

Bill No. CS for SB 2316

Amendment No. ____ Barcode 755878

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Dockery and Atwater moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 11, line 1, through page 13, line 3, delete		
15	those lines		
16			
17	and insert:		
18	Section 6. Subsection (2) of section 373.1961, Florida		
19	Statutes, is amended to read:		
20	373.1961 Water production.--		
21	(2) The Legislature finds that, due to a combination		
22	of factors, vastly increased demands have been placed on		
23	natural supplies of fresh water, and that, absent increased		
24	development of alternative water supplies, such demands may		
25	increase in the future. The Legislature also finds that		
26	potential exists in the state for the production of		
27	significant quantities of alternative water supplies,		
28	including reclaimed water, and that water production includes		
29	the development of alternative water supplies, including		
30	reclaimed water, for appropriate uses. It is the intent of the		
31	Legislature that utilities develop reclaimed water systems,		

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1 where reclaimed water is the most appropriate alternative
2 water supply option, to deliver reclaimed water to as many
3 users as possible through the most cost-effective means, and
4 to construct reclaimed water system infrastructure to their
5 owned or operated properties and facilities where they have
6 reclamation capability. It is also the intent of the
7 Legislature that the water management districts which levy ad
8 valorem taxes for water management purposes should share a
9 percentage of those tax revenues with water providers and
10 users, including local governments, water, wastewater, and
11 reuse utilities, municipal, industrial, and agricultural water
12 users, and other public and private water users, to be used to
13 supplement other funding sources in the development of
14 alternative water supplies. The Legislature finds that public
15 moneys or services provided to private entities for such uses
16 constitute public purposes which are in the public interest.
17 In order to further the development and use of alternative
18 water supply systems, including reclaimed water systems, the
19 Legislature provides the following:

20 (a) The governing boards of the water management
21 districts where water resource caution areas have been
22 designated shall include in their annual budgets an amount for
23 the development of alternative water supply systems, including
24 reclaimed water systems, pursuant to the requirements of this
25 subsection. Beginning in 1996, such amounts shall be made
26 available to water providers and users no later than December
27 31 of each year, through grants, matching grants, revolving
28 loans, or the use of district lands or facilities pursuant to
29 the requirements of this subsection and guidelines established
30 by the districts. In making grants or loans, funding priority
31 shall be given to projects in accordance with s. 373.0831(4).

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1 Without diminishing amounts available through other means
2 described in this paragraph, the governing boards are
3 encouraged to consider establishing revolving loan funds to
4 expand the total funds available to accomplish the objectives
5 of this section. A revolving loan fund created pursuant to
6 this paragraph shall be a nonlapsing fund from which the water
7 management district may make loans with interest rates below
8 prevailing market rates to public or private entities for the
9 purposes described in this section. The governing board may
10 adopt resolutions to establish revolving loan funds which
11 shall specify the details of the administration of the fund,
12 the procedures for applying for loans from the fund, the
13 criteria for awarding loans from the fund, the initial
14 capitalization of the fund, and the goals for future
15 capitalization of the fund in subsequent budget years.
16 Revolving loan funds created pursuant to this paragraph shall
17 be used to expand the total sums and sources of cooperative
18 funding available for the development of alternative water
19 supplies. The Legislature does not intend for the creation of
20 revolving loan trust funds to supplant or otherwise reduce
21 existing sources or amounts of funds currently available
22 through other means.

23 (b) It is the intent of the Legislature that for each
24 reclaimed water utility, or any other utility, which receives
25 funds pursuant to this subsection, the appropriate
26 rate-setting authorities should develop rate structures for
27 all water, wastewater, and reclaimed water and other
28 alternative water supply utilities in the service area of the
29 funded utility, which accomplish the following:

30 1. Provide meaningful progress toward the development
31 and implementation of alternative water supply systems,

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1 including reclaimed water systems;

2 2. Promote the conservation of fresh water withdrawn
3 from natural systems;

4 3. Provide for an appropriate distribution of costs
5 for all water, wastewater, and alternative water supply
6 utilities, including reclaimed water utilities, among all of
7 the users of those utilities; and

8 4. Prohibit rate discrimination within classes of
9 utility users.

10 (c) Funding assistance provided by the water
11 management districts for a water reuse system project may
12 include the following grant or loan conditions for that
13 project when the water management district determines such
14 conditions will encourage water use efficiency:

15 1. Metering of reclaimed water use for the following
16 activities: residential irrigation, agricultural irrigation,
17 industrial uses except for electric utilities as defined in s.
18 366.02(2), landscape irrigation, irrigation of other public
19 access areas, commercial and institutional uses such as toilet
20 flushing, and transfers to other reclaimed water utilities.

21 2. Implementation of reclaimed water rate structures
22 based on actual use of reclaimed water for the types of reuse
23 activities listed in subparagraph 1.

24 3. Implementation of education programs to inform the
25 public about water issues, water conservation, and the
26 importance and proper use of reclaimed water.

27 4. Development of location data for key reuse
28 facilities.

29 ~~(d)(c)~~ In order to be eligible for funding pursuant to
30 this subsection, a project must be consistent with a local
31 government comprehensive plan and the governing body of the

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1 local government must require all appropriate new facilities
2 within the project's service area to connect to and use the
3 project's alternative water supplies. The appropriate local
4 government must provide written notification to the
5 appropriate district that the proposed project is consistent
6 with the local government comprehensive plan.

7 ~~(e)(d)~~ Any and all revenues disbursed pursuant to this
8 subsection shall be applied only for the payment of capital or
9 infrastructure costs for the construction of alternative water
10 supply systems that provide alternative water supplies.

11 ~~(f)(e)~~ By January 1 of each year, the governing boards
12 shall make available written guidelines for the disbursal of
13 revenues pursuant to this subsection. Such guidelines shall
14 include at minimum:

15 1. An application process and a deadline for filing
16 applications annually.

17 2. A process for determining project eligibility
18 pursuant to the requirements of paragraphs ~~(d)(e)~~ and ~~(e)~~
19 ~~(d)~~.

20 3. A process and criteria for funding projects
21 pursuant to this subsection that cross district boundaries or
22 that serve more than one district.

23 ~~(g)(f)~~ The governing board of each water management
24 district shall establish an alternative water supplies grants
25 advisory committee to recommend to the governing board
26 projects for funding pursuant to this subsection. The advisory
27 committee members shall include, but not be limited to, one or
28 more representatives of county, municipal, and investor-owned
29 private utilities, and may include, but not be limited to,
30 representatives of agricultural interests and environmental
31 interests. Each committee member shall represent his or her

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1 interest group as a whole and shall not represent any specific
2 entity. The committee shall apply the guidelines and project
3 eligibility criteria established by the governing board in
4 reviewing proposed projects. After one or more hearings to
5 solicit public input on eligible projects, the committee shall
6 rank the eligible projects and shall submit them to the
7 governing board for final funding approval. The advisory
8 committee may submit to the governing board more projects than
9 the available grant money would fund.

10 ~~(h)(g)~~ All revenues made available annually pursuant
11 to this subsection must be encumbered annually by the
12 governing board if it approves projects sufficient to expend
13 the available revenues. Funds must be disbursed within 36
14 months after encumbrance.

15 ~~(i)(h)~~ For purposes of this subsection, alternative
16 water supplies are supplies of water that have been reclaimed
17 after one or more public supply, municipal, industrial,
18 commercial, or agricultural uses, or are supplies of
19 stormwater, or brackish or salt water, that have been treated
20 in accordance with applicable rules and standards sufficient
21 to supply the intended use.

22 ~~(j)(i)~~ This subsection shall not be subject to the
23 rulemaking requirements of chapter 120.

24 ~~(k)(j)~~ By January 30 of each year, each water
25 management district shall submit an annual report to the
26 Governor, the President of the Senate, and the Speaker of the
27 House of Representatives which accounts for the disbursement of
28 all budgeted amounts pursuant to this subsection. Such report
29 shall describe all projects funded and shall account
30 separately for moneys provided through grants, matching
31 grants, revolving loans, and the use of district lands or

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1 facilities.

2 ~~(1)(*)~~ The Florida Public Service Commission shall
 3 allow entities under its jurisdiction constructing alternative
 4 water supply facilities, including but not limited to aquifer
 5 storage and recovery wells, to recover the full, prudently
 6 incurred cost of such facilities through their rate structure.
 7 Every component of an alternative water supply facility
 8 constructed by an investor-owned utility shall be recovered in
 9 current rates.

10 Section 7. Private property rights and regional
 11 reservoirs.--

12 ~~(1)~~ The Legislature finds that construction of a
 13 regional reservoir designed to store more than 10 billion
 14 gallons of water may inordinately burden nearby real property
 15 because of the proximity of the reservoir and may result in a
 16 loss of value for the property owner. Therefore, a regional
 17 water supply authority, serving three or fewer counties, that
 18 is authorized to construct, operate, and maintain such a
 19 regional reservoir shall be deemed a governmental entity under
 20 section 70.001, Florida Statutes, the Bert J. Harris, Jr.,
 21 Private Property Rights Protection Act, for purposes of this
 22 section.

23 ~~(2)~~ This section provides a cause of action for the
 24 actions of a regional water supply authority, in siting and
 25 constructing a reservoir as described in subsection (1), that
 26 may not rise to the level of a taking under the State
 27 Constitution or the United States Constitution. This section
 28 may not necessarily be construed under the case law regarding
 29 takings if the action of a regional water supply authority
 30 does not rise to the level of a taking. The provisions of this
 31 section are cumulative and do not abrogate any other remedy

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1 lawfully available, including any remedy lawfully available
2 for the actions of a regional water supply authority that rise
3 to the level of a taking. However, a regional water supply
4 authority may not be liable more than once for compensation
5 due to an action of the regional water supply authority that
6 results in a loss of value for a subject real property.

7 (3) Each owner of real property located within 10,000
8 feet of the the center of the footprint of a regional
9 reservoir, as described in subsection (1), or 5,500 feet from
10 the exterior of the berm of such reservoir, may present a
11 claim for compensation in writing to the head of the regional
12 water supply authority on or before December 31, 2004, for a
13 loss in property value resulting from the proximity of the
14 reservoir. For each claim presented under this section,
15 section 70.001, Florida Statutes, applies, except when there
16 is conflict with this section, the provisions of this section
17 shall govern.

18 (a) The property owner must submit along with the
19 claim a bona fide, valid appraisal that supports the claim and
20 demonstrates the loss in fair market value to the real
21 property.

22 (b) A claim under this section shall be presented only
23 to the regional water supply authority that is authorized to
24 construct, operate, and maintain the reservoir.

25 (4) The Legislature recognizes that construction and
26 maintenance of a regional reservoir may not necessarily
27 interfere with allowable uses of real property near the
28 reservoir. However, the siting and construction of the
29 reservoir may result in an actual loss to the fair market
30 value of real property located within 10,000 feet of the
31 center of the footprint of the reservoir, or 5,500 feet from

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1 the exterior of the berm, because of the proximity of the
2 reservoir. Therefore, any offer of compensation by the
3 regional water supply authority shall be based solely on the
4 loss of value for the property owner as a result of the
5 proximity of the reservoir and not on the effects the
6 reservoir has on existing uses or on a vested right to a
7 specific use of real property.

8 (a) Notwithstanding section 70.001, Florida Statutes,
9 the regional water supply authority to whom a claim is
10 presented shall, not later than 180 days after receiving such
11 claim:

12 1. Make a written offer to purchase the real property
13 if there is more than a 50-percent loss in value to the real
14 property as a result of the proximity of the reservoir and if
15 the property owner is a willing seller;

16 2. Make a written offer to purchase an interest in
17 rights of use which may become transferable development rights
18 to be held, sold, or otherwise disposed of by the regional
19 water supply authority; or

20 3. Terminate negotiations.

21 (b) An offer by the regional water supply authority to
22 purchase the property in fee or purchase an interest in rights
23 of use under this section shall cover the cost of the
24 appraisal required in subsection (3).

25 (5) During the 180-day period, unless the property
26 owner accepts a written offer for purchase pursuant to
27 subparagraph (4)(a)1. or 2., the regional water supply
28 authority shall issue a final decision stating that:

29 (a) The real property has a loss in value due to an
30 inordinate burden on the property resulting from the proximity
31 of the reservoir and the regional water supply authority and

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1 property owner cannot reach agreement on the amount of
2 compensation; or

3 (b) The property owner has failed to establish a basis
4 for relief under the provisions of this section and section
5 70.001, Florida Statutes.

6
7 Failure of the regional water supply authority to issue a
8 final decision as required by this subsection shall cause the
9 written offer or termination of negotiations required in
10 subsection (4) to operate as a final decision. As a matter of
11 law, this final decision constitutes the last prerequisite to
12 judicial review of the merits for the purposes of the judicial
13 proceeding provided for in section 70.001, Florida Statutes.

14 (6) The circuit court, for purposes of this section,
15 shall determine whether, considering the written offer and
16 final decision, the regional water supply authority has
17 inordinately burdened the subject real property. Following a
18 determination that the regional water supply authority has
19 inordinately burdened the real property, the court shall
20 impanel a jury to determine the total amount of compensation
21 to the property owner for the loss in value due to the
22 inordinate burden to the subject real property.

23 (7) Pursuant to section 70.001, Florida Statutes, the
24 court may award reasonable costs and attorney's fees and the
25 court shall determine the amount. If the court awards the
26 property owner reasonable costs and attorney's fees, the costs
27 shall include the cost of the appraisal required in subsection
28 (3).

29 (8) This section is repealed effective January 1,
30 2005. However, the repeal of this section shall not affect a
31 claim filed on or before December 31, 2004.

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1 Section 8. If any provision of this act or the
2 application thereof to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or
4 applications of this act which can be given effect without the
5 invalid provision or application, and to this end the
6 provisions of this act are declared severable.

7
8 (Redesignate subsequent sections.)

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10

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 On page, line, delete

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15 and insert:

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