

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/CS/SB 444

SPONSOR: Governmental Oversight and Productivity Committee, Environmental Preservation Committee and Senator Dockery

SUBJECT: Water Resources

DATE: April 20, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	<u>Withdrawn</u>
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	<u>WM</u>	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute provides for numerous changes to Florida water protection and development programs. The primary provision of the committee substitute creates a \$500 million annual funding program entitled the “Water Protection and Sustainability Program” to assist in the implementation of many existing water protection and development programs. In addition, funding is provided for a new alternative water supply program. Specific programs funded by the committee substitute include: total maximum daily load program, Surface Water Improvement and Management Program, water management district designated priority water bodies, Clean Water State Revolving Fund, Drinking Water State Revolving Fund, and Disadvantaged Small Community Wastewater Grant Program. Documentary stamp tax revenues are amended to provide additional funding for the state’s invasive plant control program.

Provisions related to comprehensive planning requirements are also amended by the committee substitute to require the inclusion of alternative water supply projects in the capital improvements element and to require that water infrastructure be in place at the time an order to commence construction is issued.

The committee substitute also substantially amends procedures for the implementation of the total maximum daily load program. Specific provisions amended include: calculation and allocation methods; procedures for developing basin management action plans and implementing total maximum daily loads, and rulemaking authority.

This bill amends ss: 163.3177, 163.3180, 163.3191, 201.15, 373.019, 373.0361, 373.196, 373.1961, 373.1962, 373.223, 373.236, 373.459, 373.4595, 403.067, 403.885, 570.085, Florida Statutes.

The bill creates ss: 215.6197 and 403.890, Florida Statutes.

II. Present Situation:

Water Facts

Florida is the fourth most populous state and the largest user of irrigation water east of the Mississippi River. By 2020, the state's population is projected to grow by nearly 5 million people, roughly a 29 percent increase from year 2000. Additionally, more than 40 million tourists visit the state each year. By 2020, total water use is expected to be about 9.3 billion gallons a day, an increase of nearly 2 billion gallons a day over 1995 levels. (Florida Water Plan, 2004 update)

Within water use sectors, agriculture is projected to account for 47 percent of the 2020 demand, followed by public water supply at 33 percent. Recreational irrigation will account for 8 percent with an additional 8 percent going to industrial, commercial, and power generation activities. While the projected growth in water demand is not as rapid as the growth in population, it is substantial. (Florida Water Plan, 2004 update)

Demands for water are not uniform across Florida or among water use categories. For example, the South Florida water management district uses as much water as all the other water management districts combined. In 1995, public water supply was the largest use category in the Northwest Florida water management district, the industrial/commercial/electric category was the largest user in the Suwannee River water management district, and agriculture was the largest user in the South Florida water management district, the Southwest Florida water management district, and the St. Johns River water management district. (Florida Water Plan, 2001)

Because of the significant growth in demand and the realization that traditional sources will not be available, the development of alternative water supplies will have to occur. Alternative water supplies typically take many years to plan, design and construct, and will cost some two to three times what a traditional source may cost. Data shared during the summer workshops on water indicates that traditional sources may be developed for less than \$1 per thousand gallons and alternative sources will range from one dollar and seventy cents to more than three dollars per thousand gallons.

Due to these higher costs, many suppliers have chosen not to develop alternative water supplies. For those projects that have been undertaken, significant cost-share arrangements have been utilized. Tampa Bay Water, which has developed or is developing more alternative water than anyone else, has received or is expecting to receive 50 percent of the construction and transmission line costs from the water management district and federal government.

Total Maximum Daily Loads (TMDL)

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the basic framework for pollution control in the nation's water bodies. The primary goal of the CWA was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the CWA intended to restore and protect the health of the nation's water bodies.

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired," meaning they do not meet specific pollutant limits for their designated uses, must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop TMDLs for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the federal and state governments until numerous lawsuits were filed by environmental groups.

More specifically, TMDLs are the result of quantitative analysis of water bodies where one or more water quality standards are not being met, and are aimed at identifying the management strategies necessary to attain those water quality standards. In essence, TMDLs describe the amount of each pollutant a water body can receive without violating standards, and are characterized as the sum of wasteload allocations, load allocations, and margin of safety to account for uncertainties. Wasteload allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources and natural background. Nonpoint sources include runoff from farms, forests, urban areas, and natural sources, such as decaying organic matter and nutrients in soil.

TMDLs take into account the water quality of an entire water body or watershed and assess all the pollutant loadings into that watershed, rather than simply considering whether each individual discharge meets its permit requirements. The management strategies that emerge from the TMDL process may encompass everything from traditional regulatory measures, agricultural best management practices and other pollution prevention measures such as, land acquisition, infrastructure funding, and pollutant trading. They also will include an overall monitoring plan to test their effectiveness.

As described previously, section 303(d) of the CWA requires states to submit a list of impaired water bodies and to prioritize TMDL development and implementation for those water bodies. The 303(d) list is updated every two years. The list sets a prioritized schedule for TMDL development for all water bodies on the list. The scope of this process is enormous since Florida has about 52,000 miles of rivers and streams, nearly 800 lakes, 4,500 square miles of estuaries, and more than 700 springs. The DEP submitted its first 303(d) list in 1992 which was later refined in subsequent submissions. In 1998, the EPA first approved the list.

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA) (ch. 99-223, L.O.F.) which codified the establishment of TMDLs for pollutants of water bodies as required by the federal CWA. The WRA required the DEP to promulgate rules relating to the methodology for assessing, calculating, allocating, and implementing the TMDL process. The

WRA also directed that the TMDL process be integrated with existing protection and restoration programs, and coordinated with all state agencies and affected parties.

The Department of Environmental Protection (DEP) reports that primary pollutants causing the impairment of surface waters include nutrients (nitrogen and phosphorus), bacteria, metals (iron, silver, copper, etc.), and mercury.

Currently, the DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body. Phase 2 is monitoring and assessing to verify water quality improvements. Phase 3 is the development and adoption of TMDLs for waters verified as impaired. Phase 4 is the development of basin management action plans (called BMAPS) used to achieve the TMDL. Phase 5 is the implementation of the plan and monitoring of results.

Throughout the process, the DEP coordinates and collaborates with all the stakeholders which are contributors to or are affected by the quality of the state's water bodies. Government agencies, businesses, organizations, and individuals who contribute to the discharge of pollutants into the state's water bodies are requested to share in the responsibility of attaining TMDLs by discharging only an allotted specified pollutant based upon an established TMDL.

As of December 2004, the DEP has adopted, by rule, 52 TMDLs with another 61 TMDLs in the proposal or drafting stages.

Regional Water Supply Planning

In 1997, the Legislature amended the Water Resources Act (Chapter 373, F.S.) to require the five water management districts to initiate regional water supply planning in all areas of the state where reasonably anticipated sources of water were deemed inadequate to meet year 2020 projected demands. Plans have been completed by all districts, except for the Suwannee River Water Management District which anticipates no shortages during the planning horizon. The districts are now undertaking the required 5-year update of these plans.

The plans must include a list of water source options, which will meet anticipated demands while sustaining water resources and related natural systems. The statute also requires that the plans contain a list of "water supply development projects" meeting the criteria in s. 373.0831(4), F.S., and a list of water resource development projects that support water supply development.

The statute makes a distinction between water supply and water resource development. 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. Water supply development assistance represents water management district financial assistance for regional or local water supply development projects.

Water resource development is primarily the responsibility of the water management districts and includes such things as collection and evaluation of water data, structural and non-structural

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.

Water resource development projects are considered a subset of water resource development. These projects are designed to create, from traditional or alternative sources, an identifiable, quantifiable supply of water for existing and or future reasonable-beneficial uses. These projects are intended to provide water supply and are not intended for direct environmental restoration applications. However, the water supplied might offset the use of other sources of water needed for environmental purposes, provided that the cost of the new source is economically feasible to users.

Clean Water State Revolving Loan Program

The State Revolving Fund (SRF) Water Pollution Control Program provides low-interest loans for planning, designing, and constructing water pollution control facilities. Federal and State appropriations have funded the SRF. It is a “revolving” fund because loan repayments are used to make additional loans. By federal law, the SRF is to be operated in perpetuity. The DEP solicits project information each year. The information is used to establish project priorities for the following annual cycle. Funds are made available for preconstruction loans and construction loans. The loan terms include a 20-year amortization and low-interest rates. Preconstruction loans are available to all communities and provide up-front disbursements for administrative services, project planning and project design.

Funding for this program is based on a mix of federal and state dollars. The federal government matches on a 5 to 1 ratio. Current year state appropriations of \$9 million produce \$45 million in federal matching funds. By adding the annual appropriation to the revenue generated by loan repayments the program is able to loan between \$120 and \$150 million a year.

Drinking Water State Revolving Loan Program

The Drinking Water State Revolving Fund (SRF) Program provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities. Federal and State appropriations have funded the SRF. It is a “revolving” fund because loan repayments are used to make additional loans. By federal law, the SRF is to be operated in perpetuity. The DEP solicits project information each year from January 1 to February 15. The information is used to establish the project priority list for the following annual cycle. Funds are made available for pre-construction loans to rate-based public water systems, construction loans of \$75,000 minimum or more and pre-construction grants and construction grants to financially disadvantaged communities. The loan terms include a 20-year (30-year for financially disadvantaged communities) amortization and low-interest rates. Small community assistance is available for communities having populations less than 10,000. Each year 15 percent of the funds are reserved exclusively for their use.

Funding for this program is based on a mix of federal and state dollars. The federal government matches on a 5 to 1 ratio. Recently annual state appropriations have been \$5 million which brings in \$25 million in matching funds. By adding the annual appropriation to the revenue generated by loan repayments the program is able to loan approximately \$35 million a year.

Wastewater State Revolving Fund Loan Program – Small Community Wastewater Facilities Grants Program

A grant-in-aid program has been developed to assist small communities in planning, designing, and constructing wastewater management facilities. In order to be eligible to participate, a community must be an incorporated municipality having a maximum 1990 population of 7,500 and 1990 per capita income (PCI) less than the State of Florida average PCI of \$19,107 as obtained from the 1990 National census survey. The entire municipality must meet these requirements. Project planning, design, and permitting do not have to be complete to qualify for a grant. The program provides funding for new wastewater management facilities such as sewers, treatment plants, effluent disposal systems, and reclaimed water reuse facilities. The program also provides funding for the renovation of existing wastewater management facilities. A partial match of local funds is required.

The state provided \$4.5 million for this fiscal year.

Reuse

Reuse is an important part of water resources management, wastewater management, and ecosystem management in Florida. It reduces demands on valuable surface and ground waters used for drinking water sources, eliminates discharges that may pollute surface waters, recharges ground water, and can substantially delay if not eliminate costly investment for development of new water sources and supplies.

The Legislature has established “The encouragement and promotion of reuse of reclaimed water and water conservation...” as state objectives in s. 403.064(1), F.S., and s. 373.250, F.S. The DEP has primary responsibility for the implementation of the reuse program. Rules have been established to ensure that reuse projects are designed and operated to ensure protection of public health and environmental quality. The program provides oversight of permitting activities that permits are consistent with departmental rules as well as applicable consumptive use permits issued by the water management districts. The DEP reports that as of 2003, 39 percent of domestic wastewater was reused.

Comprehensive Planning

Adopted by the 1985 Legislature, Florida’s Growth Management Act (Chapter 163, Part II, Florida Statutes, The Local Government Comprehensive Planning and Land Development Regulation Act) requires all of Florida’s 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or “elements” that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its “concurrency” provision that requires facilities and services to be available concurrent with the impact of development.

The Act requires the Department of Community Affairs (DCA) to review comprehensive plans and plan amendments for compliance with the Act. Other agencies, including the water management districts, the DEP, and the Fish and Wildlife Conservation Commission review plans and amendments and issue recommended objections to the DCA.

Pursuant to s. 163.3191, F.S., every 7 years, local governments must adopt an evaluation and appraisal report (EAR) that evaluates the successes and weaknesses of implementing the comprehensive plan and recommend changes. Once the DCA reviews the EAR reports, local governments amend their comprehensive plans based on recommendations included in the report.

Bonding

The state has utilized bonding for many programs. The success of the state's land acquisition programs is directly attributed to funds raised through annual bonding. Preservation 2000 and its successor Florida Forever continue to raise some \$300 million annually. Authority to issue bonds for environmental purposes is contained in section 11(e), Article VII, of the State Constitution, which states:

“Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.”

III. Effect of Proposed Changes:

Sections 1 through 3 - These provisions of the committee substitute provide the necessary changes to allow for the issuance of the bonds needed for the water protection and sustainability program (program).

Section 201.15, F.S., is amended to provide for the use of documentary (doc) stamp taxes to pay the costs associated with issuance of water and sustainability bonds. In addition, an existing provision, s. 201.15(8), F.S., is amended. This provision provided that one-half of one percent of doc stamp revenues is dedicated to the implementation of the total maximum daily load program (TMDL). This provision is amended to provide one-quarter of one percent for this program. The current law was amended to remove the DEP from the fund sharing between it and the Department of Agriculture and Consumer Services.

The one-quarter of one percent of doc stamp revenue is then added to the invasive plant control program for which funding is provided in s. 201.15(6), F.S. The current level of doc stamp revenue is two and seventy-eight hundredths percent.

The CS creates a new provision that encourages the Legislature to maximize the use of non-recurring revenue for the program in lieu of bonding.

Section 215.6197, F.S., is created to provide for the issuance of water protection and sustainability bonds. Specific authorization is granted to provide for the issuance of up to \$500 million in bonds annually for a period of 10 years. There is also a provision created that directs the legislature to maximize the use of non-recurring revenues prior to issuing any bonds.

Finally, the committee substitute provides a legislative finding that the issuances of bonds for this program are in the public interest. This provision is needed should the state elect to exceed the six percent bond cap.

Section 4 – The committee substitute creates new definitions needed for the implementation of the program. The definitions are: alternative water supplies; capital costs; and multi-jurisdictional water supply entity.

Section 5 - This provision of the committee substitute make changes to s. 373.196, F.S., which provides legislative findings regarding state water policy.

Subsection (1) defines the purposes of this section. These include findings that:

- Demand for natural supplies of fresh water will continue to increase.
- There is a need for development of alternative supplies to sustain the state's economic growth and lessen the impact on the environment through the use of traditional groundwater sources.
- Priority funding must be given to the development of alternative supplies.
- Cooperation among all interest groups is needed to develop county-wide and multi-county projects to achieve economies of scale.
- All groups should work together in the development of alternative supplies to avoid the adverse impacts of competition for limited supplies.

Subsection (2) provides additional directives relating to alternative water supply development. Included in these is a finding that funding for water supply development, including alternative supplies, will be a shared responsibility of the state, water management districts, and local entities.

The changes in this subsection also include defining the roles of the water management districts and local governments and others regarding alternative water supply development.

The role of the water management districts shall be: formulation and implementation of strategies and programs; collection and evaluation of data; construction, operation and maintenance of facilities for flood control, storage, and recharge; planning for development in conjunction with local governments and others; and providing technical and financial assistance.

The role of local governments, regional water supply authorities, special districts, and water utilities shall be: planning, design, construction, operation, and maintenance of alternative water supply development projects; formulation, development, and implementation of alternative water supply development; planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water; and coordination of activities with appropriate water management districts.

Language is provided to ensure that nothing in this act shall interfere with the existing rights of entities to continue operating existing water production and transmission facilities or to enter into contracts to meet their respective future needs.

Provisions will also require the water management districts to include in their annual budget submissions specific funding allocations that will provide, at a minimum, 25 percent of the capital costs needed to fund projects.

Section 6 - Section 373.1961, F.S., is substantially amended:

Conforming changes are made to subsection (1) General Powers and Duties.

A new subsection (2), Identification of Water Supply Needs in District Budgets, is created. This provision directs the water management districts to include in its annual budget the amount needed to implement alternative water supply development projects, as prioritized in their regional water supply plans.

A new subsection (3), Funding, is created. These new provisions replace the existing subsection (2). These provisions:

- Provide conforming changes.
- Provide distributions of revenues to the water management districts, for use in funding an alternative water supply program made available under the new program, as follows:

- 40 percent to South Florida
- 25 percent to Southwest Florida
- 25 percent to St. Johns River
- 5 percent to Suwannee River
- 5 percent to Northwest Florida

- For districts without a regional water supply plan (Suwannee River) or those without a need for alternative water supply development projects the funds may be used for other water resource development projects including springs protection.
- Require that all applicants shall submit the total capital cost of their project.
- Require all applicants to provide, at a minimum, 60 percent of the total capital costs. The level of state and water management district funding shall be determined on a project by project basis.
- Provide a waiver, in part or in full, of the match requirement for financially disadvantaged small local governments.
- New provisions to be used by the governing boards for determining project priorities are provided:

They shall give significant weight to factors that consider:

- Whether the project provides substantial environmental benefits by limiting adverse water resource impacts.
- Whether the project reduces competition.
- Whether the project brings about replacement of traditional water sources to aid in the implementation of minimum flows and levels or reservations.
- Whether the applicant is achieving goal based targets for water conservation.
- The quantity of water supplied compared to its cost.
- Projects where reuse is a major component.
- Whether the applicant is a regional water supply authority or multi-jurisdictional water supply entity.

Additional factors to be considered shall include:

- Whether the project is part of a plan to produce water at a uniform rate.
 - The percentage of project costs to be borne by the applicant.
 - Whether the project can reasonably be expected to be implemented.
 - Whether the project is a subsequent phase of an existing project.
 - In what percentage the local government is transferring water supply system revenues into water infrastructure needs.
- Would allow the governing boards to use up to 20 percent of these funds for projects not specifically identified in the regional water supply plan. However, these projects must be consistent with the goals of the plan.
 - Existing provisions concerning rate structures used by utilities who receive grants is relocated to this subsection. Utilities rate structures shall: promote development of alternative water supply systems; promote conservation of groundwater withdrawals; appropriately distribute costs among all the users; and prohibit rate discrimination within classes of users.

The committee substitute also directs that the districts shall report annually the amount of new water created as a result of these projects.

An existing provision is modified to allow for the costs incurred as a result of construction of these facilities, which are regulated by the Public Service Commission, to be eligible for cost recovery. However, no cost recovery may be sought for any cost-share dollars received.

A new subsection (4) is created to address funding for reuse. This provision would permit the districts to impose certain conditions for grants made for a water reuse system. These conditions could require: metering of reclaimed water; implementation of rate structures for reclaimed water; implementation of education programs about water issues; or the development of location data.

Section 7 - Section 373.1962, F.S., is amended to make necessary conforming changes.

Section 8 - Section 373.223(5) is created to provide for a presumption that alternative water supply development projects identified by the districts pursuant to the requirements in Section 5 of the bill will be in the public interest. This change assists applicants in meeting one of the requirements of the “three-prong” test required for the issuance of a consumptive use permit. Aside from the public interest test, applicants are also required to demonstrate that the project will have a reasonable-beneficial use and does not interfere with any existing legal users.

Section 9 - Section 373.236(4), F.S., is created to provide for the granting of permits for a term of at least 20 years for alternative water supply projects. In addition, authority is granted to issue permits in excess of 20 years if they are needed to retire bonds or other financing instruments.

Section 10 - Section 373.459, F.S., which provides guidance for funding surface water improvement and management projects, is amended. The bill creates a new subsection (2) require that any projects receiving funds pursuant to this program shall provide a fifty percent match. The match can be provided with cash or in-kind services.

Section 11 - The committee substitute substantially rewords s. 373.0361, F.S., which guides the development of regional water supply plans. The effect of the rewording is to add new language with respect to public education, the assessment of the impacts of minimum flows and levels on water supply needs, listing of water supply development projects, the joint development of regional water supply plans, and annual reporting requirements of the DEP on the status of regional water supply planning. A new subsection is added to require the water management districts to notify the affected local governments and make every reasonable effort to educate and involve local public officials in working toward solutions when the water supply component shows the need for one or more alternative water supply projects.

Sections 12 through 14 - The committee substitute amends three provisions of ch. 163, F.S., concerning growth management issues. These are:

- i. Section 163.3177, F.S., relating to elements of the comprehensive plan, is amended. Local governments are directed to update their capital improvements to reflect those alternative water projects they have selected. New language is also added to encourage intergovernmental cooperation in the development of water projects.
- ii. Section 163.3180, F.S., relating to concurrency requirements, is amended to require that adequate water supplies shall be in place prior to any local government’s approval to commence construction.
- iii. Section 163.3191, F.S., relating to the evaluation and appraisal of compliance plans, is amended to include a requirement that such evaluation address whether water supply sources necessary to meet existing and future needs have been successfully identified and work projects timely implemented.

Section 15 - The committee substitute substantially amends section 403.067, F.S. These provisions provide for the establishment and implementation of total maximum daily loads (TMDL’s).

Subsection (6) Calculation and Allocation is amended to:

Allow for preliminary allocations of pollutant loads.

Adds best management practices and enforceable treatment levels to a list of issues that shall be considered when determining allocations.

Allows the DEP to adopt rules permitting for a phased implementation of TMDLs.

A new subsection (7) is created. This new subsection outlines procedures for the development of basin management action plans and implementation of total maximum daily loads.

Created or substantially amended by the bill is the following:

Section 403.067(7)(a) Basin Management Action Plans (BMAPS or plan)

Provides for the creation of BMAPS and directs that such plans integrate the appropriate strategies to achieve the TMDLs. The BMAPS are to ensure the restoration of designated uses and shall allow for phased implementation of TMDLs. The BMAPs shall have a schedule for implementation, establish a basis for evaluating results, and identify feasible funding strategies.

The BMAP shall equitably allocate pollutant reductions. For nonpoint sources the plan shall permit the use of adopted best management practices. For dischargers that have implemented strategies to reduce pollutant loads the plan may provide for pollutant credits. Finally, the plan shall address potential future sources of pollution.

The process for developing the plan shall involve the broadest representation of stakeholders. At least one public hearing is required and must be held within the basin impacted by the plan.

The plan and any revisions shall be adopted through a formal department order and will be subject to the provisions of chapter 120, F.S., the Administrative Procedures Act.

The BMAP shall be evaluated on a periodic basis to determine if pollutant load reductions are being achieved and whether revisions are needed.

Section 403.067(7)(b) Total Maximum Daily Load Implementation

Management strategies and pollutant reduction requirements adopted in BMAPS shall be included in any future permits or permit modifications.

The DEP is prohibited from imposing additional pollution requirements in any permit until such time as the TMDL is established for the pollutant, the permit expires, or a modification is sought.

The BMAP does not relieve any requirement for dischargers to obtain, renew, or modify permits.

Management strategies set forth in a BMAP shall be completed pursuant to the schedule in the plan and may extend beyond the 5-year term of NPDES federal permits.

Management strategies and pollution reduction requirements in the BMAP shall not be subject to challenge when they are being incorporated into existing permits or subsequent permits.

For non-agricultural pollutant sources not subject to federal permits but subject to other state or local permits, the pollutant reductions in the BMAP shall be implemented to the maximum extent practicable as part of those permits.

A nonpoint source discharger included in a BMAP may demonstrate compliance with pollutant reductions by implementing appropriate best management practices or conducting water quality monitoring as prescribed by the DEP or water management district.

Nonpoint source dischargers included in a BMAP may be subject to enforcement actions if they fail to implement reductions required in the BMAP.

A landowner, discharger, or other responsible person who is implementing strategies in the plan shall not be required to implement additional strategies to reduce pollutant loads, and shall be deemed to be in compliance with applicable laws, unless the BMAP is revised.

Section 403.067(7)(c) Best management practices

The bill amends existing provisions to remove language that has been expanded upon and re-created in paragraph (b). New provisions created in this paragraph include:

A requirement that the effectiveness of implementation strategies be verified by the DEP. This verification or an initial verification shall be reported to the Department of Agriculture and Consumer Services and the water management districts prior to adoption of any rule that codifies that strategy. The verification of a practice shall provide a presumption of compliance for the purposes of meeting state water quality standards.

Should verification data indicate that practices outlined in the BMAP are not achieving the desired result then the appropriate agency shall revise the plan.

A provision is also added that requires the DEP to submit a report concerning the development of a pollutant trading process. The report shall contain recommendations developed in cooperation with a technical advisory committee that includes experts in pollutant trading and representative of potentially affected parties.

Sections 16 and 17 - Sections 373.4595 and 570.585, F.S., are amended to provide for necessary conforming changes.

Section 18 - Section 403.885, F.S., which provides for a stormwater management, a wastewater management, and water restoration grant program, is amended. The program created to deal with special requests considered by the Legislature for grants is amended to provide additional guidance for applicants. Specific changes made include:

Eliminating a requirement that the program be competitive.

Prohibiting drinking water projects from being eligible.

Creating a new series of requirements that proposals must meet. These include: approval from the water management district; a demonstration that the project has been previously funded; construction has begun; proof that the project also qualifies under other existing water pollution control loan programs; and a local match.

Section 19 - The committee substitute creates s. 403.890, F.S., to create the Water Protection and Sustainability Funding Program. Provisions created direct how the \$500 million in annual revenue is to be distributed.

45 percent (\$225 million) for the implementation of an alternative water supply program. These proceeds shall be distributed to the water management districts in the following manner:

40 percent (\$90 million) to South Florida
25 percent (\$62.5 million) to Southwest Florida
25 percent (\$62.5 million) to St. Johns
5 percent (\$11.25 million) to Suwannee River
5 percent (\$11.25 million) to Northwest Florida

25 percent (\$125 million) to the Department of Environmental Protection (85 percent, \$106.25 million) and the Department of Agriculture (15 percent, \$18.75 million) for the implementation of best management practices and capital costs for the implementation of the total maximum daily loads program (TMDL's).

15 percent (\$75 million) for the implementation of surface water improvement and management programs (SWIM) and surface water restoration activities in water management district designated priority water bodies. The SWIM program was created by the Legislature in 1987. A dedicated funding source has never been established and projects have been funded on an individual basis. Existing SWIM and priority water bodies include Lake Okeechobee, Tampa Bay, Lake Apopka, Indian River Lagoon, the St. Johns River, Charlotte Harbor, Pensacola Bay,

and Apalachicola Bay. These funds shall be distributed to the water management districts in the following manner and shall also require a 50 percent match of cash or in-kind services from district or local source:

- 35 percent (\$26.25 million) to South Florida
- 25 percent (\$18.75 million) to Southwest Florida
- 25 percent (\$18.75 million) to St. Johns
- 7.5 percent (\$5.625 million) to Suwannee River
- 7.5 percent (\$5.625 million) to Northwest Florida

15 percent (\$75 million) to the Department of Environmental Protection to augment current funding for the stormwater, drinking water, and wastewater loans and grants programs. Currently these programs receive \$30 million in state funds plus \$120 million in federal match. These new funds shall be distributed evenly (\$25 million) among the three programs. For the Clean Water State Revolving Loan Grants Program and the Drinking Water State Revolving Loan Grant Program the additional money will be matched on a 5 to 1 basis by federal funds. The final program to receive the funds is the state sponsored Disadvantaged Small Community Wastewater Grant Program.

The committee substitute requires that prior to the end of the 2008 Regular Session, the Legislature shall review the distribution of funds described above.

Section 20 - Provides that the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Documentary stamp tax revenue would be reduced as follows:

\$45 million annually for 10 years to cover the annual cost of issuing the bonds.

Annual debt service payments that would escalate until 2030 and then begin to decline as each series was retired. The amount of these debt payments is dependent on the interest rate of each issuance and the level of annual bonding.

Funding made available in the wastewater, drinking water, and disadvantaged communities programs would be significantly increased.

State funding for the Clean Water Revolving Loan Program would increase from \$9 million to \$34 million. Annual federal dollars because of the 5 to 1 match ratio would increase from \$45 million to \$170 million.

State funding for the Drinking Water Revolving Loan Program would increase from \$5 million to \$30 million. Annual federal dollars because of the 5 to 1 match ratio would increase from \$25 million to \$150 million.

Funding for the Disadvantaged Small Community Wastewater Grant Program would increase from \$4.5 million to \$29.5 million.

Because there are substantially more applicants for all three programs than funds available, the proposed increase would significantly expand the number of projects being financed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
