

By the Committee on Agriculture

575-1722B-05

1                                   A bill to be entitled  
2           An act relating to agricultural water  
3           conservation; requiring each water management  
4           district to review rule criteria for  
5           environmental resource permits, existing permit  
6           exemptions, and alternatives to standard  
7           permitting programs and recommend regulatory  
8           alternatives that will encourage agricultural  
9           water conservation; requiring a report by the  
10          Department of Agriculture and Consumer Services  
11          and the Department of Environmental Protection  
12          to the appropriate legislative committees;  
13          amending s. 373.236, F.S.; authorizing the  
14          issuance of permits for agricultural production  
15          for a specified period for uses that  
16          incorporate agricultural water conservation  
17          measures and provide a 10-percent net reduction  
18          in permitted water use or the replacement of a  
19          water supply source; amending s. 373.406, F.S.;  
20          providing that an exemption provided for  
21          activities having minimal adverse impact does  
22          not apply to any activities that are conducted  
23          as mitigation for wetland or other surface  
24          water impacts; amending s. 373.414, F.S.;  
25          authorizing the governing board of a water  
26          management district or the department to adopt  
27          criteria by rule for issuing permits for the  
28          use of wetlands for implementing agricultural  
29          water conservation measures; amending s.  
30          373.2234, F.S.; conforming a cross-reference;  
31          providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

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3           Section 1. Each water management district, in  
4 cooperation with the Department of Environmental Protection  
5 and the Department of Agriculture and Consumer Services, shall  
6 review rule criteria for environmental resource permits,  
7 existing permit exemptions, and alternatives to standard  
8 permitting programs, such as the Agricultural Ground and  
9 Surface Water Management Program implemented within the  
10 Southwest Florida Water Management District, and make  
11 recommendations to the Legislature regarding regulatory  
12 alternatives that will encourage agricultural water  
13 conservation. By October 1, 2005, the Department of  
14 Agriculture and Consumer Services and the Department of  
15 Environmental Protection shall provide recommendations  
16 developed by the review to the chairs of the Senate Committee  
17 on Agriculture, the Senate Committee on Environmental  
18 Preservation, the House of Representatives Committee on  
19 Agriculture, and the House of Representatives Committee on  
20 Water and Natural Resources.

21           Section 2. Present subsection (3) of section 373.236,  
22 Florida Statutes, is redesignated as subsection (4), and a new  
23 subsection (3) is added to that section, to read:

24           373.236 Duration of permits; compliance reports.--

25           (3) In addition to the other provisions of this  
26 section, permits for agricultural production shall be issued  
27 for a period of 20 years for uses that incorporate  
28 agricultural water conservation measures and that provide a  
29 10-percent net reduction in permitted water use, or the  
30 replacement of a water supply source that has been negatively  
31 impacted by water-use withdrawals, if there is sufficient data

1 to provide reasonable assurance that the conditions for  
2 issuance will be met for the 20-year duration; otherwise,  
3 permits may be issued for shorter durations that reflect the  
4 period for which such reasonable assurances can be provided.

5 Section 3. Subsection (9) of section 373.406, Florida  
6 Statutes, is amended to read:

7 373.406 Exemptions.--The following exemptions shall  
8 apply:

9 (9) Implementation of measures having the primary  
10 purpose of environmental restoration, water conservation, or  
11 water quality improvement on agricultural lands are exempt  
12 from regulation under this part where these measures or  
13 practices are determined by the district or department, on a  
14 case-by-case basis, to have minimal or insignificant  
15 individual and cumulative adverse impact on the water  
16 resources of the district ~~state~~. The district or department  
17 shall provide written notification as to whether the proposed  
18 activity qualifies for the exemption within 30 days after  
19 receipt of a written notice requesting the exemption. No  
20 activity under this exemption shall commence until the  
21 district or department has provided written notice that the  
22 activity qualifies for the exemption. This exemption does not  
23 apply to any activities that are conducted as mitigation for  
24 wetland or other surface water impacts or any activities  
25 within a mitigation bank.

26 Section 4. Subsections (4) and (9) of section 373.414,  
27 Florida Statutes, are amended to read:

28 373.414 Additional criteria for activities in surface  
29 waters and wetlands.--

30 (4)(a) It is the intent of the Legislature to provide  
31 for the use of certain wetlands for implementing agricultural

1 water conservation measures, including the storage of  
2 irrigation tailwater for future use, when such measures are  
3 compatible with the ecological characteristics of such waters.  
4 To accomplish this, the governing board or the department may  
5 establish by rule criteria for the issuance of general permits  
6 for the use of certain wetlands for implementing agricultural  
7 water conservation measures. At a minimum, the rule must  
8 include specific criteria for the use of small, previously  
9 drained isolated wetlands, including size thresholds, and  
10 consideration of the resource benefits of water conservation.

11 (b) It is the intent of the Legislature to provide for  
12 the use of certain wetlands to receive and treat domestic  
13 wastewater that at a minimum has been treated to secondary  
14 standards. The department may by rule establish criteria for  
15 this activity, which criteria protect the type, nature, and  
16 function of the wetlands receiving the wastewater.

17 (9) The department and the governing boards, ~~on or~~  
18 ~~before July 1, 1994,~~ shall adopt rules to incorporate the  
19 provisions of this section, relying primarily on the existing  
20 rules of the department and the water management districts,  
21 into the rules governing the management and storage of surface  
22 waters. Such rules shall seek to achieve a statewide,  
23 coordinated and consistent permitting approach to activities  
24 regulated under this part. Variations in permitting criteria  
25 in the rules of individual water management districts or the  
26 department shall only be provided to address differing  
27 physical or natural characteristics. Such rules adopted  
28 pursuant to this subsection shall include the special criteria  
29 adopted pursuant to s. 403.061(29) and may include the special  
30 criteria adopted pursuant to s. 403.061(34). Such rules shall  
31 include a provision requiring that a notice of intent to deny

1 or a permit denial based upon this section shall contain an  
2 explanation of the reasons for such denial and an explanation,  
3 in general terms, of what changes, if any, are necessary to  
4 address such reasons for denial. ~~Such~~ Rules adopted pursuant  
5 to this chapter may establish exemptions and general permits,  
6 if such exemptions and general permits do not allow  
7 significant adverse impacts to occur individually or  
8 cumulatively. ~~Such~~ Rules adopted pursuant to this part may  
9 require submission of proof of financial responsibility which  
10 may include the posting of a bond or other form of surety  
11 prior to the commencement of construction to provide  
12 reasonable assurance that any activity permitted pursuant to  
13 this section, including any mitigation for such permitted  
14 activity, will be completed in accordance with the terms and  
15 conditions of the permit once the construction is commenced.  
16 Until rules adopted pursuant to this subsection become  
17 effective, existing rules adopted under this part and rules  
18 adopted pursuant to the authority of ss. 403.91-403.929 shall  
19 be deemed authorized under this part and shall remain in full  
20 force and effect. Neither the department nor the governing  
21 boards are limited or prohibited from amending any such rules.

22 Section 5. Section 373.2234, Florida Statutes, is  
23 amended to read:

24 373.2234 Preferred water supply sources.--The  
25 governing board of a water management district is authorized  
26 to adopt rules that identify preferred water supply sources  
27 for consumptive uses for which there is sufficient data to  
28 establish that a preferred source will provide a substantial  
29 new water supply to meet the existing and projected  
30 reasonable-beneficial uses of a water supply planning region  
31 identified pursuant to s. 373.0361(1), while sustaining

1 existing water resources and natural systems. At a minimum,  
2 such rules must contain a description of the preferred water  
3 supply source and an assessment of the water the preferred  
4 source is projected to produce. If an applicant proposes to  
5 use a preferred water supply source, that applicant's proposed  
6 water use is subject to s. 373.223(1), except that the  
7 proposed use of a preferred water supply source must be  
8 considered by a water management district when determining  
9 whether a permit applicant's proposed use of water is  
10 consistent with the public interest pursuant to s.  
11 373.223(1)(c). A consumptive use permit issued for the use of  
12 a preferred water supply source must be granted, when  
13 requested by the applicant, for at least a 20-year period and  
14 may be subject to the compliance reporting provisions of s.  
15 373.236(4) ~~s. 373.236(3)~~. Nothing in this section shall be  
16 construed to exempt the use of preferred water supply sources  
17 from the provisions of ss. 373.016(4) and 373.223(2) and (3),  
18 or be construed to provide that permits issued for the use of  
19 a nonpreferred water supply source must be issued for a  
20 duration of less than 20 years or that the use of a  
21 nonpreferred water supply source is not consistent with the  
22 public interest. Additionally, nothing in this section shall  
23 be interpreted to require the use of a preferred water supply  
24 source or to restrict or prohibit the use of a nonpreferred  
25 water supply source. Rules adopted by the governing board of a  
26 water management district to implement this section shall  
27 specify that the use of a preferred water supply source is not  
28 required and that the use of a nonpreferred water supply  
29 source is not restricted or prohibited.

30 Section 6. This act shall take effect July 1, 2005.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1748

Committee Substitute for Senate Bill 1748 is different from  
Senate Bill 1748 in that it:

1. Deletes a provision that authorizes a water management district governing board or the department to authorize, under a general permit, the on-site relocation or filling of isolated wetlands on agricultural lands that are individually less than five acres in area;
2. Clarifies that an exemption provided in s.373.406, F.S., applies to both existing and proposed mitigation banks;
3. Requires the Department of Environmental Protection as well as the Department of Agriculture and Consumer Services to make certain recommendations to the Legislature; and
4. Makes technical corrections.