

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

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

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 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.). 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.

WMDs currently consider water conservation as a way to meet future water demands to varying degrees. In their 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.

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

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.

The PSC can only allow full recovery on reuse facilities, and not on other alternative water supply projects. Utilities with a gross annual revenue of less than \$150,000 can request PSC staff assistance on rate changes.

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.

Issue – Water rights

Statutory and case law provide that water in Florida is a public resource, and there are no proprietary rights associated with water. The only rights are those associated with the right to use water under the terms and conditions of a consumptive use permit issued by a WMD.

Issue – Variances

The Secretary of 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.).

Other

Currently, DEP may provide financial assistance to eligible entities for the construction of water pollution control facilities (see s. 403.1835, F.S.). However, it is prevented from making deposits with financial institutions that earn less than the prevailing rate for U.S. Treasury securities.

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 also requires that prior to the completion of any regional water supply plan the WMD conduct at least one public workshop to discuss the technical data and modeling used to support the plan.

The bill provides that in the preparation of the regional water supply plan the WMDs are to use the best data for population projections that are available. In determining the best available data, the WMDs are

to consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections.

Within the boundaries of a regional water supply authority, the water supply development component of the regional water supply plan must be developed jointly by the WMD and the regional water supply authority.

The bill requires each WMD, in its annual report to the Governor, to assess the overall progress being made to develop a water supply that is consistent with the regional water supply plan to meet existing and future needs during a 1-in-10 year drought.

The bill provides that a regional water supply plan may not be used in the review of CUP applications unless the plan has been adopted by rule.

The bill also provides that WMDs are authorized to adopt rules identifying "preferred water supply sources" from which applicants for a CUP can choose. If an applicant chooses a preferred water source his permit shall be for a period of at least 20 years.

The bill requires that in its annual budget reporting to the Governor and the legislature, each WMD in the 5-year water resource development work program must identify which projects in the work program will provide water, how each project will produce additional water, and estimate the quantity of water to be produced.

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.

In order to foster water conservation, the bill encourages local governments to develop and adopt urban, commercial, and residential landscape irrigation standards for new construction that incorporates a landscape irrigation system.

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 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.

The bill provides that funding priority is to be given to projects for the development of alternative water supply systems in water resource caution areas, which are consistent with the regional water supply plan, and which feature efficient and effective use of reclaimed water.

The bill authorizes the PSC to allow full recovery of the costs of alternative water supplies, and provides that utilities with gross annual revenues below \$250,000 will be able to request PSC staff assistance on rate changes.

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.

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.

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.

The bill 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.

Issue – Water Rights

The bill directs the DEP and the WMDs to submit to the Legislature recommendations identifying alternative methods of extending water resources including, but not limited to, the potential rights of existing permit holders to share water allocated under a CUP.

Issue – Variances

The bill allows the consideration by the Secretary of DEP of variances from statutory and rule provisions that address phosphate 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.

Other

The bill amends the definition of “priority project” in s. 159.803 to include a water facility which is operated by a member-owned, not-for-profit utility.

The bill prohibits Tampa Bay Water from developing wellfields in northeast Hillsborough County to prevent adverse impacts on wetlands in that region.

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 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.

The bill creates a cause of action under the Bert Harris Private Property Rights Protection Act for property owners whose land would be reduced in value by the construction of a regional reservoir even though the land is not strictly legally “taken” by the construction of the reservoir. Any land owner within 10,000 feet of the center of the reservoir or within 5,000 feet of the berm surrounding the reservoir would be entitled to present a claim to the authority for compensation for the loss in property value. The claim must be filed before December 31, 2004.

C. SECTION DIRECTORY:

Section 1. Amends ss. 159.803, F.S., to revise the definition of “priority project.”

Section 2. Adds ss. (13) to s. 163.3167, F.S., to require comprehensive plans to address the availability of water supplies.

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. Creates s. 373.227, F.S., to provide for the development of a water conservation guidance manual.

Section 6. Amends s. 373.0361, F.S., to provide additional requirements for regional water supply plans.

Section 7. Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.

Section 8. Amends s. 373.1961, F.S., to require WMDs to give funding priority to projects that develop alternative water supply systems, and condition funding assistance for water reuse system projects.

Section 9. Amends s. 373.1963, F.S., to prohibit Tampa Bay Water from developing wellfields in northeast Hillsborough County to prevent adverse impacts on wetlands in that region.

Section 10. Amends s. 373.223, F.S., to direct the DEP and the WMDs to submit to the Legislature recommendations regarding the potential rights of existing permit holders to share water allocated under a CUP.

Section 11. Creates s. 373.2234, F.S., to provide for the identification of preferred water supply sources.

Section 12. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 13. 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 14. Encourages local governments to develop and adopt landscape irrigation design standards for new construction.

Section 15. Amends s. 378.212, F.S., to authorize DEP to issue variances.

Section 16. Amends s. 378.404, F.S., to authorize DEP to issue variances.

Section 17. Amends S. 403.064, F.S., to provide that a reuse feasibility study shall be given significant consideration by a WMD in CUP permitting, and to encourage metering and volume-based rates for use of reclaimed water.

Section 18. Amends s. 403.1835, F.S., to allow DEP to make deposits at certain financial institutions, and to provide legislative intent with regard to the development of alternative water supplies and water conservation.

Section 19. 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 20. Provides for severability.

Section 21. Provides for a cause of action under the Bert Harris, Jr., Private Property Rights Act, relating a regional reservoir.

Section 22. Providing for statutory construction

Section 23. Providing 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:

There will be indeterminate costs to DEP associated with the development of the water conservation guidance manual. There will also be indeterminate costs to WMDs associated with the development of rules identifying preferred water supply sources. The cost of the study and report required in section 19 could be substantial, perhaps on the order of \$100,000; no appropriation has been identified to cover this cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local government utilities will be allowed full cost recovery of the costs associated with the development of alternative water supplies.

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: None

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 their comprehensive plans to address the water supply projects needed to meet existing and future demands; however an exemption applies since the additional costs associated with this required action of local governments will have an insignificant impact.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt a water conservation guidance manual by rule, and authorizes the WMDs to adopt rules identifying preferred water supply sources.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill contains the substance of CS/HB 1459, 2nd Engrossed with several provisions deleted. Deleted are provisions relating to: a study of the cumulative impacts of the demands on the water resources of the Peace River watershed; metering of new commercial and residential construction; reclaimed water use at state facilities; the authority of local governments in areas of critical state concern to impose a residential acquisition fee; the ownership and operation of utilities by local governments (which were passed in SB 140); and the bonding authority of DEP (which were passed in SB 2260).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES