 12 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: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 9, 2003, the House Committee on Natural Resources favorably adopted a substitute strike all and five amendments that does the following:

- Creates 373.227, F.S., to require the DEP to develop a water conservation manual.
- Amends s. 373.0361, F.S., to provide additional requirements and restrictions relating to WMDs regional water supply plans.
- Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.
- Amends s. 373.1961, F.S., to encourage the WMD to administer revolving loan programs for alternative water supply development.
- Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.
- Amends s. 373.536, 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.
- 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.
- Amends s. 378.404, F.S., to authorize DEP to issue variances.
- Amends s. 403.064, F.S., to provide that a reuse feasibility study governs permitting decisions for CUPs.
- Amends s. 403.1835, F.S., relating to DEP water pollution control financial assistance.
- Amends s. 403.1837, F.S., relating to the issuance of bonds by the Florida Water Pollution Control Financing Corporation.
- 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.
- Provides that the act shall take effect upon becoming law.

