

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

¹ Subsection 373.0361(5), F.S.

² Subsection 373.019(19), F.S.

³ Subsection 373.019(21), F.S.

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 – Regional Water Supply Planning

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, and to identify in the 5-year water resource development work program those projects in the work program which will provide water, how each project will produce additional water, and an estimate of the quantity of water to be produced.

The bill also 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 bill also 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 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, and 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.

Currently, the Secretary of DEP is authorized to issue *variances* from certain statutory and rule provisions under certain circumstances for phosphate mine reclamation activities (see s. 378.212, F.S.). Sections 16 and 17 of the bill duplicate language that was included in SB 18E which was passed in Special Session E of the 2003 legislative session. This language allows the Secretary of DEP to consider 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. Therefore, Sections 16 and 17 of HB 293 are unnecessary.

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

The bill also provides that 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.

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.⁹ 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.¹⁰

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.

Issue – Water conservation

WMDs currently consider water conservation as a way to meet future water demands. 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.

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.

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 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 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.¹¹ WMDs which have water resource caution areas within their boundaries are required to include in their

⁹ Paragraph 163.3177(6)(c), F.S.).

¹⁰ Paragraph 163.3191(2)(l), F.S.

¹¹ Subsection 373.1961(2), F.S.

annual budgets an amount designated for the development of alternative water supplies, and to provide these amounts as grants or loans for 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 also 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 Public Service Commission (PSC), pursuant to s. 367.081, F.S., regulates the rates and services of private (or investor-owned) water and wastewater utilities in Florida that are not regulated by the counties in which the utility is situated. Under Section 373.1961(2)(k), F.S., the PSC is required to allow entities under its jurisdiction to recover the full costs of constructing alternative water supply facilities through their rate structure. The bill simply imposes this same requirement on the PSC under chapter 367, F.S. (i.e. to allow recovery for full, prudently incurred costs of alternative water-supply facilities).

Currently, under s. 367.0814, F.S., utilities whose gross annual revenues are \$150,000 or less may request and obtain PSC staff assistance for the purpose of changing rates and charges. The bill increases this maximum level of gross annual revenues to \$200,000. This increase will allow an additional 13 utilities to qualify for staff assistance.

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.

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. It also 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.

Applicants for domestic wastewater permits above a certain threshold are required to prepare a reuse feasibility study as part of the permitting process under Ch. 403. The WMDs are not allowed to require a separate feasibility study from the same facility when that facility applies for a consumptive use permit. However, the WMD is not required to accept the findings or conclusions of the study in its permitting process.

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 – 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.

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.

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. 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.

Part VI of Chapter 159, F.S., is the Florida Private Activity Bond Act. This Act addresses the amount and allocation of private activity bonds that are issued in Florida under the Internal Revenue Code. Special consideration is given to "*priority projects*." Currently, "priority projects" are defined as "a solid waste disposal facility or a sewage facility, as such terms are defined in s. 142 of the Code, or any project which is to be located in an area which is an enterprise zone designated pursuant to s. 290.0065." The bill amends the definition of "priority project" to include water facilities that are operated by member-owned, not-for-profit utilities, as defined in s. 142 of the Code.

The bill amends s. 373.116, F.S., to allow water management districts to provide *electronic mail notice* to local governments of the receipt of an application for a water use permit.

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

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

Section 9. 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 10. 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 11. 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 12. Creates s. 373.2234, F.S., to provide for the identification of preferred water supply sources.

Section 13. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 14. 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 15. Encourages local governments to develop and adopt landscape irrigation design standards for new construction.

Section 16. Amends s. 378.212, F.S., to authorize DEP to issue variances.

Section 17. Amends s. 378.404, F.S., to authorize DEP to issue variances.

Section 18. 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 19. Amends s. 403.1835, F.S., to allow DEP to make deposits at certain financial institutions, and to provide legislative intent with regard to encouraging the development rate structures by utilities

that show progress toward the development of alternative water supplies and that promote water conservation.

Section 20. 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 21. Provides for severability.

Section 22. 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 DEP associated with the development of the water conservation guidance manual. No estimate is currently available as to the amount of these costs.

There will also 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.

DEP estimates that the cost of the study of the discharge of reclaimed water into canals could be substantial, perhaps on the order of \$150,000 to \$200,000; no appropriation has as yet been identified to cover this cost.

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:

An additional 13 utilities will qualify under the maximum revenue level increase to request and obtain PSC staff assistance for the purpose of changing rates and charges. These companies will realize a cost avoidance.

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 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 is substantially the same as HB 105A which passed the House of Representatives in the 2003 Special Session A. It does not contain that section of HB 105A addressing private property rights and regional reservoirs.

The language in Sections 16 and 17 of the bill amending Sections 378.212 and 378.404, F.S., authorizing DEP to grant variances under certain conditions, was previously included in SB18E which passed in Special Session E of the 2003 Legislative Session. The bill should be amended to delete these two sections.

Comments of the St. Johns River Water Management District:

“The development of a water conservation manual for public water supply utilities would provide a more consistent statewide approach to water conservation, while allowing conservation programs to be tailored to a specific utility. In addition, as a result of the Governor’s Statewide Water Conservation Initiative, a workgroup has been investigating the development of statewide water conservation options for public supply utilities to consider in tailoring conservation programs to reflect their individual characteristics and achieve the most cost effective water use efficiency. All involved regulatory agencies and key associations representing public supply utilities in Florida have been involved in this workgroup over the past year in a multi- party effort to develop a voluntary water conservation program able to be tailored to public supply providers. Each of the participants has assisted in the development of a joint statement of commitment (JSOC), which was recently executed by all parties. The JSOC reflects two primary steps: the first being the development of a work plan with specific tasks, interim milestones, completion dates, cost estimates and responsibility assignments. This first step is now underway and will be completed within twelve months of the execution of the JSOC. The second step is for the signatories to take such actions as necessary for the implementation of the work plan. The signatories to the JSOC are the Department of Environmental Protection, the Public Service Commission (PSC), the Utility Council of the Florida Section of the American Water Works Association (FSAWWA), the Utility Council of the Florida Water Environment Association (FWEA), the Florida Rural Water Association (FRWA) and all the water management districts.

No legislative action is required. If the process breaks down, perhaps legislation would be helpful. However, at present, the process is moving forward well with full participation and commitment of the DEP, the Governing Boards of the WMDs, PSC, FSAWWA, and FWEA.”

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES