

1 A bill to be entitled
2 An act relating to water resources; amending s. 373.227,
3 F.S.; revising provisions of the comprehensive statewide
4 water conservation program to provide for a Conserve
5 Florida Clearinghouse and a Conserve Florida Clearinghouse
6 Guide to assist public water supply utilities in
7 developing goal-based water conservation plans to meet
8 water conservation requirements for obtaining consumptive
9 use permits; encouraging water management districts and
10 public water supply utilities to use the guide for water
11 conservation plans, reports, evaluations, and assessments;
12 revising requirements for goal-based water conservation
13 plans submitted by public water supply utilities as part
14 of consumptive use permit applications; deleting an
15 obsolete provision requiring the Department of
16 Environmental Protection to submit a report on the program
17 to the Governor, the Legislature, and substantive
18 legislative committees by a specified date; amending s.
19 298.66, F.S.; revising provisions prohibiting the
20 obstruction of certain drainage works; amending s.
21 373.0361, F.S.; providing for the inclusion of wastewater
22 utilities, reuse utilities, and the department in the
23 regional water supply planning process; amending s.
24 373.079, F.S.; revising provisions relating to the
25 authority of a water management district governing board
26 to employ an executive director, an inspector general,
27 professional persons, and personnel; prohibiting governing
28 board intervention during review of specified permit

29 applications; providing for expiration of such
30 prohibition; revising provisions authorizing a water
31 management district governing board to delegate certain
32 authority to the executive director; requiring the
33 governing board to provide a process for referring certain
34 denials to the board for final action; amending s.
35 373.083, F.S.; revising provisions authorizing a water
36 management district governing board to delegate certain
37 authority to the executive director; deleting a provision
38 prohibiting governing board members from intervening in
39 the review of certain applications; amending s. 373.085,
40 F.S.; requiring water management districts and
41 governmental agencies to encourage public-private
42 partnerships for procurement of materials for
43 infrastructure and restoration work projects; amending s.
44 373.118, F.S.; authorizing a water management district
45 governing board to delegate certain authority to the
46 executive director; requiring a water management district
47 governing board to provide a process for referring
48 application and petition denials to the board for final
49 action; exempting such delegations from rulemaking under
50 ch. 120; amending s. 373.236, F.S.; reducing the frequency
51 of compliance reports during the term of a consumptive use
52 permit; providing an exception; amending s. 373.250, F.S.;
53 requiring water management districts, in consultation with
54 the department, to adopt rules relating to reclaimed water
55 feasibility evaluations for consumptive use permit
56 applicants; providing rule requirements; encouraging reuse

57 | utilities and water management districts to periodically
 58 | coordinate and share information relating to reclaimed
 59 | water; requiring water management districts to initiate
 60 | certain rulemaking by a specified date; amending s.
 61 | 403.0877, F.S.; deleting a provision limiting the
 62 | authority of water management districts or the department
 63 | to require certification from a professional for specified
 64 | activities; providing an effective date.

65 |
 66 | Be It Enacted by the Legislature of the State of Florida:

67 |
 68 | Section 1. Section 373.227, Florida Statutes, is amended
 69 | to read:

70 | 373.227 Water conservation; legislative findings;
 71 | legislative intent; objectives; comprehensive statewide water
 72 | conservation program requirements.—

73 | (1) The Legislature recognizes that the proper
 74 | conservation of water is an important means of achieving the
 75 | economical and efficient utilization of water necessary, in
 76 | part, to constitute a reasonable-beneficial use. The overall
 77 | water conservation goal of the state is to prevent and reduce
 78 | wasteful, uneconomical, impractical, or unreasonable use of
 79 | water resources. The Legislature finds that the social,
 80 | economic, and cultural conditions of the state relating to the
 81 | use of public water supply vary by service area and that public
 82 | water supply utilities must have the flexibility to tailor water
 83 | conservation measures to best suit their individual
 84 | circumstances. The Legislature encourages the use of efficient,

85 | effective, and affordable water conservation measures. Where
86 | water is provided by a public water supply utility, the
87 | Legislature intends that a variety of conservation measures be
88 | made available and used to encourage efficient water use. To
89 | achieve these conservation objectives, the state should
90 | emphasize goal-based, accountable, tailored, and measurable
91 | water conservation programs for public water supply. For
92 | purposes of this section, the term "public water supply utility"
93 | includes both publicly owned and privately owned public water
94 | supply utilities that sell potable water on a retail basis to
95 | end users.

96 | (2) To implement the findings in subsection (1), the
97 | department, in cooperation with the water management districts
98 | and other stakeholders, shall develop a comprehensive statewide
99 | water conservation program for public water supply. The program
100 | should:

101 | (a) Encourage utilities to implement water conservation
102 | programs that are economically efficient, effective, affordable,
103 | and appropriate;

104 | (b) Allow no reduction in, and increase where possible,
105 | utility-specific water conservation effectiveness over current
106 | programs;

107 | (c) Be goal-based, accountable, measurable, and
108 | implemented collaboratively with water suppliers, water users,
109 | and water management agencies;

110 | (d) Include cost and benefit data on individual water
111 | conservation practices to assist in tailoring practices to be
112 | effective for the unique characteristics of particular utility

113 service areas, focusing upon cost-effective measures;

114 (e) Use standardized public water supply conservation
 115 definitions and standardized quantitative and qualitative
 116 performance measures for an overall system of assessing and
 117 benchmarking the effectiveness of water conservation programs
 118 and practices;

119 (f) Create a Conserve Florida Clearinghouse ~~or inventory~~
 120 for water conservation programs and practices available to
 121 public water supply utilities which will provide an integrated
 122 statewide database for the collection, evaluation, and
 123 dissemination of quantitative and qualitative information on
 124 public water supply conservation programs and practices and
 125 their effectiveness. The clearinghouse ~~or inventory~~ should have
 126 technical assistance capabilities to aid in the design,
 127 refinement, and implementation of water conservation programs
 128 and practices. The clearinghouse ~~or inventory~~ shall also provide
 129 for continual assessment of the effectiveness of water
 130 conservation programs and practices;

131 (g) Develop a standardized water conservation planning
 132 process for utilities; and

133 (h) Develop and maintain a Florida-specific Conserve
 134 Florida Clearinghouse Guide ~~water conservation guidance document~~
 135 containing a menu of affordable and effective water conservation
 136 practices to assist public water supply utilities in the design
 137 and implementation of goal-based, utility-specific water
 138 conservation plans tailored for their individual service areas
 139 as provided in subsection (5) ~~(4)~~.

140 (3) The Conserve Florida Clearinghouse Guide is recognized

141 as an appropriate tool to assist public water supply utilities
142 in developing goal-based water conservation plans to meet the
143 water conservation requirements for obtaining consumptive use
144 permits. Water management districts and public water supply
145 utilities are encouraged to use the guide in developing water
146 conservation plans, reporting on the implementation of water
147 conservation practices and measures included in consumptive use
148 permits, evaluating proposals for financial cost sharing of
149 water conservation activities, and assessing the effectiveness
150 of water conservation projects.

151 ~~(4)~~~~(3)~~ Regarding the use of water conservation or drought
152 rate structures as a conservation practice, a water management
153 district shall afford a public water supply utility wide
154 latitude in selecting a rate structure and shall limit its
155 review to whether the utility has provided reasonable assurance
156 that the rate structure contains a schedule of rates designed to
157 promote efficient use of water by providing economic incentives.
158 A water management district shall not fix or revise rates.

159 ~~(5)~~~~(4)~~ As part of an application for a consumptive use
160 permit, a public water supply utility may propose a goal-based
161 water conservation plan that is tailored to its individual
162 circumstances as a partial or entire alternative to the water
163 conservation requirements adopted by the appropriate water
164 management district. The public water supply utility is
165 encouraged, but not required, to use the Conserve Florida
166 Clearinghouse Guide in developing its goal-based water
167 conservation plan. The plan shall include a schedule for
168 implementing the water conservation goal or goals. The plan must

169 include a means for measuring progress towards the water
170 conservation goal or goals ~~must be measurable.~~

171 (6) If a public water supply utility elects to develop a
172 goal-based water conservation plan, the utility shall submit the
173 goal or goals and the plan to the appropriate water management
174 district. The plan must be designed to achieve the water
175 conservation goal or goals approved by the district in a cost-
176 effective manner, considering the utility's customers, service
177 area, and other individual circumstances of the utility. The
178 water management district shall review the goal or goals and
179 approve them if they are consistent with s. 373.223(1) and
180 approve the plan if it meets the requirements of this section.
181 ~~If the utility provides reasonable assurance that the plan will~~
182 ~~achieve effective water conservation at least as well as the~~
183 ~~water conservation requirements adopted by the appropriate water~~
184 ~~management district and is otherwise consistent with s. 373.223,~~
185 ~~the district must approve the plan which shall satisfy water~~
186 ~~conservation requirements imposed as a condition of obtaining a~~
187 ~~consumptive use permit. The conservation measures included in an~~
188 ~~approved goal-based water conservation plan may be reviewed~~
189 ~~periodically and updated as needed to ensure efficient water use~~
190 ~~for the duration of the permit. If the plan fails to meet the~~
191 ~~water conservation goal or goals by the timeframes specified in~~
192 ~~the permit, the public water supply utility shall revise the~~
193 ~~plan to address the deficiency or employ the water conservation~~
194 ~~requirements that would otherwise apply in the absence of an~~
195 ~~approved goal-based plan.~~

196 ~~(5) By December 1, 2005, the department shall submit a~~

197 ~~written report to the President of the Senate, the Speaker of~~
 198 ~~the House of Representatives, and the appropriate substantive~~
 199 ~~committees of the Senate and the House of Representatives on the~~
 200 ~~progress made in implementing the comprehensive statewide water~~
 201 ~~conservation program for public water supply required by this~~
 202 ~~section. The report must include any statutory changes and~~
 203 ~~funding requests necessary for the continued development and~~
 204 ~~implementation of the program.~~

205 (7)~~(6)~~ The department or a water management district may
 206 adopt rules pursuant to ss. 120.536(1) and 120.54 to carry out
 207 the purposes of this section.

208 Section 2. Section 298.66, Florida Statutes, is amended to
 209 read:

210 298.66 Obstruction of drainage canals, etc., prohibited;
 211 damages; penalties.—

212 (1) ~~A~~ ~~No~~ person may not willfully, or otherwise, obstruct
 213 any public canal, drain, ditch, or watercourse or damage or
 214 destroy any public drainage works constructed in or maintained
 215 by any district.

216 (2)~~(1)~~ Any person who ~~shall~~ willfully obstructs ~~obstruct~~
 217 any public canal, drain, ditch or watercourse or damages or
 218 destroys ~~shall damage or destroy~~ any public drainage works
 219 constructed in or maintained by any district ~~is,~~ ~~shall be~~ liable
 220 to any person injured thereby for the full amount of the injury
 221 occasioned to any land or crops or other property by reason of
 222 such misconduct, ~~and is~~ ~~shall be~~ liable to the district
 223 constructing the drainage ~~said~~ work for double the cost of
 224 removing the ~~such~~ obstruction or repairing the ~~such~~ damage.

225 (3)~~(2)~~ Any person who ~~whoever shall~~ willfully, or
 226 otherwise, obstructs ~~obstruct~~ any public canal, drain, ditch, or
 227 watercourse, impedes or obstructs ~~impede or obstruct~~ the flow of
 228 water therein, or damages or destroys ~~shall damage or destroy~~
 229 any public drainage works constructed in or maintained by any
 230 district commits ~~shall be guilty of~~ a felony of the third
 231 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 232 775.084.

233 Section 3. Subsection (1) of section 373.0361, Florida
 234 Statutes, is amended to read:

235 373.0361 Regional water supply planning.—

236 (1) The governing board of each water management district
 237 shall conduct water supply planning for any water supply
 238 planning region within the district identified in the
 239 appropriate district water supply plan under s. 373.036, where
 240 it determines that existing sources of water are not adequate to
 241 supply water for all existing and future reasonable-beneficial
 242 uses and to sustain the water resources and related natural
 243 systems for the planning period. The planning must be conducted
 244 in an open public process, in coordination and cooperation with
 245 local governments, regional water supply authorities,
 246 government-owned and privately owned water and wastewater
 247 utilities, multijurisdictional water supply entities, self-
 248 suppliers, reuse utilities, the department, and other affected
 249 and interested parties. The districts shall actively engage in
 250 public education and outreach to all affected local entities and
 251 their officials, as well as members of the public, in the
 252 planning process and in seeking input. During preparation, but

253 prior to completion of the regional water supply plan, the
 254 district must conduct at least one public workshop to discuss
 255 the technical data and modeling tools anticipated to be used to
 256 support the regional water supply plan. The district shall also
 257 hold several public meetings to communicate the status, overall
 258 conceptual intent, and impacts of the plan on existing and
 259 future reasonable-beneficial uses and related natural systems.
 260 During the planning process, a local government may choose to
 261 prepare its own water supply assessment to determine if existing
 262 water sources are adequate to meet existing and projected
 263 reasonable-beneficial needs of the local government while
 264 sustaining water resources and related natural systems. The
 265 local government shall submit such assessment, including the
 266 data and methodology used, to the district. The district shall
 267 consider the local government's assessment during the formation
 268 of the plan. A determination by the governing board that
 269 initiation of a regional water supply plan for a specific
 270 planning region is not needed pursuant to this section shall be
 271 subject to s. 120.569. The governing board shall reevaluate such
 272 a determination at least once every 5 years and shall initiate a
 273 regional water supply plan, if needed, pursuant to this
 274 subsection.

275 Section 4. Subsection (4) of section 373.079, Florida
 276 Statutes, is amended to read:

277 373.079 Members of governing board; oath of office;
 278 staff.-

279 (4) ~~(a)~~ The governing board of the district shall ~~is~~
 280 ~~authorized to~~ employ:

281 (a) An executive director, ombudsman, and such engineers,
282 other professional persons, and other personnel and assistants
283 as it deems necessary and under such terms and conditions as it
284 may determine and to terminate such employment. The appointment
285 of an executive director by the governing board is subject to
286 approval by the Governor and must be initially confirmed by the
287 ~~Florida~~ Senate. The governing board may delegate all or part of
288 its authority under this paragraph to the executive director.
289 However, the governing board shall delegate to the executive
290 director all of its authority to take final action on permit
291 applications under ~~part II or~~ part IV or petitions for variances
292 or waivers of permitting requirements under ~~part II or~~ part IV,
293 ~~except for denials of such actions as provided in s. 373.083(5).~~
294 The executive director may execute such delegated authority
295 through designated staff members. Such delegations shall not be
296 subject to the rulemaking requirements of chapter 120. The
297 governing board must provide a process for referring a denial of
298 such application or petition to the governing board for the
299 purpose of taking final action. The executive director must be
300 confirmed by the Senate upon employment and must be confirmed or
301 reconfirmed by the Senate during the second regular session of
302 the Legislature following a gubernatorial election.

303 (b) The delegation required by this subsection shall
304 expressly prohibit governing board members from individually
305 intervening in any manner during the review of an application
306 before such application is referred to the governing board for
307 final action. This paragraph does not prohibit the governing
308 board as a collegial body from acting on any permit application

309 or supervising, overseeing, or directing the activities of
 310 district staff. This paragraph shall expire on June 1, 2011,
 311 unless reenacted by the Legislature.

312 ~~(c) (b) 1. The governing board of each water management~~
 313 ~~district shall employ~~ An inspector general, who shall report
 314 directly to the board. However, the governing boards of the
 315 Suwannee River Water Management District and the Northwest
 316 Florida Water Management District may jointly employ an
 317 inspector general, or provide for inspector general services by
 318 interagency agreement with a state agency or water management
 319 district inspector general.

320 ~~2.~~ An inspector general must have the same qualifications
 321 ~~prescribed~~ and perform the applicable duties of state agency
 322 inspectors general as provided in s. 20.055.

323 Section 5. Subsection (5) of section 373.083, Florida
 324 Statutes, is amended to read:

325 373.083 General powers and duties of the governing board.—
 326 In addition to other powers and duties allowed it by law, the
 327 governing board is authorized to:

328 (5) Execute any of the powers, duties, and functions
 329 vested in the governing board through a member ~~or members~~
 330 ~~thereof~~, the executive director, or other district staff as
 331 designated by the governing board. The governing board may
 332 establish the scope and terms of any delegation. However, if the
 333 governing board delegates ~~shall delegate~~ to the executive
 334 director ~~all of~~ its authority to take final action on permit
 335 applications under part II ~~or part IV~~ or petitions for variances
 336 or waivers of permitting requirements under part II ~~or part IV~~,

337 ~~and~~ the executive director may execute such delegated authority
 338 through designated staff. Such delegations shall not be subject
 339 to the rulemaking requirements of chapter 120. However, the
 340 governing board must ~~shall~~ provide a process for referring a ~~any~~
 341 denial of such application or petition to the governing board
 342 for the purpose of taking to take final action. ~~Such process~~
 343 ~~shall expressly prohibit any member of a governing board from~~
 344 ~~intervening in any manner during the review of an application~~
 345 ~~prior to such application being referred to the governing board~~
 346 ~~for final action.~~ The authority to delegate under ~~in~~ this
 347 subsection is supplemental to any other provision of this
 348 chapter granting authority to the governing board to delegate
 349 specific powers, duties, or functions.

350 Section 6. Subsection (1) of section 373.085, Florida
 351 Statutes, is amended to read:

352 373.085 Use of works or land by other districts or private
 353 persons.—

354 (1) (a) In order to promote water quantity and water
 355 resource development, projects that improve flood control, and
 356 conservation of lands, the district and other governmental
 357 agencies shall encourage public-private partnerships by
 358 collaborating, when possible, with those partnerships when
 359 procuring materials for infrastructure and restoration work
 360 projects, consistent with district and state procurement
 361 procedures.

362 (b) The governing board has authority to prescribe the
 363 manner in which local works provided by other districts or by
 364 private persons will connect with and make use of the works or

365 land of the district, to issue permits therefor, and to cancel
366 the permits for noncompliance with the conditions thereof or for
367 other cause. It is unlawful to connect with or make use of the
368 works or land of the district without consent in writing from
369 its governing board, and the board has authority to prevent or,
370 if done, estop or terminate the same. The use of the works or
371 land of the district for access is governed by this section and
372 is not subject to the provisions of s. 704.01. However, any land
373 or works of the district which have historically been used for
374 public access to the ocean by means of the North New River Canal
375 and its tributaries may not be closed for this purpose unless
376 the district can demonstrate that significant harm to the
377 resource would result from such public use.

378 Section 7. Subsection (5) is added to section 373.118,
379 Florida Statutes, to read:

380 373.118 General permits; delegation.-

381 (5) To improve efficiency, the governing board may
382 delegate its powers and duties pertaining to general permits to
383 the executive director. The executive director may execute such
384 delegated authority through designated staff. However, when
385 delegating the authority to take final action on permit
386 applications under part II or petitions for variances or waivers
387 of permitting requirements under part II, the governing board
388 must provide a process for referring a denial of such
389 application or petition to the governing board for the purpose
390 of taking final action. Such delegations shall not be subject to
391 the rulemaking requirements of chapter 120.

392 Section 8. Subsection (4) of section 373.236, Florida
393 Statutes, is amended to read:

394 373.236 Duration of permits; compliance reports.—

395 (4) Where necessary to maintain reasonable assurance that
396 the conditions for issuance of a 20-year permit can continue to
397 be met, the governing board or department, in addition to any
398 conditions required pursuant to s. 373.219, may require a
399 compliance report by the permittee every 10 ~~5~~ years during the
400 term of a permit. The Suwannee River Water Management District
401 may require a compliance report by the permittee every 5 years
402 through July 1, 2015, and thereafter every 10 years during the
403 term of the permit. This report shall contain sufficient data to
404 maintain reasonable assurance that the initial conditions for
405 permit issuance are met. Following review of this report, the
406 governing board or the department may modify the permit to
407 ensure that the use meets the conditions for issuance. Permit
408 modifications pursuant to this subsection shall not be subject
409 to competing applications, provided there is no increase in the
410 permitted allocation or permit duration, and no change in
411 source, except for changes in source requested by the district.
412 This subsection shall not be construed to limit the existing
413 authority of the department or the governing board to modify or
414 revoke a consumptive use permit.

415 Section 9. Paragraphs (c) and (d) are added to subsection
416 (3) of section 373.250, Florida Statutes, subsections (4) and
417 (5) of that section are renumbered as subsections (5) and (6),
418 respectively, and a new subsection (4) is added to that section,
419 to read:

420 373.250 Reuse of reclaimed water.—

421 (3) The water management district shall, in consultation
422 with the department, adopt rules to implement this section. Such
423 rules shall include, but not be limited to:

424 (c) Provisions to require permit applicants to provide, as
425 part of their reclaimed water feasibility evaluation for a
426 nonpotable use, written documentation from a reuse utility
427 addressing the availability of reclaimed water. This requirement
428 shall apply when the applicant's proposed use is within an area
429 that is or may be served with reclaimed water by a reuse utility
430 within a 5-year horizon, as established by the reuse utility and
431 provided to the district. If the applicable reuse utility fails
432 to respond or does not provide the information required under
433 paragraph (d) within 30 days after receipt of the request, the
434 applicant shall provide to the district a copy of the written
435 request and a statement that the utility failed to provide the
436 requested information. The district is not required to adopt, by
437 rule, the area where written documentation from a reuse utility
438 is required, but the district shall publish the area, and any
439 updates thereto, on the district's website. This paragraph may
440 not be construed to limit the ability of a district to require
441 the use of reclaimed water or to limit a utility's ability to
442 plan reclaimed water infrastructure.

443 (d) Provisions specifying the content of the documentation
444 required in paragraph (c), including sufficient information
445 regarding the availability and costs associated with the
446 connection to and the use of reclaimed water, to facilitate the
447 permit applicant's reclaimed water feasibility evaluation.

448 (4) Reuse utilities and the applicable water management
 449 district or districts are encouraged to periodically coordinate
 450 and share information concerning the status of reclaimed water
 451 distribution system construction, the availability of reclaimed
 452 water supplies, and existing consumptive use permits in areas
 453 served by the reuse utility.

454 Section 10. The water management districts shall initiate
 455 rulemaking no later than July 1, 2011, to implement the
 456 requirements of s. 373.250(3)(c) and (d), Florida Statutes, as
 457 created by this act.

458 Section 11. Section 403.0877, Florida Statutes, is amended
 459 to read:

460 403.0877 Certification by professionals regulated by the
 461 Department of Business and Professional Regulation.—

462 ~~(1) Nothing in this section shall be construed as specific~~
 463 ~~authority for a water management district or the department to~~
 464 ~~require certification by a professional engineer licensed under~~
 465 ~~chapter 471, a professional landscape architect licensed under~~
 466 ~~part II of chapter 481, a professional geologist licensed under~~
 467 ~~chapter 492, or a professional surveyor and mapper licensed~~
 468 ~~under chapter 472, for an activity that is not within the~~
 469 ~~definition or scope of practice of the regulated profession.~~

470 (1)(2) If an application for a permit or license to
 471 conduct an activity regulated under this chapter, chapter 373,
 472 chapter 376, or any permitting program delegated to a water
 473 management district by a state agency, or to undertake
 474 corrective action of such activity or program ordered by the
 475 department or a water management district, requires the services

476 of a professional ~~as enumerated in subsection (1)~~, the
477 department or governing board of a water management district may
478 require, by rule, in conjunction with such an application or any
479 submittals required as a condition of granting a permit or
480 license, or in conjunction with the order of corrective action,
481 such certification by the professional as is necessary to ensure
482 that the proposed activity or corrective action is designed,
483 constructed, operated, and maintained in accordance with
484 applicable law and rules of the department or district and in
485 conformity with proper and sound design principles, or other
486 such certification by the professional as may be necessary to
487 ensure compliance with applicable law or rules of the department
488 or district. The department or governing board of a water
489 management district may further require as a condition of
490 granting a permit or license, or in conjunction with ordering
491 corrective action that the professional certify upon completion
492 of the permitted or licensed activity or corrective action that
493 such activity or corrective action has, to the best of his or
494 her knowledge, been completed in substantial conformance with
495 the plans and specifications approved by the department or
496 board.

497 (2)~~(3)~~ The cost of such certifications by the professional
498 shall be borne by the permittee or the person ordered to correct
499 the permitted activity.

500 (3)~~(4)~~ A permitted or licensed activity or corrective
501 action that is required to be so certified upon completion of
502 the activity or action may not be placed into use or operation
503 until the professional's certificate is filed with the

CS/HB 7177, Engrossed 1

2010

504 | department or board.

505 | Section 12. This act shall take effect July 1, 2010.