

By Senator Latvala

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1 A bill to be entitled
2 An act relating to permitting of consumptive uses of
3 water; amending s. 373.236, F.S.; requiring
4 consumptive use permits to be issued for a period of
5 20 years; providing exceptions; deleting legislative
6 findings requiring the Department of Environmental
7 Protection to provide certain information to
8 agricultural applicants; eliminating requirements for
9 permit compliance reports; removing the authority of
10 the department and the water management district
11 governing boards to request permit compliance reports
12 and to modify or revoke consumptive use permits;
13 providing for the modification of existing consumptive
14 use permits under certain conditions; amending s.
15 373.250, F.S.; providing requirements for water
16 management districts in evaluating applications for
17 the consumptive use of water in mandatory reuse zones;
18 providing applicability; creating s. 373.255, F.S.;
19 requiring water management districts to implement a
20 sustainable water use permit program for public water
21 utilities; providing program criteria; providing
22 permit application and issuance requirements;
23 providing requirements for permit monitoring,
24 compliance, and performance metrics; amending ss.
25 373.2234 and 373.243, F.S.; conforming cross-
26 references; directing each water management district
27 to consult with the Department of Environmental
28 Protection to examine options for improving the
29 coordination between the consumptive use permitting

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30 process and the water supply planning process by
31 extending and reconciling certain permitting
32 provisions; requiring each water management district
33 to provide a report to the Governor and the
34 Legislature; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Section 373.236, Florida Statutes, is amended to
39 read:

40 373.236 Duration of permits; ~~compliance reports.~~-

41 (1) Permits shall be granted for a period of 20 years
42 unless an applicant requests that the permit be issued for a
43 shorter period of time, ~~if requested for that period of time, if~~
44 ~~there is sufficient data to provide reasonable assurance that~~
45 ~~the conditions for permit issuance will be met for the duration~~
46 ~~of the permit; otherwise, permits may be issued for shorter~~
47 ~~durations which reflect the period for which such reasonable~~
48 ~~assurances can be provided. The governing board or the~~
49 ~~department may base the duration of permits on a reasonable~~
50 ~~system of classification according to source of supply or type~~
51 ~~of use, or both.~~

52 ~~(2) The Legislature finds that some agricultural landowners~~
53 ~~remain unaware of their ability to request a 20-year consumptive~~
54 ~~use permit under subsection (1) for initial permits or for~~
55 ~~renewals. Therefore, the water management districts shall inform~~
56 ~~agricultural applicants of this option in the application form.~~

57 (2) ~~(3)~~ The governing board or the department may authorize
58 a permit of duration of up to 50 years in the case of a

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59 municipality or other governmental body or of a public works or
60 public service corporation where such a period is required to
61 provide for the retirement of bonds for the construction of
62 waterworks and waste disposal facilities.

63 ~~(4) Where necessary to maintain reasonable assurance that~~
64 ~~the conditions for issuance of a 20-year permit can continue to~~
65 ~~be met, the governing board or department, in addition to any~~
66 ~~conditions required pursuant to s. 373.219, may require a~~
67 ~~compliance report by the permittee every 10 years during the~~
68 ~~term of a permit. The Suwannee River Water Management District~~
69 ~~may require a compliance report by the permittee every 5 years~~
70 ~~through July 1, 2015, and thereafter every 10 years during the~~
71 ~~term of the permit. This report shall contain sufficient data to~~
72 ~~maintain reasonable assurance that the initial conditions for~~
73 ~~permit issuance are met. Following review of this report, the~~
74 ~~governing board or the department may modify the permit to~~
75 ~~ensure that the use meets the conditions for issuance. Permit~~
76 ~~modifications pursuant to this subsection shall not be subject~~
77 ~~to competing applications, provided there is no increase in the~~
78 ~~permitted allocation or permit duration, and no change in~~
79 ~~source, except for changes in source requested by the district.~~
80 ~~This subsection shall not be construed to limit the existing~~
81 ~~authority of the department or the governing board to modify or~~
82 ~~revoke a consumptive use permit.~~

83 (3)~~(5)~~ Permits approved for the development of alternative
84 water supplies shall be granted for a term of at least 20 years.
85 However, if the permittee issues bonds for the construction of
86 the project, upon request of the permittee prior to the
87 expiration of the permit, that permit shall be extended for such

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88 additional time as is required for the retirement of bonds, not
89 including any refunding or refinancing of such bonds, provided
90 that the governing board determines that the use will continue
91 to meet the conditions for the issuance of the permit. ~~Such a~~
92 ~~permit is subject to compliance reports under subsection (4).~~

93 (4)(6)(a) The Legislature finds that the need for
94 alternative water supply development projects to meet
95 anticipated public water supply demands of the state is so
96 important that it is essential to encourage participation in and
97 contribution to these projects by private-rural-land owners who
98 characteristically have relatively modest near-term water
99 demands but substantially increasing demands after the 20-year
100 planning period in s. 373.709. Therefore, where such landowners
101 make extraordinary contributions of lands or construction
102 funding to enable the expeditious implementation of such
103 projects, the governing board ~~water management districts~~ and the
104 department may grant permits for such projects for a period of
105 up to 50 years to municipalities, counties, special districts,
106 regional water supply authorities, multijurisdictional water
107 supply entities, and publicly or privately owned utilities, with
108 the exception of any publicly or privately owned utilities
109 created for or by a private landowner after April 1, 2008, which
110 have entered into an agreement with the private landowner for
111 the purpose of more efficiently pursuing alternative public
112 water supply development projects identified in a district's
113 regional water supply plan and meeting water demands of both the
114 applicant and the landowner.

115 ~~(b) A permit under paragraph (a) may be granted only for~~
116 ~~that period for which there is sufficient data to provide~~

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117 ~~reasonable assurance that the conditions for permit issuance~~
118 ~~will be met. Such a permit shall require a compliance report by~~
119 ~~the permittee every 5 years during the term of the permit. The~~
120 ~~report shall contain sufficient data to maintain reasonable~~
121 ~~assurance that the conditions for permit issuance applicable at~~
122 ~~the time of district review of the compliance report are met.~~
123 ~~After review of this report, the governing board or the~~
124 ~~department may modify the permit to ensure that the use meets~~
125 ~~the conditions for issuance. This subsection does not limit the~~
126 ~~existing authority of the department or the governing board to~~
127 ~~modify or revoke a consumptive use permit.~~

128 (5)~~(7)~~ A permit approved for a renewable energy generating
129 facility or the cultivation of agricultural products on lands
130 consisting of 1,000 acres or more for use in the production of
131 renewable energy, as defined in s. 366.91(2)(d), shall be
132 granted for a term of at least 25 years at the applicant's
133 request based on the anticipated life of the facility if there
134 is sufficient data to provide reasonable assurance that the
135 conditions for permit issuance will be met for the duration of
136 the permit; otherwise, a permit may be issued for a shorter
137 duration if requested by the applicant ~~that reflects the longest~~
138 ~~period for which such reasonable assurances are provided. Such a~~
139 ~~permit is subject to compliance reports under subsection (4).~~

140 (6) If requested by an existing consumptive use permit
141 holder, the governing board shall modify the permit to bring it
142 into compliance with this section.

143 Section 2. Subsections (4), (5), and (6) of section
144 373.250, Florida Statutes, are renumbered as subsections (5),
145 (6), and (7), respectively, and a new subsection (4) is added to

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146 that section to read:

147 373.250 Reuse of reclaimed water.—

148 (4) (a) In evaluating an application for the consumptive use
149 of water, a water management district shall recognize a
150 mandatory reuse zone created by a local government or special
151 district pursuant to applicable law that requires persons
152 specified by the local government or special district to connect
153 to a reclaimed water system for irrigation and other nonpotable
154 uses, as follows:

155 1. If reclaimed water is available and technically and
156 environmentally feasible for the proposed use, the water
157 management district shall presume that reclaimed water is
158 economically feasible in a mandatory reuse zone, and the
159 applicant shall bear the burden of overcoming the presumption.

160 2. Any applicant in a mandatory reuse zone seeking
161 authorization for a nonpotable use shall consider the
162 feasibility of using available reclaimed water. This requirement
163 applies to all regulated water uses, regardless of the type of
164 permit or authorization, excluding exemptions from permitting.

165 3. In a mandatory reuse zone, the use of reclaimed water
166 shall be prioritized over other water sources for nonpotable
167 uses and shall be required if determined to be technically,
168 environmentally, and economically feasible.

169 (b) This subsection does not limit the authority of a reuse
170 utility, local government, or special district to restrict the
171 use of potable water, supplied by the potable water distribution
172 system serving its customers, for the purposes of irrigation or
173 other nonpotable uses that may be met by reclaimed water.

174 Section 3. Section 373.255, Florida Statutes, is created to

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175 read:

176 373.255 Sustainable water use permit.-

177 (1) Each water management district shall implement a
178 sustainable water use permit program for public water utilities
179 that:

180 (a) Provides a single permitting process authorizing the
181 use of water from multiple water sources.

182 (b) Encourages and facilitates the use of alternative water
183 sources.

184 (c) Stores excess captured surface water flow in off-stream
185 reservoirs or aquifer storage and recovery wellfields.

186 (d) Recovers stored water in order to reliably meet public
187 demand.

188 (e) Provides for use of traditional groundwater as a
189 supplemental source during drought conditions when stored water
190 is reduced, to the extent necessary to meet the public demand
191 for water in a reliable and efficient manner.

192 (f) Preserves traditional water supply sources for use by
193 future generations.

194 (2) A public water utility applying for a sustainable water
195 use permit must identify each source from which water is
196 proposed to be withdrawn and demonstrate for each source that
197 the withdrawal is a reasonable-beneficial use as defined in s.
198 373.019, is consistent with the public interest, and will not
199 interfere with any presently existing legal use of water.

200 (3) A sustainable water use permit:

201 (a) Shall specify all sources from which water may be
202 withdrawn and the conditions under which such withdrawals may be
203 made in order to meet the reasonable public water supply demands

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204 of the utility.

205 (b) May be issued without specifying the quantity of water
206 that is permitted to be withdrawn from any individual source.

207 (c) Shall be issued for a period of not less than 20 years,
208 with the reasonable expectation of renewal in the absence of
209 readily quantifiable changed conditions.

210 (4) Monitoring, compliance, and performance metrics for
211 sustainable water use permits shall acknowledge and accommodate
212 the natural variability and inherent uncertainty of the climate,
213 weather, and hydrology of the relevant region while
214 simultaneously enabling public water supply utilities to meet
215 the potable water demands of their customers in a reliable,
216 efficient, and cost-effective manner.

217 Section 4. Section 373.2234, Florida Statutes, is amended
218 to read:

219 373.2234 Preferred water supply sources.—The governing
220 board of a water management district is authorized to adopt
221 rules that identify preferred water supply sources for
222 consumptive uses for which there is sufficient data to establish
223 that a preferred source will provide a substantial new water
224 supply to meet the existing and projected reasonable-beneficial
225 uses of a water supply planning region identified pursuant to s.
226 373.709(1), while sustaining existing water resources and
227 natural systems. At a minimum, such rules must contain a
228 description of the preferred water supply source and an
229 assessment of the water the preferred source is projected to
230 produce. If an applicant proposes to use a preferred water
231 supply source, that applicant's proposed water use is subject to
232 s. 373.223(1), except that the proposed use of a preferred water

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233 supply source must be considered by a water management district
234 when determining whether a permit applicant's proposed use of
235 water is consistent with the public interest pursuant to s.
236 373.223(1)(c). A consumptive use permit issued for the use of a
237 preferred water supply source must be granted, when requested by
238 the applicant, for at least a 20-year period ~~and may be subject~~
239 ~~to the compliance reporting provisions of s. 373.236(4)~~. Nothing
240 in this section shall be construed to exempt the use of
241 preferred water supply sources from the provisions of ss.
242 373.016(4) and 373.223(2) and (3), or be construed to provide
243 that permits issued for the use of a nonpreferred water supply
244 source must be issued for a duration of less than 20 years or
245 that the use of a nonpreferred water supply source is not
246 consistent with the public interest. Additionally, nothing in
247 this section shall be interpreted to require the use of a
248 preferred water supply source or to restrict or prohibit the use
249 of a nonpreferred water supply source. Rules adopted by the
250 governing board of a water management district to implement this
251 section shall specify that the use of a preferred water supply
252 source is not required and that the use of a nonpreferred water
253 supply source is not restricted or prohibited.

254 Section 5. Subsection (4) of section 373.243, Florida
255 Statutes, is amended to read:

256 373.243 Revocation of permits.—The governing board or the
257 department may revoke a permit as follows:

258 (4) For nonuse of the water supply allowed by the permit
259 for a period of 2 years or more, the governing board or the
260 department may revoke the permit permanently and in whole unless
261 the user can prove that his or her nonuse was due to extreme

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262 hardship caused by factors beyond the user's control. For a
263 permit issued pursuant to s. 373.236~~(5)-(7)~~, the governing board
264 or the department may revoke the permit only if the nonuse of
265 the water supply allowed by the permit is for a period of 4
266 years or more.

267 Section 6. In consultation with the Department of
268 Environmental Protection, each water management district is
269 directed to examine options for improving the coordination
270 between the consumptive use permitting process under part II of
271 chapter 373, Florida Statutes, and the water supply planning
272 process under part VII of chapter 373, Florida Statutes, by
273 extending and reconciling the duration of issued consumptive use
274 permits to provide for the simultaneous expiration and renewal
275 of the permits, at the request of an applicant, on a rolling
276 basin-specific basis. Each water management district shall
277 report its findings and recommendations to the Governor, the
278 President of the Senate, and the Speaker of the House of
279 Representatives by January 1, 2012. This section does not affect
280 the term of any consumptive use permit issued in accordance with
281 Florida law.

282 Section 7. This act shall take effect July 1, 2011.