

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1111 Water Supply
SPONSOR(S): Government Accountability Act Council
TIED BILLS: IDEN./SIM. BILLS: SB 2424

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Government Accountability Act Council, 20 Y, 0 N, As CS, Zeiler, Hansen. Row 2: 1) General Government Policy Council, Kliner, Hamby.

SUMMARY ANALYSIS

CS/HB 1111 creates a new Part VII to Chapter 373, F.S., to include all those existing sections of Chapter 373, F.S., that address water supply policy, planning, production and funding.

The bill repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S., as these sections are incorporated into a new Part VII of Chapter 373, F.S.

Section 373.71, F.S., is renumbered 373.69, F.S., to remove it from the numbering scheme assigned to the new Part VII of Chapter 373, F.S.

Numerous conforming cross-reference changes are provided.

This bill has no fiscal impact on state or local governments.

The bill provides a July 1, 2009, effective date.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 373, F.S., was originally enacted by the Florida Legislature as the "Water Resources Act of 1972" (ch. 72-299, L.O.F.). At that time, the chapter was limited in scope to principally address issues relating to flood control, the management and storage of surface water, the regulation of consumptive use of water, including wells, and the governance of the water management districts (WMD). No effort was made at that time to address water supply except through the "state water plan." The direction of the state water plan was to "study existing water sources . . . to formulate, as a functional element of a comprehensive state plan, an integrated, coordinated plan for the use and development of the waters of the state" (see s. 373.036(1), F.S. (1972)).

Chapter 373, F.S., has been amended numerous times since 1972 to address a multitude of issues relating to water.

The following sections of Chapter 373, F.S., either in whole or in part, specifically address water supply policy, planning and production:

- s. 373.016, F.S. Declaration of policy
- s. 373.019, F.S. Definitions
- s. 373.036, F.S. Florida water plan; district water management plans
- s. 373.0361, F.S. Regional water supply planning
- s. 373.0391, F.S. Technical assistance
- s. 373.0831, F.S. Water resource development; water supply development
- s. 373.196, F.S. Legislative findings
- s. 373.1961, F.S. Water production
- s. 373.1962, F.S. Regional water supply authorities
- s. 373.1963, F.S. Assistance to West Coast Regional Water Supply Authority

Section 373.016, F.S., Declaration of policy

Section 373.016, F.S., was included in the original Water Resources Act of 1972. At that time it contained little in the way of policy that addressed water supply planning and production. Section 373.016, F.S., was amended in 1997 to add what is now paragraph (3)(d), which establishes a policy that the “availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems shall be promoted” (s. 1, ch. 97-160, L.O.F.). In 1998, paragraphs (4)(a) and (b) were added to address the issue of the use of local sources of water first for consumptive uses before transporting water across county boundaries (s. 1, ch. 98-88, L.O.F.).

Section 373.0361, F.S., Regional water supply planning

In 1997, the Legislature, made an effort to address water supply planning, and that primarily at a regional level. Section 4 of chapter 97-160, Laws of Florida, created the regional water supply planning process and, in 2004 (s. 9, ch. 2004-381, L.O.F.), the Legislature amended requirements of the regional water supply plan (RWSP). These amendments:

- addressed the requirements of the water supply development component of the RWSP and included:
 - Requiring the WMD to hold at least one public workshop prior to completion of the RWSP to discuss the technical data and modeling tools anticipated to be utilized in the development of RWSP.
 - Identifying the best available data to be utilized to project populations.
 - Allowing the use of water conservation and demand management measurements as water source options in the water supply development component of the RWSP.
- Included the reservation of water as a component of the RWSP.
- Required reporting progress made in developing water supplies consistent with RWSP.

In 2005, the Legislature substantially reworded s. 373.0361, F.S. (s. 9, ch. 2005-291, L.O.F, often referred to as “SB 444”). The rewording added 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 RWSP, and the annual reporting requirements to the Department of Environmental Protection (DEP) on the status of regional water supply planning. A new subsection was added to require the WMDs 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. An additional provision allows local governments to prepare their own water supply assessments to determine if existing water sources are adequate. This assessment is to be submitted to the WMD to be considered when the RWSP is being developed or updated.

Section 373.0391, F.S., Technical assistance to local governments

Section 373.0391, F.S., was created in 1989 and requires WMDs to provide a range of technical services to assist local governments in the preparation and implementation of their comprehensive plans and public facilities reports.

Section 373.0831, F.S., Water resource development; water supply development

In association with regional water supply planning, s. 373.0831, F.S., was another significant section added in 1997 by Chapter 97-160, Laws of Florida (section 11). This section provides for legislative findings and intent relating to the planning and development of water resources and the production of water supplies from those water resources. Section 373.0831, F.S., was amended in 2004 to add (4)(c) dealing with permitting and funding for the development of alternative water sources (s. 10, ch. 2004-381, Laws of Florida) and subsequently repealed in 2005 (s. 4, ch. 2005-291, L.O.F.)

Section 373.196, F.S., Alternative water supply development

Section 373.196, F.S., was created in 1974 (s. 1, ch. 74-114, L.O.F.). It contains provisions regarding the need for cooperation between local governments and the WMDs in order to meet the needs of the increasing demand on water resources and allows for the creation of regional water supply authorities. Subsection (2) of section 373.196, F.S., was amended in 1998 (s. 2, ch. 98-88, L.O.F.) to provide that WMDs are to have the power to engage in functions “that are related to water resource development

pursuant to s. 373.0831.” This was done to conform to the powers given to the WMDs in 1997 granting them the responsibility for water supply planning and water resource development.

In 2005, the Legislature substantially reworded s. 373.196, F.S. (SB 444). The rewording made changes to legislative findings regarding state water policy.

These findings acknowledge that:

- Demand for natural supplies of fresh water will continue to increase.
- There is a need for development of alternative water supplies to sustain the state’s economic growth and its natural resources.
- Cooperation among all interest groups is required to develop adequate and dependable supplies of water and such efforts use all practical means.
- Regional Water Supply Authorities are encouraged and such entities facilitate the development of county-wide and multi-county projects that achieve necessary economies of scales and efficiencies.
- Public moneys and services provided to alternative water supply development may serve a public interest.
- In order to provide sufficient water and to avoid the adverse impacts of competition for limited supplies, coordinated efforts with the WMDs are required, and funding necessary to develop alternative water supplies is a shared responsibility.

The primary roles of the WMDs, local governments, and others regarding alternative water supply development were refined. The role of the WMDs is the 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 is: 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 WMDs.

Section 373.1961, F.S., Water production

Section 373.1961, F.S., was also created in 1974 (s. 2, ch. 74-114, LOF), and has been amended several times since, with the most significant and recent changes being those of s. 9, ch. 2005-291, L.O.F (SB 444). This section contains four subsections. Subsection (1) sets forth the powers and duties of the WMD governing boards with respect to the production of water; Subsection (2) sets forth the identification and reporting of alternative water supply development funding in the WMD budgets; Subsection (3) sets forth the allocation, allowed uses, and conditions of funding provided through the Water Protection and Sustainability Program and its Trust Fund; and Subsection (4) sets forth the conditions a WMD may attach to reuse projects that receive funding assistance.

The revisions of SB 444 included:

The new subsection (2), Identification of water supply needs in WMD budgets, was created and required the WMDs to identify in their annual budget the amount needed to implement alternative water supply development projects, as prioritized in their RWSP.

A new subsection (3), Funding, was created and established provisions that:

- Provide the distributions of state funding granted to the WMDs, for use in funding alternative water supply projects under the Water Protection and Sustainability Program. The funding allocation is as follows:
 - 30 percent to South Florida.
 - 25 percent to Southwest Florida.
 - 25 percent to St. Johns River.
 - 10 percent to Suwannee River.
 - 10 percent to Northwest Florida.
- Allow funds to be used for other water resource development projects including springs protection, if the WMD is without a regional water supply plan (Suwannee River) or has no alternative water supply development project needs.
- Require that all applicants must submit the total capital cost of their projects.

- Require all applicants to provide, at a minimum, 60 percent of the total capital costs of the project. The level of state and WMD funding is determined on a project-by-project basis.
- Provide the WMD the discretion to grant a waiver, in part or in full, of the match requirement for financially disadvantaged small local governments and
- Allow the WMD to accept non-state funding to meet match requirements.
- Allow the governing boards the flexibility 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 RWSP.
- Require that utilities receiving funding establish rate structures that promote conservation of water and promote development of alternative water supplies.
- Establish additional factors to be used by the governing boards in prioritizing and funding the projects. The factors that require significant weight in the governing funding decision include:
 - Whether the project provides substantial environmental benefits by limiting adverse water resource impacts.
 - Whether the project reduces competition for water.
 - 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 in which 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 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 be reasonably implemented within the timeframes of RWSP.
- Whether the project is a subsequent phase of an existing project.
- At what percentage the local government is transferring water supply system revenues into water infrastructure needs.

The WMDs are required to conduct at least one public hearing prior to adopting a priority list of projects eligible for funding. In developing the list, the WMDs may allocate up to 20 percent of the funding for projects that are not identified or listed in the RWSP but are consistent with the goals of the plan.

Section 373.1962, F.S., Regional water supply authorities

In 1974, the Legislature established a process for the creation of regional water supply authorities in s. 373.1962, F.S., (s.7, ch. 74-114, LOF). Numerous minor amendments have been made to the section since then. The establishment of regional water supply authorities requires approval by the Secretary of DEP and may be created for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas.

Section 373.1963, F.S., Assistance to West Coast Regional Water Supply Authority

Section 373.1963, F.S., was created in 1976 to address issues relating to the governance of the West Coast Regional Water Supply Authority (s. 13, ch. 76-243, LOF). The section has been substantially rewritten three times with the last rewrite coming in 1998 (s. 4, ch. 339, LOF, s. 30, ch. 97-160, LOF, and s. 2, ch. 98-402, LOF). The West Coast Regional Water Supply Authority is currently known as Tampa Bay Water. Tampa Bay Water is a special district that serves as a water wholesaler for its member governments: Hillsborough County, Pasco County, Pinellas County, New Port Richey, St. Petersburg and Tampa.

Effect of Proposed Changes

The bill creates a new Part VII to Chapter 373, F.S., that include all sections of Chapter 373, F.S., that address water supply policy, planning, and production.

New Section 373.701, F.S. -- Declaration of policy

Those policy statements in s. 373.016, F.S., dealing with water supply planning and production and portions of s. 373.196, F.S., are moved to a new section 373.701, F.S., "Declaration of policy".

The bill restates the legislature's policy regarding the following issues:

- The availability of sufficient water for all beneficial uses should be promoted. (s. 373.016(3)(d), F.S.)
- Water is a public resource benefitting the entire state. (s. 373.016 (4)(a), F.S.)
- Necessity of transporting water. (s. 373.016 (4)(b), F.S.)
- Cooperative efforts to develop water supplies are mandatory and should utilize all practical means. (s. 373.196(1)(c), F.S.).

New Section 373.703, F.S., Powers and duties

Subsection 373.196(1), F.S., relating to the powers and duties of the WMD governing board is moved to a new section 373.703, F.S., "Powers and duties".

New Section 373.705, F.S., Water resource development; water supply development

Section 373.0831, F.S., is moved to a new section 373.705, F.S., "Water resource development; water supply development".

New Section 373.707, F.S., Alternative water supply development

Section 373.196, F.S., and subsections (2) (3) and (4) of 373.1961, F.S., are moved to a new section 373.707, F.S., "Alternative water supply development"

New Section 373.709, F.S., Regional water supply planning

Section 373.0361, F.S., is moved in its entirety to a new section 373.709, F.S., "Regional water supply planning".

New Section 373.711, F.S., Technical assistance to local governments

Section 373.0391, F.S., is moved to a new section 373.711, F.S., "Technical assistance".

New Section 373.713, F.S., Regional water supply authorities

Section 373.1962, F.S., is moved to a new section 373.713, F.S., "Regional water supply authorities".

New Section 373.715, F.S., Assistance to West Coast Regional Water Supply Authority

Section 373.1963, F.S., is moved to a new section 373.715, F.S., "West Coast Regional Water Supply Authority".

The bill provides a number of conforming cross-reference revisions.

The bill repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S. All the fore mentioned sections are incorporated into a new Part VII of Chapter 373, F.S., as described above.

Section 373.71, F.S., is renumbered 373.69, F.S., to remove it from the numbering scheme assigned to the new Part VII of Chapter 373, F.S.

The bill provides a July 1, 2009, effective date.

B. SECTION DIRECTORY:

Section 1: Creates Part VII of Chapter 373, F.S., consisting of:

- s. 373.701, F.S., "Declaration of policy", includes those policy statements currently in s. 373.016, F.S., and portions of 373.196, F.S., dealing with water supply planning and production.

- s. 373.703, F.S., "Powers and duties", includes former ss. 373.1961(1), F.S., providing the powers and duties of the governing board.
- s. 373.705, F.S., "Water resource development; water supply development", includes former s. 373.0831, F.S., providing the roles and responsibilities of WMDs, local governments and utilities relating to water resource development and water supply development.
- s. 373.707, F.S., "Alternative water supply development", includes former s. 373.196, F.S. and subsections (2), (3) and (4) of s. 373.1961, F.S., providing for cooperative efforts between WMDs, local governments and utilities regarding the development of alternative water supplies; providing the fund allocation to WMDs and funding requirement for recipients of Water Protection and Sustainability Program funds.
- s. 373.709, F.S., "Regional water supply planning", includes former s. 373.0361, F.S., establishing the goals and requirements regional water supply plans.
- s. 373.711, F.S., "Technical assistance", includes former s. 373.0391, F.S., providing for the WMD assistance to local governments in preparing comprehensive plans.
- s. 373.713, F.S., "Regional water supply authorities", includes former s. 373.1962, F.S., providing for the establishment and authority of regional water supply authorities.
- s. 373.715, F.S., "Assistance to West Coast Regional Water Supply Authority", includes former s. 373.1963, F.S., providing for the establishment and authority of West Coast Regional Water Supply Authorities.

- Section 2. Amends s. 373.026, F.S. maintaining counties reasonable and beneficial use of water
- Section 3. Amends s. 120.52(13), F.S., to conform a cross-reference.
- Section 4. Amends s. 163.3167(13), F.S., to conform a cross-reference.
- Section 5. Amends ss. 163.3177(4) and (6), F.S., to conform cross-references.
- Section 6. Amends s. 163.3191(2), F.S., to conform a cross-reference.
- Section 7. Amends s. 189.404(4), F.S., to conform cross-references.
- Section 8. Amends s. 189.4155(3), F.S., to conform a cross-reference.
- Section 9. Amends s. 189.4156, F.S., to conform a cross-reference.
- Section 10. Amends s. 367.021(7), F.S., to conform a cross-reference.
- Section 11. Amends s. 373.019(17), F.S., to conform a cross-reference.
- Section 12. Amends s. 373.0421(4), F.S., to conform a cross-reference.
- Section 13. Amends s. 373.0695(4), F.S., to conform a cross-reference.
- Section 14. Amends ss. 373.223(3) and (5), F.S., to conform a cross-reference.
- Section 15. Amends s. 373.2234, F.S., to conform cross-references.
- Section 16. Amends s. 373.229(3), F.S., to conform a cross-reference.
- Section 17. Amends s. 373.536(6), F.S., to conform a cross-reference.
- Section 18. Amends s. 373.59(11), F.S., to conform cross-references.
- Section 19. Amends s. 378.212(1)(g), F.S., to conform a cross-reference.
- Section 20. Amends s. 378.404(9), F.S., to conform a cross-reference.
- Section 21. Amends s. 403.0891(3)(a), F.S., to conform a cross-reference.
- Section 22. Amends s. 403.890(1) and (2), F.S., to conform a cross-reference.
- Section 23. Amends s. 682.02, F.S., to conform a cross-reference.
- Section 24. Renumbers s 373.71, F.S. as s. 373.69, F.S.

Section 25 Repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S.

Section 26. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Since this bill simply codifies existing statutory provisions into a new Part VII of Chapter 373, F.S., it has no fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Based on comments from the state's water management districts, five amendments were drafted but not adopted. Two amendments removed duplicative provisions and three amendments addressed erroneous cross-references.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES