

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 693 CS

Florida Springs Protection Act

**SPONSOR(S):** Stansel

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2538

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	7 Y, 0 N, w/CS	Perkins	Kliner
2) Governmental Operations Committee	5 Y, 0 N	Brown	Williamson
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5) _____			

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### SUMMARY ANALYSIS

The bill creates the Florida Springs Protection Act and creates the Florida Springs Commission (Commission) for the purpose of identifying protection, restoration and preservation strategies for Florida's springs. The bill requires the Commission, with assistance from the Department of Environmental Protection (DEP) and water management districts, to perform an assessment of all the first and second magnitude springs through an identification and mapping of all such springs within each water management district. The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan must contain components that can be utilized by state agencies, local governments, and citizens for individual spring protection plans.

The Commission expires in 2010.

The overall fiscal impact is indeterminate.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government:** The bill may result in additional regulatory requirements and may increase workload for individuals in state government, water management districts, and possibly local governments relating to enhancing spring protection through an expansive mapping requirement.

**Safeguard Individual Liberty:** The bill may create additional regulatory requirements relating to spring protection. These regulations may have an extensive impact on private landowners within designated springshed areas.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Florida's Springs

DEP estimates that Florida has more than 700 springs<sup>1</sup> which provide natural, recreational and economic values for Floridians and tourists. A spring is a point from which groundwater steadily discharges from a single large vent or from several small vents. The groundwater that flows from most of Florida's springs originates from the same Floridan Aquifer that is tapped for most municipal supplies and private wells in the state. Springs vary in size from the largest "first magnitude" springs with a flow of 100 cubic feet per second or more (64.6 million gallons per day), to the smallest "eighth magnitude" springs at less than one pint per minute. Florida has 33 first magnitude springs; more than any other state.<sup>2</sup>

Florida's springs are protected by a variety of state regulatory programs, including the state's surface and groundwater standards; the wastewater, stormwater, and other regulatory programs governing discharges to groundwater; acquisition of conservation lands; and a variety of local protection measures.<sup>3</sup> Local governments have the primary responsibility to determine land use activities within their jurisdiction.<sup>4</sup> Therefore, local government's comprehensive plans include goals, objectives, and policies that address land use, natural resource protection, and other common considerations.<sup>5</sup> A local government comprehensive plan that is effectively implemented can aid in the protection and restoration of springs.

Water can carry contaminants from the land surface into springs. Since the 1970's, scientists have documented a decline in water quality in most of Florida's springs, particularly with regards to nutrients, such as nitrogen and phosphorus found in plant fertilizers. Elevated nutrient levels may lead to increase in algae growth that decrease water clarity and change both the aesthetic qualities and the natural ecology of springs. The groundwater that feeds springs is recharged by seepage from the surface and through direct conduits such as sinkholes. The nature and magnitude of the threats to springs varies according to land use practices and geology within each spring recharge basin. Contaminants that reach the groundwater and flow to springs include nutrients from fertilizers, septic tanks, wastewater sprayfields, and farm animal wastes.<sup>6</sup>

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<sup>1</sup> March 22, 2006, DEP e-mail.

<sup>2</sup> Materials regarding state springs gathered from: <http://www.dep.state.fl.us/springs/overview.htm>.

<sup>3</sup> *2006 Substantive Analysis for HB 693*, Department of Environmental Protection.

<sup>4</sup> See generally Part II of Chapter 163, F.S., and Chapter 380, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Florida's Springs Strategies for Protection & Restoration Report*, November 2000, Florida Department of Environmental Protection.

Available online here: <http://www.dep.state.fl.us/springs/reports/FloridaSpringsReport.pdf>.

The Total Maximum Daily Load (TMDL) Program is a federally mandated water quality program administered by DEP under the Florida Watershed Restoration Act.<sup>7</sup> A TMDL is the maximum amount of a pollutant that a water body can assimilate without exceeding water quality standards. Under section 403.067, F.S., TMDLs must be developed for all impaired waters. A fundamental issue associated with determining spring impairment is an appropriate delineation of the relevant springshed and an assessment of the relationship between pollution sources in the springshed, groundwater quality, and the interaction between groundwater and surface water quality. TMDLs are developed, allocated, and implemented through a watershed management approach.<sup>8</sup>

In order to educate the public and further study Florida springs, DEP developed the Florida Springs Initiative.<sup>9</sup> This program investigates the sources of spring-flow, determines the springsheds that affect the water quantity and quality of springs, monitors water quality, assists landowners in implementing springs protection actions, and promotes the value of springs through extensive public education. DEP reports that springshed maps have been generated for most of the state's first magnitude springs discharging from the Floridan aquifer system.<sup>10</sup> The quality of Florida spring water is directly related to discharge rates, residence time of water within the aquifer, and land-use practices within the spring recharge basin.<sup>11</sup>

### Commissions

Chapter 20, F.S., authorizes the creation of a number of different entities within the executive branch to assist agencies in performing their duties more efficiently and effectively. One such entity is the "commission," which is defined as "a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor."<sup>12</sup>

Section 20.052, F.S., provides that statutorily created, executive advisory bodies,<sup>13</sup> commissions, boards of trustees, and other collegial bodies are subject to requirements that include the following:

- The entity must be necessary and beneficial to the furtherance of a public purpose.
- The entity must be terminated by the Legislature when no longer essential to the furtherance of a public purpose.
- Members of the entity may not receive compensation, other than per diem and travel expense reimbursement pursuant to s. 112.061, F.S., unless otherwise provided by statute.
- Members of an entity, other than a commission or board of trustees, must be appointed by the Governor, a department head, an executive director, or a Cabinet officer.
- Members of a commission or board of trustees must be appointed by the Governor unless otherwise provided by law, confirmed by the Senate, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II of the State Constitution.
- All meetings and records of the entity are public, unless an exemption is specifically provided by law.

### Effect of Proposed Change

#### Florida Springs Protection Act:

<sup>7</sup> Codified at s. 403.067, F.S. The federal requirement is contained in section 303(d) of the federal Clean Water Act, codified at 33 U.S.C. s. 1251, *et seq.*

<sup>8</sup> *Water & Natural Resources Briefing Book 2005*, Environmental Regulation Committee, Florida House of Representatives.

<sup>9</sup> Additional detail about the Florida Springs Initiative and its research is available here:

<http://www.dep.state.fl.us/springs/research/index.htm>.

<sup>10</sup> *Id.*

<sup>11</sup> March 22, 2006, DEP e-mail.

<sup>12</sup> Section 20.03(5), F.S.

<sup>13</sup> The term "advisory body" is not defined in s. 20.052, F.S.; however, the term appears to refer to councils, committees, and task forces, as these entities are specifically referred to as advisory bodies in s. 20.03, F.S.

The bill creates Part IV of chapter 369, F.S., relating to springs protection. Section 369.401, F.S., is created and cited as the Florida Springs Protection Act. Legislative intent is addressed in section 369.403, F.S., to include that the Legislature recognizes the following:

- Florida springs whether found in urban or rural settings, public parks, or private lands, are threatened by actual and potential flow reductions and declining water quality. Many of Florida's springs have begun to exhibit signs of distress, including increasing nutrient loading and lowered discharge.
- Springs and groundwater once damaged by overuse can be restored through good stewardship, including effective planning strategies and best management practices to protect and preserve springs. Managing land use types and their allowable densities and intensities of development, followed by specific site planning to further minimize impacts, rank as an important goal.
- Development in Florida will continue to add pressure for growth and development already affecting the surface and ground water resources that contribute to spring flow.
- There is a need to provide for land use decisions that recognize protected property rights and ensure the long-term viability of springs in Florida.
- Cooperative and coordinated efforts, such as the Suwannee River Partnership and the Wekiva River Basin Coordinating Committee, implemented by state and regional agencies, local governments and affected interests can best develop the mechanisms to protect Florida's springs. A Florida Springs Commission should be created for the purpose of identifying protection, restoration and preservation strategies for Florida springs.

#### Florida Springs Commission

The bill creates the Florida Springs Commission (the Commission), which is comprised of 21 members.<sup>14</sup> The Secretary of DEP will serve as the chair of the Commission. The bill provides that all members of the Commission will serve without compensation; however they will be reimbursed for per diem and travel expenses according to section 112.061, F.S. The bill authorizes state and regional governmental commission members to allow a senior staff person to represent their entity along with granting them full voting authority. The Commission may appoint technical subcommittees as needed to assist in the completion of the work of the Commission. The bill requires all state agencies as directed, and all other agencies and local governments as requested, to assist and cooperate with the Commission.

#### Duties of the Florida Springs Commission

The bill requires the Commission to perform an assessment of all the first and second magnitude springs. The DEP and the water management districts are required to assist the Commission in identifying and mapping all first and second magnitude springs within each water management district. The DEP and the water management districts will cooperatively perform an assessment and create a uniform geographic information system standard for collecting and reporting springs data. The bill requires spring assessment data to include at a minimum the following information:

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<sup>14</sup> Membership includes the following members: Commissioner of Agriculture; Secretary of the Department of Community Affairs; Secretary of the DEP; Secretary of the Department of Transportation; Secretary of the Department of Health; Executive Director of the Florida Fish and Wildlife Conservation Commission; a representative from a water management district governing board; a representative from a regional planning council; a representative from the Florida Chamber of Commerce; a representative from the Florida Association of Community Developers; a representative from the American Water Works Association; a representative from the Florida Home Builders Association; and nine members to be appointed pursuant to the following:

- Governor:
  - a member from an environmental organization; a property owner interested in spring protection; and a member from the business community.
- Senate President:
  - a legislative member from the Senate; a member from a conservation organization; and a locally elected county or municipal official.
- Speaker of the House of Representatives:
  - a legislative member from the House of Representatives; a member from the agricultural community; and a locally elected county or municipal official.

- Current land owner;
- Latitude and longitude;
- Water quality, water quantity, and water use;
- Wetlands;
- Geology and soils;
- Vegetation;
- Floodplain area;
- Infrastructure;
- Fish and wildlife;
- Cultural resources and archaeology;
- Public access and use;
- Land use;
- Hazardous materials;
- Public Health and safety;
- Aesthetics and scenic resources; and
- Socioeconomics.

#### Strategies For Protecting Springs

The bill requires the Commission to evaluate and recommend strategies for protecting and ensuring long-term viability of Florida springs according to the following considerations:

- Protection of property rights.
- Effectiveness and application of current land use planning strategies.
- Development and application of innovative land use planning strategies.
- Effectiveness and sufficiency of existing regulations.
- Use of regional partnerships, best management practices, and other incentive-based nonregulatory programs.

The bill recognizes that many springs protection policies and programs have been developed or implemented through ongoing efforts and that an evaluation of these policies and programs can serve as a baseline. The bill instructs the Commission to utilize these existing springs protection policies and programs as an aid in the development of its recommendations along with the use of basin management action plans developed by DEP relating to the implementation of the TMDL program.

#### Model Springs Protection Plan

The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan will contain components that can be utilized by state agencies, local governments, and citizens for detailed spring protection plans. The bill requires the model plan to provide a five-year strategy for the use and management of the springs based on the information from the assessment. The bill provides component criteria (i.e. analysis of environmental conditions, analysis of present use conditions, management partnerships, etc.) to be included in the model plan. The bill requires the Commission to consider public comment throughout the development of the Commission's recommendations.

The bill provides for the Commission to expire in 2010.

#### C. SECTION DIRECTORY:

Section 1 creates the Florida Springs Protection Act at sections 369.401 – 369.415, F.S.

Section 2 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The overall fiscal impact is indeterminate. DEP estimates that in order to meet a portion of the bill requirements relating to the mapping components of all first and second magnitude springs, DEP would need approximately 56 additional staff members and associated resources, at an estimated cost of \$25 million per year, to complete a basic mapping of approximately 120 springs. DEP reports current funding of \$2.5 million and two staff members for the springs program.<sup>15</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The cost associated with local government participation with the Commission duties associated with this bill is indeterminate; however, local governments are requested to assist the Commission, not directed to assist.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires the Commission to develop an overall model springs protection plan utilizing its recommended strategies. The model plan shall contain components that that may be utilized by state agencies, local governments, and citizens for individual spring protection plans. Local government adoption of measures that would preclude land use activity surrounding springs may diminish potential development areas within their local jurisdiction.

D. FISCAL COMMENTS:

The bill does not provide additional funding to DEP. DEP staff estimates that at current staffing levels, it would take 60 years to accomplish the bill requirements, well beyond the time allotted to DEP in the bill.<sup>16</sup> While the water management districts are also named in the bill, the financial burden would likely fall heaviest on the DEP.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions 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:

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<sup>15</sup> March 9, 2006 DEP e-mail.

<sup>16</sup> March 22, 2005, DEP e-mail.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Commission Creation

The bill appears to violate two provisions of s. 20.052, F.S., regarding the creation and responsibilities of a commission. The bill does not provide for “4-year staggered terms” of the members, either explicitly or by reference.<sup>17</sup> More critically, the bill may violate the dual-office-holding provision of Article II, Section 5(a) of the Constitution of the State of Florida,<sup>18</sup> by the presence of two members of the Florida Legislature on the commission (and possibly by the appointment of four other members, by the President of the Senate and the Speaker of the House of Representatives).

**III. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 8, 2006, the Environmental Regulation Committee favorably adopted a “Strike All” amendment to HB 693. The analysis has been revised to reflect this amendment.

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<sup>17</sup> Section 20.052(4)(c), F.S.

<sup>18</sup> This constitutional violation in turn violates s. 20.052(5)(c), F.S.