HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 Water Resources
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:** HB 293, SB 110, SB 1104, SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Lands and Water Resources		Lotspeich	Lotspeich
2) Natural Resources			
3) Agriculture and Environment App. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

The bill addresses several areas concerning water resources including: regional water supply planning, water conservation, landscape irrigation, 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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.

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.

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

[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

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 consumptove 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 *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 the 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 Florida Building Commission to adopt by rule landscape and xeriscape design standards for new construction that incorporates a landscape irrigation system. The bill requires local governments to use the design standards when adopting ordinances or regulations.

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; and (3) provide an appropriate distribution of costs among all water 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.[6] 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 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 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

[6] Subsection 373.1961(2), F.S.

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.

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. Amends s. 367.081, F.S., to authorize the PSC to allow the recovery of costs of alternative water supply facilities.

Section 3. Amends s. 367.0814, F.S., to change the eligibility of utilities to request and obtain staff assistance for rate changes.

Section 4. Creates s. 373.227, F.S., to provide for the development of a water conservation guidance manual.

Section 5. Amends s. 373.0361, F.S., to provide additional requirements for regional water supply plans.

Section 6. Amends s. 373.0831, F.S., to encourage WMDs to expeditiously implement water resource development projects.

Section 7. 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 8. 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 9. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 10. Requires the Florida Building Commission to develop and adopt landscape irrigation design standards for new construction.

Section 11. 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 12. Creates s. 403.0645, F.S., to require the use of reclaimed water at state facilities.

Section 13. 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 of rate structures by utilities that show progress toward the development of alternative water supplies and that promote water conservation.

Section 14. 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 15. 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.

   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:

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:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None

B. RULE-MAKING AUTHORITY:
   The bill requires DEP to adopt a water conservation guidance manual by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The sponsor has filed a strike-all amendment to conform the bill to SB 1142.