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1 A bill to be entitled

2 An act relating to water supplies; providing legislative
3 findings and intent; providing for the development of a
4 water conservation guidance manual by the Department of
5 Environmental Protection; providing for purpose and
6 contents of the manual and requirements with respect
7 thereto; requiring water management districts to adopt the
8 manual in their rules by a specified date; requiring
9 public water supply utilities to develop water
10 conservation programs based upon options contained in the
11 manual; amending s. 373.023, F.S.; revising scope and
12 applicability of the Florida Water Resources Act of 1972
13 to exclude from regulation under the act water produced by
14 domestic wastewater treatment facilities; amending s.
15 373.0361, F.S.; providing additional components of
16 regional water supply plans; providing that a district
17 water management plan may not be used as criteria for the
18 review of permits for consumptive uses of water unless the
19 plan or applicable portion thereof has been adopted by
20 rule; amending s. 373.0831, F.S.; revising the criteria by
21 which water supply development projects may receive
22 priority consideration for funding assistance; providing
23 for permitting and funding of a proposed alternative water
24 supply project identified in the relevant approved
25 regional water supply plan; amending s. 373.1961, F.S.;
26 encouraging water management district governing boards to
27 establish revolving loan trust funds for specified
28 purposes; amending s. 373.223, F.S.; including certain
29 utilities within provisions which require the
30 consideration of specified factors and conditions by a



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31 water management governing board or the Department of
32 Environmental Protection prior to approval of a water use
33 permit; amending s. 373.236, F.S.; providing for
34 consumptive use permits of extended duration where
35 specified conservation measures are in effect; amending s.
36 373.246, F.S.; providing requirements of a permittee with
37 respect to compliance with a water shortage order;
38 amending s. 373.250, F.S.; providing construction with
39 respect to provisions governing reuse of reclaimed water;
40 amending s. 378.212, F.S.; authorizing the granting of a
41 variance from pt. IV of ch. 378, F.S., the Resource
42 Extraction Reclamation Act, and from ch. 373, F.S., the
43 Florida Water Resources Act of 1972, under specified
44 circumstances; providing an additional circumstance for
45 which a variance may be granted; amending s. 403.064,
46 F.S.; providing that conclusions of described reuse
47 feasibility studies shall govern specified permitting
48 decisions and the feasibility of providing reclaimed water
49 for reuse purposes; amending s. 403.1835, F.S.;

50 authorizing the Department of Environmental Protection to
51 make specified deposits for the purpose of enabling below-
52 market interest rate loans for treatment of polluted
53 water; amending s. 259.03, F.S.; revising the definition
54 of "water resource development project"; providing for a
55 study of the feasibility of discharging reclaimed
56 wastewater into canals in a specified area as an
57 environmentally acceptable means of accomplishing
58 described objectives; requiring reports; providing an
59 effective date.

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61 Be It Enacted by the Legislature of the State of Florida:

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63 Section 1. (1) The Legislature recognizes that the proper
64 conservation of water is an important means of achieving the
65 economic and efficient utilization of water necessary to
66 constitute a reasonable and beneficial use. The Legislature
67 encourages the development and use of water conservation
68 measures that are effective, flexible, and affordable. In the
69 context of the use of water for public supply provided by a
70 water utility, the Legislature intends for a variety of
71 conservation measures to be available and used to encourage
72 efficient water use. The Legislature finds that the social,
73 economic, and cultural conditions of this state relating to the
74 use of public water supply vary by geographic region, and thus
75 water utilities must have the flexibility to tailor water
76 conservation measures to best suit their individual
77 circumstances.

78 (2) In furtherance of the findings in subsection (1), the
79 Department of Environmental Protection shall develop a water
80 conservation guidance manual containing a menu of water
81 conservation measures from which public water supply utilities
82 may select in the development of a water conservation program
83 tailored for their individual service areas that is effective
84 and does not impose undue costs or burdens on customers. The
85 water conservation guidance manual may contain measures such as
86 billing notices informing customers of the need to conserve
87 water; ordinances requiring low-flow plumbing; rebate programs
88 for the installation of water-saving plumbing or appliances;
89 general water conservation educational programs; and water
90 conservation or drought rate structures that encourage customers



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91 to conserve water through appropriate price signals. If the
92 water conservation guidance manual includes the option of
93 adopting water conservation or drought rate structures, the
94 department shall specifically set forth in the manual that it is
95 the responsibility of the appropriate utility to determine the
96 rates it will charge its customers and that the role of the
97 department or water management district is confined to the
98 review of those rate structures to determine whether they
99 encourage water conservation. The department shall also set
100 forth in the water conservation guidance manual that a utility
101 need not adopt a water conservation or drought rate structure if
102 the utility employs other measures that are equally effective or
103 more effective.

104 (3) The Department of Environmental Protection shall
105 develop the water conservation guidance manual no later than
106 November 15, 2003. The department shall develop the manual in
107 consultation with representatives from the water management
108 districts, public water supply utilities, domestic wastewater
109 utilities, environmental and community organizations, business
110 organizations, and municipalities and counties. The water
111 management districts shall, by March 15, 2004, adopt the water
112 conservation guidance manual by reference in their rules
113 governing the review of applications for permits under part II
114 of chapter 373, Florida Statutes. Once the water conservation
115 guidance manual is adopted by rule, a public water supply
116 utility shall develop a water conservation program from the
117 options contained in the manual. The program shall be used to
118 satisfy water conservation requirements imposed as a condition
119 to obtaining a permit under part II of chapter 373, Florida
120 Statutes. The department, in consultation with the



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121 aforementioned entities, may periodically amend or revise the
 122 water conservation guidance manual as appropriate to reflect
 123 changed circumstances or new technologies or ideas. The
 124 findings and provisions in this section shall not be construed
 125 to apply to uses of water other than potable water supply.

126 Section 2. Subsection (1) of section 373.023, Florida
 127 Statutes, is amended to read:

128 373.023 Scope and application.--

129 (1) All waters in the state, except water produced by
 130 domestic wastewater treatment facilities subject to regulation
 131 under s. 403.064, are subject to regulation under the provisions
 132 of this chapter unless specifically exempted by general or
 133 special law.

134 Section 3. Subsections (2) and (6) of section 373.0361,
 135 Florida Statutes, are amended to read:

136 373.0361 Regional water supply planning.--

137 (2) Each regional water supply plan shall be based on at
 138 least a 20-year planning period and shall include, but not be
 139 limited to:

140 (a) A water supply development component that includes:

141 1. A quantification of the water supply needs for all
 142 existing and reasonably projected future uses within the
 143 planning horizon. The level-of-certainty planning goal
 144 associated with identifying the water supply needs of existing
 145 and future reasonable-beneficial uses shall be based upon
 146 meeting those needs for a 1-in-10-year drought event.

147 2. A list of water source options for water supply
 148 development, including traditional and alternative sources, from
 149 which local government, government-owned and privately owned



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150 utilities, self-suppliers, and others may choose, which will
151 exceed the needs identified in subparagraph 1.

152 3. For each option listed in subparagraph 2., the
153 estimated amount of water available for use and the estimated
154 costs of and potential sources of funding for water supply
155 development.

156 4. A list of water supply development projects that meet
157 the criteria in s. 373.0831(4).

158 (b) A water resource development component that includes:

159 1. A listing of those water resource development projects
160 that support water supply development.

161 2. For each water resource development project listed:

162 a. An estimate of the amount of water to become available
163 through the project.

164 b. The timetable for implementing or constructing the
165 project and the estimated costs for implementing, operating, and
166 maintaining the project.

167 c. Sources of funding and funding needs.

168 d. Who will implement the project and how it will be
169 implemented.

170 (c) The recovery and prevention strategy described in s.
171 373.0421(2).

172 (d) A funding strategy for water resource development
173 projects, which shall be reasonable and sufficient to pay the
174 cost of constructing or implementing all of the listed projects.

175 (e) Consideration of how the options addressed in
176 paragraphs (a) and (b) serve the public interest or save costs
177 overall by preventing the loss of natural resources or avoiding
178 greater future expenditures for water resource development or



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179 water supply development. However, unless adopted by rule, these
180 considerations do not constitute final agency action.

181 (f) The technical data and information applicable to the
182 planning region which are contained in the district water
183 management plan and are necessary to support the regional water
184 supply plan.

185 (g) The minimum flows and levels established for water
186 resources within the planning region.

187 (h) Reservations of water adopted by rule pursuant to s.
188 373.223(4).

189 (i) An analysis, developed in cooperation with the
190 department, of areas or instances in which the variance
191 provisions of s. 378.212(1)(g) may be used to create water
192 supply development or water resource development projects.

193 (6) Nothing contained in the water supply development
194 component of the district water management plan shall be
195 construed to require local governments, government-owned or
196 privately owned water utilities, self-suppliers, or other water
197 suppliers to select a water supply development option identified
198 in the component merely because it is identified in the plan,
199 nor may the plan be used as criteria for the review of permits
200 under part II unless the plan, or applicable portion thereof,
201 has been adopted by rule. However, this subsection shall not be
202 construed to limit the authority of the department or governing
203 board under part II.

204 Section 4. Subsections (3) and (4) of section 373.0831,
205 Florida Statutes, are amended to read:

206 373.0831 Water resource development; water supply
207 development.--



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208 (3) The water management districts shall fund and
209 implement water resource development as defined in s. 373.019.
210 The water management districts are encouraged to implement water
211 resource development as expeditiously as possible in areas
212 subject to regional water supply plans. Each governing board
213 shall include in its annual budget the amount needed for the
214 fiscal year to implement water resource development projects, as
215 prioritized in its regional water supply plans. When submitting
216 its annual budget to the Governor's office for review under s.
217 373.536, the governing board shall explain how each water
218 resource development project will produce additional water
219 available for consumptive uses and estimate the quantity of
220 water to be produced.

221 (4)(a) Water supply development projects which are
222 consistent with the relevant regional water supply plans and
223 which meet at least one ~~or more~~ of the following criteria shall
224 receive priority consideration for state or water management
225 district funding assistance:

226 1. The project supports establishment of a dependable,
227 sustainable supply of water which is not otherwise financially
228 feasible;

229 2. The project provides substantial environmental benefits
230 by preventing or limiting adverse water resource impacts, but
231 requires funding assistance to be economically competitive with
232 other options; or

233 3. The project significantly implements reuse, storage,
234 recharge, or conservation of water in a manner that contributes
235 to the efficient use and sustainability of regional water supply
236 sources.

237 (b) Water supply development projects which meet the



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238 criteria in paragraph (a) and also bring about replacement of
239 existing sources in order to help implement a minimum flow or
240 level shall be given first consideration for state or water
241 management district funding assistance.

242 (c) If a proposed alternative water supply project is
243 identified in the relevant approved regional water supply plan,
244 the project shall receive:

245 1. A 20-year consumptive use permit, if it otherwise meets
246 the permit requirements under ss. 373.223 and 373.236 and rules
247 adopted thereunder.

248 2. Priority funding pursuant to s. 373.1961(2) with the
249 implementation of the water resource development component of
250 the proposed project.

251 Section 5. Paragraph (a) of subsection (2) of section
252 373.1961, Florida Statutes, is amended to read:

253 373.1961 Water production.--

254 (2) The Legislature finds that, due to a combination of
255 factors, vastly increased demands have been placed on natural
256 supplies of fresh water, and that, absent increased development
257 of alternative water supplies, such demands may increase in the
258 future. The Legislature also finds that potential exists in the
259 state for the production of significant quantities of
260 alternative water supplies, including reclaimed water, and that
261 water production includes the development of alternative water
262 supplies, including reclaimed water, for appropriate uses. It is
263 the intent of the Legislature that utilities develop reclaimed
264 water systems, where reclaimed water is the most appropriate
265 alternative water supply option, to deliver reclaimed water to
266 as many users as possible through the most cost-effective means,
267 and to construct reclaimed water system infrastructure to their



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268 owned or operated properties and facilities where they have
269 reclamation capability. It is also the intent of the Legislature
270 that the water management districts which levy ad valorem taxes
271 for water management purposes should share a percentage of those
272 tax revenues with water providers and users, including local
273 governments, water, wastewater, and reuse utilities, municipal,
274 industrial, and agricultural water users, and other public and
275 private water users, to be used to supplement other funding
276 sources in the development of alternative water supplies. The
277 Legislature finds that public moneys or services provided to
278 private entities for such uses constitute public purposes which
279 are in the public interest. In order to further the development
280 and use of alternative water supply systems, including reclaimed
281 water systems, the Legislature provides the following:

282 (a) The governing boards of the water management districts
283 where water resource caution areas have been designated shall
284 include in their annual budgets an amount for the development of
285 alternative water supply systems, including reclaimed water
286 systems, pursuant to the requirements of this subsection.
287 Beginning in 1996, such amounts shall be made available to water
288 providers and users no later than December 31 of each year,
289 through grants, matching grants, revolving loans, or the use of
290 district lands or facilities pursuant to the requirements of
291 this subsection and guidelines established by the districts.
292 Without diminishing amounts available through other means
293 described in this paragraph, the governing boards are encouraged
294 to consider establishing revolving loan funds to expand the
295 total funds available to accomplish the objectives of this
296 section. A revolving loan fund created pursuant to this
297 paragraph shall be a nonlapsing fund from which the water



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298 management district may make loans with interest rates below
 299 prevailing market rates to public or private entities for the
 300 purposes described in this section. The governing boards may
 301 adopt resolutions to establish revolving loan funds which shall
 302 specify the details of the administration of the fund, the
 303 procedures for applying for loans from the fund, the criteria
 304 for awarding loans from the fund, the initial capitalization of
 305 the fund, and the goals for future capitalization of the fund in
 306 subsequent budget years. Revolving loan funds created pursuant
 307 to this paragraph shall be used to expand the total sums and
 308 sources of cooperative funding available for the development of
 309 alternative water supplies. The Legislature does not intend for
 310 the creation of revolving loan trust funds to supplant or
 311 otherwise reduce existing sources or amounts of funds currently
 312 available through other means.

313 Section 6. Subsection (3) of section 373.223, Florida
 314 Statutes, is amended to read:

315 373.223 Conditions for a permit.--

316 (3) Except for the transport and use of water supplied by
 317 the Central and Southern Florida Flood Control Project, and
 318 anywhere in the state when the transport and use of water is
 319 supplied exclusively for bottled water as defined in s.
 320 500.03(1)(d), any water use permit applications pending as of
 321 April 1, 1998, with the Northwest Florida Water Management
 322 District, ~~and~~ self-suppliers of water for which the proposed
 323 water source and area of use or application are located on
 324 contiguous private properties, utilities implementing one or
 325 more options of an approved regional water supply plan prepared
 326 pursuant to ss. 373.036 and 373.0361, utilities implementing
 327 interconnections, and utilities owning or operating facilities



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328 located in more than one county, when evaluating whether a
329 potential transport and use of ground or surface water across
330 county boundaries is consistent with the public interest,
331 pursuant to paragraph (1)(c), the governing board or department
332 shall consider:

333 (a) The proximity of the proposed water source to the area
334 of use or application.

335 (b) All impoundments, streams, groundwater sources, or
336 watercourses that are geographically closer to the area of use
337 or application than the proposed source, and that are
338 technically and economically feasible for the proposed transport
339 and use.

340 (c) All economically and technically feasible alternatives
341 to the proposed source, including, but not limited to,
342 desalination, conservation, reuse of nonpotable reclaimed water
343 and stormwater, and aquifer storage and recovery.

344 (d) The potential environmental impacts that may result
345 from the transport and use of water from the proposed source,
346 and the potential environmental impacts that may result from use
347 of the other water sources identified in paragraphs (b) and (c).

348 (e) Whether existing and reasonably anticipated sources of
349 water and conservation efforts are adequate to supply water for
350 existing legal uses and reasonably anticipated future needs of
351 the water supply planning region in which the proposed water
352 source is located.

353 (f) Consultations with local governments affected by the
354 proposed transport and use.

355 (g) The value of the existing capital investment in water-
356 related infrastructure made by the applicant.

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358 Where districtwide water supply assessments and regional water
359 supply plans have been prepared pursuant to ss. 373.036 and
360 373.0361, the governing board or the department shall use the
361 applicable plans and assessments as the basis for its
362 consideration of the applicable factors in this subsection.

363 Section 7. Subsection (4) is added to section 373.236,
364 Florida Statutes, to read:

365 373.236 Duration of permits; compliance reports.--

366 (4) The department or the water management district shall
367 issue permits of longer duration than specified in subsection
368 (1), subsection (2), or subsection (3) to applicants who
369 implement and provide reasonable assurances of effective and
370 efficient conservation measures that exceed the average for the
371 industry or type of water use, and where sufficient data exists
372 to provide reasonable assurance that the conditions for the
373 issuance of an extended-duration permit will be met for the
374 duration of the permit. Permits issued for a duration of 10
375 years or longer pursuant to this subsection shall be subject to
376 the provisions of subsection (3).

377 Section 8. Subsection (6) of section 373.246, Florida
378 Statutes, is amended to read:

379 373.246 Declaration of water shortage or emergency.--

380 (6) The governing board or the department shall notify
381 each permittee in the district by regular mail of any change in
382 the condition of his or her permit or any suspension of his or
383 her permit or of any other restriction on the permittee's use of
384 water for the duration of the water shortage. The permittee
385 shall comply with such orders, subject to the right to challenge
386 such orders as provided herein. However, an applicant for a
387 permit under this part shall not be required to demonstrate the



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388 ability to comply with future potential orders issued under this
389 section as a condition to obtaining the permit.

390 Section 9. Subsection (4) of section 373.250, Florida
391 Statutes, is amended to read:

392 373.250 Reuse of reclaimed water.--

393 (4) Nothing in this section shall impair a water
394 management district's authority to plan for and regulate
395 consumptive uses of water under this chapter. However, neither
396 this section nor this part shall be construed to grant the water
397 management districts the authority to require a utility to
398 provide reclaimed water, the provision of which shall be solely
399 governed by s. 403.064.

400 Section 10. Subsection (1) of section 378.212, Florida
401 Statutes, is amended to read:

402 378.212 Variances.--

403 (1) Upon application, the secretary may grant a variance
404 from the provisions of this part, part IV, and chapter 373, or
405 the rules adopted pursuant thereto. Variances and renewals
406 thereof may be granted for any one of the following reasons:

407 (a) There is no practicable means known or available to
408 comply with the provisions of this part or the rules adopted
409 pursuant thereto.

410 (b) Compliance with a particular requirement or
411 requirements from which a variance is sought will necessitate
412 the taking of measures which must be spread over a considerable
413 period of time. A variance granted for this reason shall
414 prescribe a timetable for the taking of the measures required.

415 (c) To relieve or prevent hardship, including economic
416 hardship, of a kind other than those provided for in paragraphs
417 (a) and (b).



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418 (d) To accommodate specific phosphate mining, processing
419 or chemical plant uses that otherwise would be inconsistent with
420 the requirements of this part.

421 (e) To provide for an experimental technique that would
422 advance the knowledge of reclamation and restoration methods.

423 (f) To accommodate projects, including those proposing
424 offsite mitigation, that provide a significant regional benefit
425 for wildlife and the environment.

426 (g) To accommodate reclamation that provides water supply
427 development or water resource development consistent with the
428 applicable regional water supply plan approved pursuant to s.
429 373.0361, provided that regional water resources are not
430 adversely affected.

431 Section 11. Subsections (1), (4), and (6) of section
432 403.064, Florida Statutes, are amended to read:

433 403.064 Reuse of reclaimed water.--

434 (1) The encouragement and promotion of water conservation,
435 and reuse of reclaimed water, as defined by the department, are
436 state objectives and are considered to be in the public
437 interest. The Legislature finds that the reuse of reclaimed
438 water is a critical component of meeting the state's existing
439 and future water supply needs while sustaining natural systems.
440 The Legislature further finds that for those wastewater
441 treatment plants permitted and operated under an approved reuse
442 program by the department, the reclaimed water shall be
443 considered environmentally acceptable and not a threat to public
444 health and safety. The Legislature encourages the development of
445 incentive-based programs for reuse implementation.

446 (4) The study required under subsection (2) shall be
447 performed by the applicant, and, if the study shows that the



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448 reuse is feasible, the applicant must give significant
449 consideration to its implementation if the study complies with
450 the requirements of subsections (2) and (3). The conclusions of
451 the study shall govern permitting decisions under this part and
452 part II of chapter 373.

453 (6) A reuse feasibility study prepared under subsection
454 (2) satisfies a water management district requirement to conduct
455 a reuse feasibility study imposed on a local government or
456 utility that has responsibility for wastewater management, and
457 the conclusions of the study shall determine the feasibility of
458 providing reclaimed water for reuse under part II of chapter
459 373.

460 Section 12. Paragraph (b) of subsection (3) of section
461 403.1835, Florida Statutes, is amended to read:

462 403.1835 Water pollution control financial assistance.--

463 (3) The department may provide financial assistance
464 through any program authorized under s. 603 of the Federal Water
465 Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as
466 amended, including, but not limited to, making grants and loans,
467 providing loan guarantees, purchasing loan insurance or other
468 credit enhancements, and buying or refinancing local debt. This
469 financial assistance must be administered in accordance with
470 this section and applicable federal authorities. The department
471 shall administer all programs operated from funds secured
472 through the activities of the Florida Water Pollution Control
473 Financing Corporation under s. 403.1837, to fulfill the purposes
474 of this section.

475 (b) The department may make or request the corporation to
476 make loans, grants, and deposits to other entities eligible to
477 participate in the financial assistance programs authorized



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478 under the Federal Water Pollution Control Act, or as a result of
 479 other federal action, which entities may pledge any revenue
 480 available to them to repay any funds borrowed. Notwithstanding
 481 s. 18.10, the department may make deposits to financial
 482 institutions that earn less than the prevailing rate for United
 483 States Treasury securities with corresponding maturities for the
 484 purpose of enabling such financial institutions to make below-
 485 market interest rate loans to entities qualified to receive
 486 loans under this section and the rules of the department.

487 Section 13. Subsection (6) of section 259.03, Florida
 488 Statutes, is amended to read:

489 259.03 Definitions.--The following terms and phrases when
 490 used in this chapter shall have the meanings ascribed to them in
 491 this section, except where the context clearly indicates a
 492 different meaning:

493 (6) "Water resource development project" means a project
 494 eligible for funding pursuant to s. 259.105 that increases the
 495 amount of water available to meet the needs of natural systems
 496 and the citizens of the state by enhancing or restoring aquifer
 497 recharge, facilitating the capture and storage of excess flows
 498 in surface waters, or promoting reuse. The implementation of
 499 eligible projects under s. 259.105 includes land acquisition,
 500 land and water body restoration, aquifer storage and recovery
 501 facilities, surface water reservoirs, and other capital
 502 improvements. The term does not include construction of potable
 503 water treatment, transmission, or distribution facilities.

504 Section 14. The Legislature finds that, within the area
 505 identified in the Lower East Coast Regional Water Supply Plan
 506 approved by the South Florida Water Management District pursuant
 507 to s. 373.0361, Florida Statutes, the groundwater levels can



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508 benefit from augmentation. The Legislature finds that the
509 discharge of reclaimed water into canals for transport and
510 subsequent reuse may provide an environmentally acceptable means
511 to augment water supplies and enhance natural systems; however,
512 the Legislature also recognizes that there are water quality and
513 water quantity issues that must be better understood and
514 resolved. In addition, there are cost savings possible by
515 collocating enclosed conduits for conveyance of water for reuse
516 in this area within canal rights-of-way that should be
517 investigated. Toward that end, the Department of Environmental
518 Protection, in consultation with the South Florida Water
519 Management District, Southeast Florida utilities, affected local
520 governments, including local governments with principal
521 responsibility for the operation and maintenance of a water
522 control system capable of conveying reclaimed wastewater for
523 reuse, representatives of the environmental and engineering
524 communities, public health professionals, and individuals having
525 expertise in water quality, shall conduct a study to investigate
526 the feasibility of discharging reclaimed wastewater into canals
527 as an environmentally acceptable means of augmenting groundwater
528 supplies, enhancing natural systems, and conveying reuse water
529 within enclosed conduits within the canal right-of-way. The
530 study shall include an assessment of the water quality, water
531 supply, public health, technical, and legal implications related
532 to the canal discharge and collocation concepts. The department
533 shall issue a preliminary written report containing draft
534 findings and recommendations for public comment by November 1,
535 2003. The department shall provide a written report on the
536 results of its study to the Governor and the substantive
537 committees of the House of Representatives and the Senate by



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538 January 31, 2004. Nothing in this section shall be used to alter
539 the purpose of the Comprehensive Everglades Restoration Plan or
540 the implementation of the Water Resources Development Act of
541 2000.

542 Section 15. This act shall take effect upon becoming a
543 law.