

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 293 w/CS Water Resources

SPONSOR(S): Russell

TIED BILLS: **IDEN./SIM. BILLS:** SB 110, SB 1104, SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	<u>10 Y, 0 N</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>16 Y, 2 N w/CS</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
3) <u>Agriculture & Environment Apps. (Sub)</u>	<u>14 Y, 0 N</u>	<u>Dixon</u>	<u>Dixon</u>
4) <u>Appropriations</u>	<u>35 Y, 0 N w/CS</u>	<u>Dixon</u>	<u>Baker</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill addresses several issues concerning water policy; however, the bill was substantially revised as a result of a strike-all amendment adopted by the Committee on Appropriations on March 19, 2004. With the strike-all amendment, the bill:

- continues to strengthen the linkage between growth management and water supply planning.
- requires water management districts to identify preferred water supply sources.
- provides for electronic noticing by water management districts.
- prohibits WMDs from requiring a provider of reclaimed water to redirect that water from one user to another.
- requires the water management districts to develop landscape irrigation and xeriscape design standards to be used by local governments when developing landscape and xeriscape ordinances.

The bill has no significant fiscal impact on the state or local governments.

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

STORAGE NAME: h0293e.ap.doc
DATE: March 23, 2004

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:

Background

Regional Water Supply Planning

In response to concerns about comprehensive water supply planning, the Florida Legislature in 1997 amended Chapter 373, F.S., to include a new process for regional water supply planning. The process requires each water management district to assess whether existing and anticipated sources of water are sufficient to serve projected future population needs over a 20-year planning period. Based on the assessments, water management districts are required to develop and update regional water supply plans for those areas where water supplies are determined to be inadequate to supply projected demand over the planning period. 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.

The five districts completed the water supply assessments in June 1998. The Northwest Florida, Southwest Florida, St. Johns River and South Florida districts identified areas where existing sources were determined to be insufficient to meet the 20-year needs and completed regional water supply plans in August 2001. The first update of the plans is scheduled for 2004-05. The Department of Environmental Protection is required to report annually to the Governor and the Legislature on the status of the regional water supply planning in each district.¹

The statute makes a distinction between *water resource* and *water supply development*. *Water resource development* is primarily the responsibility of the water management districts and includes such things as collection and evaluation of water resource data, structural and nonstructural programs to manage water resources, construction and operation of major public works facilities for flood control and water storage, and technical assistance to water utilities.² *Water resource development* projects are designed to create identifiable, quantifiable supplies of water from traditional or alternative sources.

Water supply development is primarily the responsibility of water utilities and other water users and is defined as the planning, design, construction, operation and maintenance of public or private facilities for water collection, treatment and distribution for sale, resale or end use.³ *Water supply development*

¹ Subsection 373.0361(5), F.S.

² Subsection 373.019(19), F.S.

³ Subsection 373.019(21), F.S.

assistance represents the water management districts' financial assistance for regional or local water supply development projects.

Based on reports from the State's water management districts, it is clear that if the State's population growth meets the estimated projections, then some parts of the State will not have adequate groundwater to meet the demand that is expected to come from that growth. This will necessitate the development of "alternative" water supplies to supplement traditional groundwater sources.

Current law requires each water management district to submit annually to the Department of Environmental Protection a five year *water resource development work program* to:⁴

1. describe the district's implementation strategy for the water resource development component of each regional water supply plan;
2. list those water resource development projects that support water resource development;
3. provide an estimate of the quantity of water that will be produced by each project;
4. provide a timetable for implementing/constructing each project;
5. identify sources of funding for each project; and
6. identify the entity responsible for implementing/constructing each project.

As a result of this water supply planning process, each water management district will continually evaluate existing water resources and its ability to develop future water resources.

While four of the five water management districts have acknowledged that traditional groundwater sources will not be sufficient to meet the future needs of some areas within the district, each has identified existing and developable water resources within the district to meet the needs of that district for the 20-year planning horizon. As the DEP stated in its most recent annual status report on regional water supply planning, "The Districts' budgets and water resource development work programs demonstrate that continuous progress is being made in implementing the regional water supply plans."⁵ Nevertheless, there is general acknowledgement that significant issues remain as to how the water resource and water supply development projects will be funded.

Linkage Between Water Supply Planning and Land Use Planning

Over the last several years there has been a growing awareness of the need to link a local government's decision to allow new development with the availability of water to supply the needs of that development.

Although for some time local governments have been required to address water supply issues in their comprehensive plans, this has only involved a consideration of the extent to which there is adequate infrastructure (i.e. treatment plant capacity and transmission lines) available to serve the proposed development. Growth management legislation enacted in the 2002 Regular Session, coupled with the 1997 water supply planning legislation, now requires local governments to "look behind" the water supply infrastructure to see whether there will be adequate water resources to actually deliver water to its citizens through the treatment plants and transmission lines. The 2002 legislation also contains new requirements for the coordination of local comprehensive plans with water management districts' regional water supply plans.⁶

Each local government must now amend its comprehensive plan to better integrate those plans with the regional water supply plans, and each local government is directed to include a potable water element and a work plan for building the water supply facilities necessary to serve existing and new development. The work plans must cover at least a 10-year period, and the local government must

⁴ Subparagraph 373.536(6)(a)4, F.S.

⁵ Annual Status Report on Regional Water Supply Planning and Water Resource Development Work Programs, June 2003

⁶ Section 2 of Chapter 2002-296, Laws of Florida, amending Section 163.3177, F.S.

adopt and transmit the work plan to the DCA by the earlier of January 1, 2005, or the date by which the local government must submit its evaluation and appraisal report.⁷

Subsection 163.3191(2), F.S., also directs the Department of Community Affairs to provide the WMDs an opportunity to submit comments and objections on comprehensive plan amendments and evaluation and appraisal reports (EARs – the required seven-year review of each local government comprehensive plan). Existing statutes and rules authorize or direct the districts to provide substantive input in the local government comprehensive planning process and thereby participate in and shape the integration of regional water supply planning with local land use planning.

The Department of Community Affairs and the water management districts are now working more closely with local government planning departments and utilities to ensure the availability of water for existing and future development. Five pilot communities – one in each water management district - are currently working with staff from DCA, DEP and the water management districts to work through issues and problems that local governments will face in this planning process.⁸

In summary, the Florida Legislature has created a statutory framework that mandates water supply planning and land use planning in a way that is designed to better correlate water resources and the future needs of Florida's growing population.

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 taking into consideration the applicable WMD regional water supply plan. It also adds a provision that pushes back the date by which local governments must amend their comprehensive plans to include consideration of water management district regional water supply plans. The date is pushed back from January 1, 2005 to December 1, 2006. This is to allow for the completion of the statutorily required updates of the regional water supply plans prior to those plans being considered by local governments in the required amendments to their comprehensive plans.

The bill provides that WMDs are authorized to adopt rules identifying “preferred water supply sources” from which applicants for a consumptive use permit (CUP) can choose. If an applicant chooses a preferred water source, his permit shall be for a period of at least 20 years. The use of such a preferred water supply source is one factor to be used by a water management district in determining whether the proposed use is consistent with the public interest. However, such a proposed use is not exempt from the “local sources first” requirements of Subsections 373.223(2) and (3), F.S.

Issue – Water Conservation

There are currently no statewide standards for design of *irrigation systems*, but some counties have adopted ordinances regulating landscaping and irrigation system design. In order to foster water conservation, the bill requires the water management districts to work with several listed groups to develop landscape irrigation and xeriscape design standards for any new construction that incorporates a landscape irrigation system and develop guidelines for urban, commercial, and residential landscape irrigation. Local governments are to use these standards and guidelines when developing landscape and xeriscape ordinances.

⁷ Paragraph 163.3177(6)(c), F.S.

⁸ City of Venice, Palm Beach County, City of Cocoa, City of Lake City, and Okaloosa County

Issue – Reclaimed Water

For many years the state has encouraged the use of treated effluent from domestic wastewater treatment facilities for irrigation purposes (golf courses, public areas, etc). This treated effluent is known as “reclaimed water.”

The WMDs do not currently require a separate CUP for an entity 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.

The bill prohibits the WMDs from requiring a provider of reclaimed water to redirect the reclaimed water from one user to another.

Other

The bill allows water management districts to provide *electronic notice* to local governments of the receipt of an application for a water use permit and of intended action on a permit application.

C. SECTION DIRECTORY:

Section 1. Adds ss. (13) to s. 163.3167, F.S., to require comprehensive plans to address the availability of water supplies.

Section 2. Amends s. 163.3177, F.S., to push back the date by which local governments must amend their comprehensive plans to include consideration of water management district regional water supply plans.

Section 3. Amends s. 373.116, F.S., to allow for electronic mail notice to local governments of an application for a water use permit.

Section 4. Creates s. 373.2234, F.S., to provide for the identification of preferred water supply sources.

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

Section 6. Creates s. 373.228, F.S., to require the WMDs to develop landscape irrigation and xeriscape design standards.

Section 7. Provides 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 costs to the WMDs associated with the development of rules identifying preferred water supply sources. No estimate is currently available as to the amount of these costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Local governments will incur additional indeterminate periodically recurring 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 fiscal impact.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill authorizes the WMDs to adopt rules identifying preferred water supply sources.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 4, 2004, the Committee on Natural Resources passed HB 293 with a committee substitute which incorporated three amendments.

On March 11, 2004, the Subcommittee on Agriculture and Environment recommended for adoption by the Appropriations Committee a single strike-all amendment to HB 293 w/CS. The strike-all amendment made the following changes to HB 293 w/CS:

- Deleted Section 1 of the bill relating to the definition of "priority project"
- Deleted Section 3, 4 and 5 of the bill relating to the Public Service Commission
- Deleted Section 6 of the bill relating to a water conservation guidance manual

- Deleted Section 7 of the bill relating to regional water supply plans
- Deleted Section 8 of the bill relating to water resource and water supply development
- Deleted Section 9 of the bill relating to electronic notice
- Deleted Section 10 of the bill relating to water production
- Deleted Section 11 of the bill relating to groundwater withdrawals in northeastern Hillsborough County
- Deleted Section 12 of the bill relating to rights of existing water use permitholders
- Deleted Section 15 of the bill relating to water management district budgets
- Deleted Section 17 of the bill relating to reuse of reclaimed water
- Deleted Section 18 of the bill relating to water pollution control financial assistance
- Deleted Section 19 of the bill relating to a study to investigate the feasibility of discharging reclaimed water into canals in south Florida as a means of augmenting groundwater supplies
- Deleted Section 20 of the bill relating to severability

The strike-all amendment also:

- Retained Section 2 of the bill (to be renumbered as Section 1) relating to local government comprehensive plans and water supply projects
- Added a new Section 2 to the bill delaying the date by which local governments must consider updated regional water supply plans in their comprehensive plans
- Retained Section 13 of the bill relating to preferred water supply sources
- Retained Section 14 of the bill relating to the reuse of reclaimed water
- Retained Section 16 of the bill relating landscape irrigation

On March 19, the Committee on Appropriations adopted a substitute strike-all amendment. The substitute strike-all amendment retained all the changes made by the original strike-all amendment but makes the following additional changes:

- Corrects a statutory cite in Section 2 of the strike-all amendment
- Provides a new Section 3 of the bill to allow water management districts to provide electronic notice to local governments of the receipt of an application for a water use permit and of intended action on a permit application
- Provides clarifying language in Section 4 (formerly Section 3 of the strike-all) with regard to preferred water sources.
- Adds a statutory reference of Section 373.228, F.S., for Section 5 (formerly Section 4 of the strike-all) and condenses (4) and (5) of that section into a single section while retaining the provision that requires water management districts to develop landscape irrigation standards for new construction that incorporates a landscape irrigation system.

This analysis has been revised to reflect the adoption of the substitute strike-all amendment.