

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Agriculture Committee

BILL: CS/CS/SB 1514

INTRODUCER: Agriculture Committee, Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Permitting of Consumptive Uses of Water

DATE: April 13, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Akhavein</u>	<u>Spalla</u>	<u>AG</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute for Committee Substitute (CS/CS) addresses issues related to environmental regulation. It:

- Clarifies that the term “alternative water supplies” as defined by statute does not include non-brackish groundwater supply development;
- Provides that if the Department of Environmental Protection (DEP) or the governing board of a water management district requires a compliance review of a permit holder’s compliance reports following issuance of a 20-year consumptive use permit (CUP) that the review must be completed within three months and with no more than one additional request for information during the review. It also reduces costly reporting requirements for 20-year permit holders by providing that quality assurance reports only have to be submitted every ten years, rather than every five years.
- Specifies how water management districts (WMD) should evaluate CUP applications in mandatory reuse zones but exempts agricultural uses from this requirement.

- Shifts, for a limited time, existing revenue of the Lake Belt water treatment upgrade fee to the South Florida WMD from Miami-Dade County to fund a seepage control project.
- Adds additional criterion to the list of factors a WMD governing board must consider when funding a water supply development project.
- Requires the WMDs, in consultation with the DEP to examine options to better coordinate CUPs with water supply planning and report findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives.

This CS/CS substantially amends ss. 373.019, 373.236, 373.250, 373.2234, 373.243, 373.41492, and 373.707 of the Florida Statutes. It also creates an unnumbered section of law.

II. Present Situation:

Permitting of Consumptive Uses of Water

The Water Resources Act of 1972 (Act) provides for a two-tiered administrative structure governing water quality and consumption.¹ The Department of Natural Resources (now the DEP) was given general supervisory authority to coordinate statewide efforts for water management.² In addition, the Act created six WMDs along hydrological boundaries.³ Each WMD has broad regulatory authority for managing water resources and has ad valorem taxing authority to raise revenue for water management purposes.⁴ One of the most important aspects of the Act was the establishment of minimum flows and levels for the state's surface waters and groundwaters.⁵ The goal of establishing such levels is to ensure there will be enough water to satisfy consumptive use and public purposes, such as swimming, boating and environmental protection. By establishing minimum flows and levels for non-consumptive use, water managers, theoretically, will be able to establish how much water is available for consumptive use.

The WMDs administer the CUP program pursuant to Part II, ch. 373, F.S. The program includes permitting, compliance and enforcement. Any entity or person who wants to use water for certain types of activities, except those exempted by statute or rule, is required to obtain a CUP. These permits are issued for finite durations and, upon expiration, must be renewed. No entity or type of use is given priority over another. However, when two or more applications are pending for a quantity of water that is not available to satisfy both permits, the DEP or governing board grants the permit to the applicant whose activities best serve the public interest. In this instance, preference is also given to applications for renewal over initial applications.⁶

¹ The act was based on the first four chapters of *A Model Water Code*. Frank E. Maloney, et al., *A Model Water Code with Commentary* (Univ. of Fla. Press 1972).

² Section 373.026(7), F.S.

³ In 1977, the Florida Legislature dissolved the Ridge and Lower Gulf Coast WMD and divided its territory between the South Florida and Southwest Florida WMDs. See ch.77-104, s. 113, Laws of Fla.

⁴ Fla. CONST. art. VII, s. 9.

⁵ Maloney, *supra* note 1. See also s. 373.042(1), F.S.

⁶ See s. 373.223, F.S.

Currently, the DEP and the WMDs may issue a CUP for a period of 20 years if requested, provided there is sufficient data that provides reasonable assurance that the conditions of the permit will be met during the duration of the permit. A CUP may be issued for period of up to 50 years if the related construction bonds for waterworks and waste disposal facilities require a longer period. In addition, the DEP and a WMD may require compliance reporting every 10 years as a condition of the permit.⁷ CUPs for the development of alternative water supplies must be granted for periods of at least 20 years and require compliance reporting. Both the Southwest Florida and South Florida WMDs allocate enough water in their respective CUPs to satisfy the expected usage at the end of the CUP's duration. For example, an applicant requests a 100,000 gallon per day CUP for 20 years. The applicant expects 15 percent usage increase over the duration of the CUP. The Southwest Florida and South Florida WMDs will allocate 115,000 gallons per day on day one of the CUP to account for the increased demand 20 years later.

Section 373.219, F.S., gives the WMDs the authority to define the requirements for issuance of these permits. Such requirements, however, must follow a set of conditions enumerated in s. 373.223(1), F.S. These conditions state a three-prong test applicants must meet for the water use to be accepted:

- Is the use a reasonable-beneficial use as defined in statute;
- Will the use interfere with any presently existing legal use of water; and
- Is the use consistent with the public interest?

Pursuant to their rulemaking authority, each WMD has adopted rules that detail when and what type of permit, individual or general, an applicant may need.⁸

Generally, WMDs require a CUP when:

- The planned withdraw exceeds 100,000 gallons per day, or
- The outside diameter of the groundwater well is six inches or larger, or
- The outside diameter of the withdrawal pipe from a surface water is four inches or larger, or
- The total withdrawal capacity of the system is one million gallons per day or larger.

Some exceptions to these general guidelines exist and are generally based on the individual hydrologic conditions of certain areas within the district. Traditional exemptions for this permitting program include, single family homes or duplexes, fire fighting water wells, salt water use and reclaimed water use.

Reuse of Reclaimed Water

The promotion of reuse of reclaimed water is established in ss. 403.064 and 373.250, F.S., as a formal state objective. The DEP and WMDs maintain the largest and most comprehensive inventory of permitted reuse systems in the country. The inventory allows the state to monitor progress on reclaimed water efforts and further promote and expand its uses in Florida. In addition, the inventory provides municipalities and utilities interested in developing reuse

⁷ Chapter 2010-205, s. 55, Laws of Fla.

⁸ See the following Florida Administrative Code rules for each district's criteria: 40A-2 (Northwest Florida); 40B-2 (Suwannee River); 40C-2 (St. Johns River); 40D-2 (Southwest Florida); and 40E-2 (South Florida).

programs access to other communities and utilities that have already implemented reuse programs.⁹ Reuse of reclaimed water is used to supplement use of potable water sources for public use purposes. Those purposes may include:¹⁰

- Public access areas and landscape irrigation,
- Agricultural irrigation,
- Groundwater recharge and indirect potable reuse,
- Industrial,
- Toilet flushing,
- Fire protection, and
- Wetlands.

Wastewater facilities having permitted capacities of 0.1 million gallons per day (mgd) or greater provide annual reports to the DEP for inclusion in the reuse inventory.¹¹ In 2009, there were a total of 548 wastewater facilities with a combined permitted capacity of 2,497 mgd and a total actual flow of 1,555 mgd. Not all facilities have reuse programs; however, the total permitted capacity of reuse is 1,559 mgd. In 2009, 673 mgd of reclaimed water was reused.¹² The reclaimed water was used to irrigate 276,471 residences, 533 golf course, 873 parks and 306 schools.¹³ As may be expected, reuse in the St. Johns River, Southwest Florida and South Florida WMDs accounted for nearly 90 percent of all reuse in 2009.¹⁴ These three WMDs are the only ones where mandatory reuse zones have been created by local governments.¹⁵

Mandatory Reuse Zones

Mandatory reuse zones are established by local governments and prohibit the use of other water sources when reclaimed water is available. Regulating reuse is not as simple as traditional sources of water. The WMDs contend that reuse falls under the regulatory authority of Part II, ch. 373, F.S., which governs permitting of consumptive uses of water. On the other hand, utilities contend that reuse is a product they created and therefore have sole discretionary control over it.¹⁶ Because of this, potential conflicts of regulatory authority arise in mandatory reuse zones. To address this situation, the St. Johns River WMD and a local government have developed ordinance language that allows for reuse in these zones unless the WMD authorizes another water source.¹⁷ However, better coordination is needed between the WMDs, local governments and public water utilities.

⁹ Florida Dep't of Environmental Protection, *2009 Water Reuse Inventory*, available at http://dep.state.fl.us/water/reuse/docs/inventory/2009_reuse-report.pdf (last visited Mar. 28, 2011).

¹⁰ *Id.* at 5.

¹¹ See rule 62-610, F.A.C.

¹² See *supra* note 9, at 3.

¹³ See *supra* note 9, at 2.

¹⁴ See *supra* note 9, at 7.

¹⁵ Florida Dep't of Environmental Protection, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings*, available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Mar. 28, 2011).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

Mitigation for Mining Activities Within the Miami-Dade County Lake Belt

Construction aggregates provide the basic materials needed for concrete, asphalt, and road base. Aggregate materials are located in various natural deposits around the state. Geologic conditions and other issues affect decisions in mine planning. These issues include the quality of the rock, thickness of overburden, water table levels, and sinkhole conditions. The most economically advantageous deposits of aggregate materials are located in 79 square miles in Northwest Miami-Dade County known as the Lake Belt. The Lake Belt is distinct in that it has been identified as the highest concentration of the highest quality aggregate indigenous to Florida. Nearly all aggregates mined in Florida are used in state.

Limestone operations in the Lake Belt are guided by the Lake Belt Mitigation Plan. The Lake Belt Plan protects the Everglades from encroaching development while maintaining the numerous economic benefits of the state's limestone industry. Under the plan, the Lake Belt limestone companies pay a special mitigation fee to acquire, restore and preserve environmentally sensitive lands and fund other important environmental projects. The Lake Belt limestone companies also pay a water treatment plant upgrade fee of 15 cents per ton. Limestone operations in the Lake Belt require water quality certification from the state and a dredge and fill permit from the Corps.

In 2008, Miami-Dade County retained an engineering consultant to plan and design the needed water treatment facilities. The consultant determined that previous estimates for such facilities failed to account for upgrades that would be needed to existing water plant facilities such that constructing the needed facilities would not be practical at the existing water plant site. The minimum design and construction cost for facilities that will meet the current surface water treatment costs is approximately \$350 million. Future bond funding, in addition to the rock mining fees, is identified in the County's capital plan for this project. To date Miami-Dade County has received approximately \$16.2 million in rock mining fees. About \$9.8 million has been spent on planning and design, and about \$6.4 million remains, of which \$3 million is committed to the current design contract.

Alternative Water Supply Development

Passed during the 2005 Legislative Session, SB 444 added major revisions to Part I, ch. 373, F.S. It marked the first time in Florida that alternative water resource development, and the money for such, was implemented. The amendments provided numerous changes to Florida water protection and alternative water supply development programs. The primary goal of SB 444 was to create a \$100 million annual funding program entitled the "Water Protection and Sustainability Program" to assist in the implementation of many existing water protection and development programs.¹⁸ In addition, funding was provided for a new alternative water supply development program. Section 373.707(8)(f), F.S., requires the WMD governing boards to prioritize financial assistance for development of alternative water supplies. The governing boards may establish factors to determine funding but must give significant weight to nine criteria contained in this subsection.

¹⁸ See ch. 2005-291, s. 3, Laws of Fla. Also, state funding has not been provided for alternative water supply development for the past two fiscal years.

III. Effect of Proposed Changes:

Section 1 amends s. 373.019, F.S., to redefine the term “alternative water supplies” to exclude the development of non-brackish groundwater supply development.

Section 2 amends s. 373.236, F.S., to require the Department of Environmental Protection or a governing board to limit its review of compliance reports following issuance of a CUP to a 3-month period and with no more than one additional request for information. It provides for the governing board rather than the district to grant permits for certain projects. The CS/CS extends the term to 10 years from 5 years for submitting compliance reports and allows a permit to be issued for a shorter period if requested by the applicant. It also provides for the modification of existing CUPs under certain conditions.

Section 3 amends s. 373.250, F.S., to add a new section related to mandatory reuse zones. The CS/CS requires the WMDs to recognize mandatory reuse zones established by local governments. When evaluating a CUP application for use in a mandatory reuse zone, a WMD must consider the following:

- If reclaimed water is available and technically and environmentally feasible for the proposed use, a WMD shall presume it is economically feasible as well. The applicant has the burden of proof to show otherwise;
- Applicants in these zones are required to consider the feasibility of reclaimed water for nonpotable uses. This requirement extends to all regulated water uses, except for those that are exempt from permitting; and
- In a mandatory reuse zone, reclaimed water use is given priority over all other water sources for nonpotable use. Using reclaimed water is required if it is technically, environmentally and economically feasible.

The CS/CS does not limit the ability of a reuse utility, local government or special district from prohibiting using potable water for nonpotable uses when reclaimed water can meet the demand. The CS/CS exempts agricultural uses on agricultural lands from the provisions of this section; however, it does not affect the authority of a WMD to consider reuse for agricultural permits.

Sections 4 and 5 amend ss. 373.2234 and 373.243, respectively, to provide conforming changes for the changes contained in this CS/CS for issuance of 20-year CUPs.

Section 6 amends s. 373.41492, F.S., relating to mitigation for mining activities within the Miami-Dade County Lake Belt. The CS/CS provides that beginning January 1, 2012, and ending either December 31, 2017, or upon issuance of Water Quality Certification for Phase II mining activities, whichever occurs later, proceeds from the water treatment plant upgrade fee, less administrative costs, must be redirected to South Florida WMD and deposited into the Lake Belt Mitigation Trust Fund. Also, beginning January 1, 2018, this same fee is to be returned to Miami-Dade County for activities authorized under this section. The CS/CS provides that the proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund must only be used to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an environmental resource permit issued by DEP for mining activities within the Miami-Dade County Lake Belt Area. The

revenue transfer provided in this CS/CS will facilitate completion of two seepage barriers. The barriers will allow for the release of water beneath the Tamiami Bridge, which is currently under construction, into an area of the Everglades for the first time in 50 years.

Section 7 amends s. 373.707, F.S., to add an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

Section 8 creates an unnumbered section of law. The CS requires each WMD, in coordination with the DEP, to examine options to better coordinate CUPs with water supply planning by extending and reconciling CUP durations so they expire and can be renewed simultaneously in a given basin. Each WMD must report its findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2012.

Section 9 provides an effective date of July 1, 2011.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Refer to Government Sector Impact, Miami-Dade County Lake Belt Mitigation Plan.

B. Private Sector Impact:

CUPS

Costs for preparing CUP applications will decrease because applicants will no longer have to provide reasonable assurances they can meet the conditions of CUPs for their duration in order to receive 20-year permits. Additionally, compliance reporting costs will be eliminated as the report is no longer required. For applicants in the Southwest or

South Florida WMDs, if there is not enough water to adequately satisfy their application requests, they may be required to provide their own water sources, either through development or purchase, or not conduct the activity they requested for the CUP. Developing or buying water allocations is a significant expense but can only be evaluated on a case-by-case basis. Thus, the fiscal impact cannot be determined at this point.

Reuse

Applicants for CUPs in mandatory reuse zones will bear the burden of proving that using reclaimed water is not economically feasible for their purposes. Agricultural operations will not bear this burden as they are exempt.

C. **Government Sector Impact:**

CUPS

Costs for reviewing CUP applications will decrease as reasonable assurance will no longer be included in the application. Additionally, costs for reviewing compliance reports will be eliminated as the report is no longer required.

Reuse

The WMDs expect they can meet the requirements of this section of the CS with existing staff and resources.

Miami-Dade County Lake Belt Mitigation Plan

Miami-Dade County has expressed reservations with the provision that diverts rock mining fees away from drinking water treatment facilities. Even though the diversion is for a limited time (until December 31, 2017), the county believes it will adversely impact its ability to design and construct the additional treatment facilities needed to protect the drinking water supply in the area. This fee is \$0.15 per ton of extracted limerock and sand that is subject to the fee. The South Florida WMD will receive the proceeds of the fee to deposit into the appropriate trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture Committee on April 11, 2011:
CS/CS/SB 1514 is different from CS/SB 1514 in that it:

- Clarifies that the term “alternative water supplies” as defined by statute does not include non-brackish groundwater supply development.
- Changes the review timeline for issuance of a consumptive use permit and allows only one request for additional information;
- Deletes Section 3 which directed the water management districts to implement a sustainable water use permit program for public water utilities;
- Redirects, for a limited time, existing revenues of a water treatment upgrade fee to the South Florida WMD from Miami-Dade County to fund two seepage control barriers that are part of the Everglades Restoration Project in the Miami-Dade County Lake Belt Area; and
- Makes technical and conforming changes.

CS by Environmental Preservation and Conservation on March 30, 2011:

Agricultural uses for water are exempt from the mandatory reuse zone requirements contained in this CS. The WMDs still have the authority to consider the feasibility of using reclaimed water in any permit for agricultural use of water. The CS modifies one criterion of the sustainable use permit to allow capture and recovery from alternative water supply sources. Lastly, the CS adds an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

B. Amendments:

None.