

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 855 w/CS Water Resources

**SPONSOR(S):** Machek

**TIED BILLS:** IDEN./SIM. BILLS: SB 1142

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands and Water Resources</u>	<u>10 Y, 0 N</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>19 Y, 0 N w/CS</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
3) <u>Agriculture &amp; Environment Apps. (Sub)</u>	<u>12 Y, 0 N</u>	<u>Dixon</u>	<u>Dixon</u>
4) <u>Appropriations</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
5) <u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

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**SUMMARY ANALYSIS**

The bill addresses several areas concerning water resources including: regional water supply planning, water conservation, the development of alternative water supplies, and the use of reclaimed water.

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

On April 2, 2004, the Subcommittee on Agriculture and Environment Appropriations favorably recommended two amendments that were clarifying in nature.

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

**STORAGE NAME:** h0855d.ap.doc

**DATE:** April 2, 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 (WMD) 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> *Water supply development*

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<sup>1</sup> Subsection 373.0361(5), F.S.

<sup>2</sup> Subsection 373.019(19), F.S.

<sup>3</sup> 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:<sup>4</sup>

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 Department of Environmental Protection (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."<sup>5</sup> Nevertheless, there is general acknowledgement that significant issues remain as to how the water resource and water supply development projects will be funded.

### **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 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.

The bill provides that regional water supply plans must include any reservations of water that have been adopted by rule by DEP or a water management district, and an analysis of instances where variances may be used to create water supply or water resource development projects on reclaimed phosphate mining lands.

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<sup>4</sup> Subparagraph 373.536(6)(a)4, F.S.

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

The bill also provides that within the boundaries of a regional water supply authority in the Southwest Florida Water Management District (SWFWMD), the water supply development component of the regional water supply plan must be developed jointly by the SWFWMD and the regional water supply authority.

The bill prohibits regional water supply plans from being used in the review of consumptive use permits unless the plan has been adopted by rule.

### **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 comprehensive statewide *water conservation guidance program*. The program should encourage public water supply utilities to implement water conservation plans that are efficient, effective and affordable. The program is to develop a water conservation guidance document containing a menu of water conservation practices to assist utilities in the design of water conservation plans. As part of an application for a consumptive use permit (CUP), a utility may propose a water conservation plan. If the plan will achieve water conservation as well as the WMD's conservation requirements, the WMD must approve the plan which would then satisfy the water conservation requirements imposed in its CUP. The bill requires DEP to submit a report by December 1, 2005, to the President of the Senate and the Speaker of the House on the status of the implementation of this program.

### **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.<sup>6</sup> 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, 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 consideration for 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.

### **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

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<sup>6</sup> Subsection 373.1961(2), F.S.

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 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.

The bill mandates that state agencies use reclaimed water whenever possible and requires each agency to report annually to DEP as to the activities designed to use reclaimed water and the amounts of reclaimed water actually used.

## **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 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, 2005, and the submittal of a final report by January 31, 2006, 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. Creates s. 373.227, F.S., to provide for the development of a comprehensive statewide water conservation program.

Section 3. Amends s. 373.0361, F.S., to provide additional requirements for regional water supply plans.

Section 4. Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.

Section 5. 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 6. 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 7. 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 8. Creates s. 403.0645, F.S., to require the use of reclaimed water at state facilities.

Section 9. Amends s. 403.1835, F.S., to allow DEP to make deposits at certain financial institutions.

Section 10. 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 11. 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 program. 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: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None

B. RULE-MAKING AUTHORITY: The bill gives the DEP and the WMDs authority to adopt rules to implement the comprehensive statewide water conservation program.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 17, 2004, the Committee on Natural Resources adopted strike-all amendment to the bill. The strike-all amendment makes the following changes to HB 855:

- Deletes Sections 2 and 3 of the bill relating to the Public Service Commission
- Rewords Section 4 to provide for a comprehensive statewide water conservation program instead of a water conservation guidance manual
- Deletes Section 9 of the bill relating to the use of reclaimed water
- Deletes Section 10 of the bill relating to landscape irrigation
- Deletes that portion of Section 13 relating to conditions for funding and the use of reclaimed water

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

On April 2, 2004, the Subcommittee on Agriculture and Environment Appropriations favorably recommended two amendments as follows:

- Amendment 1 states that the South Florida Water Management District shall provide the necessary financial and in-kind resources to assist the Department of Environmental Protection in a study.
- Amendment 2 clarifies wording regarding the water supply development component of a regional water supply plan.