

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7175 PCB ANR 10-09 Consumptive Use Permits

**SPONSOR(S):** Agriculture & Natural Resources Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Agriculture & Natural Resources Policy Committee	11 Y, 0 N	Kliner	Reese
1)	Natural Resources Appropriations Committee	8 Y, 1 N	Smith Brown	Dixon
2)	General Government Policy Council		Kliner	Hamby
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill amends specific sections of Part II of Chapter 373, F.S., relating to consumptive use permits (CUPs). Specifically, the bill:

- Increases from 5 to 10 years the duration for filing with the applicable water management district (WMD) a CUP compliance report.
- Provides that decreases in a permittee's need for a permitted allocation due to conservation activities shall not result in a modification that decreases the maximum allocation during the term of the permit, and provides the same for an agricultural water use permit that requires the implementation of the most efficient irrigation system that is economically feasible and available at the time of permit issuance.
- Provides an exception for the revocation of CUP if the non-use was due to the conservation measures.

Fiscal impact: The implementation of conservation measures may inure to the benefit of private and public utilities that provide public water resources. In addition, by increasing the duration of CUP compliance reports to the DEP or WMD, public and private water use permittees will save resources by preparing for reviews every 10 years, rather than five. The bill appears to have no negative fiscal impact on local governments. At the state government level, there may be insignificant costs associated with rulemaking by the DEP.

The bill has an effective date of July 1, 2010.

## 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:

##### Current Situation

##### Consumptive Use Permits

A consumptive use permit (CUP), also called a water use permit, constitutes authorization to withdraw a specified amount of water for a specified time either from the ground or from a surface water body. CUPs are generally issued by the water management districts (WMDs) under Part II of Chapter 373, F.S., specifically s. 373.223, F.S. State law allows the DEP to issue CUPs where an applicant proposes an "inter-district transfer" of water (i.e. from a source within one WMD to a user in another WMD).

The water permitted to be withdrawn under a CUP is most often used for agricultural and other types of irrigation, for drinking water for public consumption, and in the manufacturing processes of various products. CUPs were created as the key mechanism by which the WMDs and the state can regulate the consumption of water for the most beneficial uses and in the best interest of the public.

People or entities wishing to utilize a water supply – whether an aquifer, a river or lake, or an "alternative supply" such as stormwater or seawater – must obtain a CUP if certain thresholds are exceeded. For example, persons who propose withdrawing water through a well whose diameter exceeds 6 inches, or who would withdraw more than 100,000 gallons a day, or who are supplying more than their domestic needs, must obtain a CUP. Each WMD's list of thresholds is slightly different, as are the penalties for failure to obtain a CUP prior to withdrawing water.

A CUP may be issued only if the applicant can establish that the proposed use of the water meets the "three prong test" specified in ss. 373. 223(1), F.S.; that is, the proposed use of water: (1) is a reasonable-beneficial use (meaning it is both an economic and efficient utilization of water for a purpose and in a manner which is both reasonable and consistent with the public interest); (2) will not interfere with any presently existing legal use of water; and (3) is consistent with the public interest.

### Duration of a CUP and Reporting Requirements

The duration of a CUP may vary, and permits may range from five years to twenty years or more, depending upon the circumstances. For instance, s. 373.236, F.S., provides for a 20-year duration for permits approved for the development of alternative water supplies. If the permittee issues bonds for the construction of the project, the permit may be extended, at the request of the permittee, to cover the time required to retire the bonds, provided the WMD board determines that the use will continue to meet the conditions for issuance of the permit. This section authorizes the governing board of a WMD to require a permittee holding a 20-year CUP to file a compliance report every five years during the term of the permit. The report must provide reasonable assurance to the board that the initial conditions for the issuance of the permit are met. A permit that is modified under this section is not subject to review of competing consumptive use applications, provided there is no increase in the permitted allocation, permit duration, and no change in the water source (unless the change is requested by the WMD).

### Revocation of a CUP for Non-use

Currently, s. 373.243, F.S., authorizes the DEP or the WMD boards to revoke a CUP for the nonuse of the water supply allowed by the permit for a period of 2 years or more, unless the user can prove that his or her nonuse was due to extreme hardship caused by factors beyond the user's control.<sup>1</sup>

### Effect of Proposed Changes

#### Duration of a CUP and Reporting Requirements

For a permittee holding a 20-year CUP the bill increases the duration to file a compliance report to the applicable WMD from 5 to 10 years.

The bill provides that decreases in a permittee's need for a permitted allocation due to conservation activities shall not result in a modification that decreases the maximum allocation during the term of the permit, and provides the same for an agricultural water use permit that requires the implementation of the most efficient irrigation system that is economically feasible and available at the time of permit issuance.

#### Revocation of a CUP for Non-use

The bill provides an exception for a DEP or WMD revocation of CUP if the non-use was due to the conservation measures.

## B. SECTION DIRECTORY:

Section 1. Amends subsection (4) of s. 373.236, F.S., increasing the duration to file a CUP compliance report to the applicable WMD from 5 to 10 years. In addition, the bill provides that decreases in a permittee's need for a permitted allocation due to conservation activities shall not result in a modification that decreases the maximum allocation during the term of the permit, and provides the same for an agricultural water use permit that requires the implementation of the most efficient irrigation system that is economically feasible and available at the time of permit issuance.

Section 2. Amends subsection (4) of s. 373.243, F.S., providing an exception for the revocation of CUP if the non-use was due to the conservation measures.

Section 3. Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>1</sup> Other actions that may result in a revocation include: any material false statement in documentation required under the permit or statute, a willful violation of the conditions of the permit, or a violation of any provision of Chapter 273, F.S.

1. Revenues:

None.

2. Expenditures:

There may be costs associated with rulemaking if the DEP or WMDs determine the need for rule revision.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local government public water supply utilities may benefit from the conservation measures in the same manner as private utilities. See, Part II, C., below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The implementation of conservation measures may inure to the benefit of utilities that provide public water resources. In addition, by increasing the duration of CUP compliance reports to the DEP or WMD, water use permittees will be required to expend resources preparing for those reviews every 10 years, rather than five.

D. FISCAL COMMENTS:

By increasing the duration of CUP compliance reports from five to 10 years, the permitting agency may experience a reduction in resources needed to review said reports. This may be revenue neutral in effect but agency staff will be free to attend to other duties.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DEP has provided the following comments regarding the amendments adopted by the Agriculture and Natural Resources Committee:

The amendments reduce a water management district's ability to ensure compliance with permit conditions for 20-year consumptive use permits by restricting compliance reviews to every ten

years. They limit the districts' ability to ensure the "reasonable-beneficial" of water. Under this bill, a water management district cannot reduce a water allocation for which a permit holder can no longer justify a need. This will allow permittees to bank water they don't need, and prevent its reasonable-beneficial use by others with a genuine need for the water.<sup>2</sup>

DEP has suggested in their analysis a strike-all amendment to address these concerns.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2010, the Agriculture and Natural Resources Committee passed a strike-all amendment and an amendment to the strike-all. The amendment:

- Increases the duration for the review of a 20 year water use permit by water management district from 5 to 10 years.
- Provides that decreases in a permittee's need for a permitted allocation due to conservation activities shall not result in a modification that decreases the maximum allocation during the term of the permit, and
- Provides for similar treatment for an agricultural water use permittee that implements the most efficient irrigation system that is economically feasible and available at the time of permit issuance.

The amendment to the strike-all:

- Provides that conservation measures that result in a reduced need for the resource will not result in a revocation of the water use permit.

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<sup>2</sup> Department of Environmental Protection, Staff Analysis HB 7175 (2010), on file with the Natural Resources Appropriations Committee.