

By the Committee on Environmental Preservation and Conservation;  
and Senator Latvala

592-03431-11

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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; amending s. 373.707, F.S.; providing an  
27          additional weighting factor that the governing board  
28          may consider when determining which alternative water  
29          supply projects to select for financial assistance;

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30 directing each water management district to consult  
31 with the Department of Environmental Protection to  
32 examine options for improving the coordination between  
33 the consumptive use permitting process and the water  
34 supply planning process by extending and reconciling  
35 certain permitting provisions; requiring each water  
36 management district to provide a report to the  
37 Governor and the Legislature; providing an effective  
38 date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Section 373.236, Florida Statutes, is amended to  
43 read:

44 373.236 Duration of permits; ~~compliance reports.~~

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

56 ~~(2) The Legislature finds that some agricultural landowners~~  
57 ~~remain unaware of their ability to request a 20-year consumptive~~  
58 ~~use permit under subsection (1) for initial permits or for~~

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59 ~~renewals. Therefore, the water management districts shall inform~~  
60 ~~agricultural applicants of this option in the application form.~~

61 (2)~~(3)~~ The governing board or the department may authorize  
62 a permit of duration of up to 50 years in the case of a  
63 municipality or other governmental body or of a public works or  
64 public service corporation where such a period is required to  
65 provide for the retirement of bonds for the construction of  
66 waterworks and waste disposal facilities.

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

87 (3)~~(5)~~ Permits approved for the development of alternative

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88 water supplies shall be granted for a term of at least 20 years.  
89 However, if the permittee issues bonds for the construction of  
90 the project, upon request of the permittee prior to the  
91 expiration of the permit, that permit shall be extended for such  
92 additional time as is required for the retirement of bonds, not  
93 including any refunding or refinancing of such bonds, provided  
94 that the governing board determines that the use will continue  
95 to meet the conditions for the issuance of the permit. ~~Such a~~  
96 ~~permit is subject to compliance reports under subsection (4).~~

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

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117 regional water supply plan and meeting water demands of both the  
118 applicant and the landowner.

119 ~~(b) A permit under paragraph (a) may be granted only for~~  
120 ~~that period for which there is sufficient data to provide~~  
121 ~~reasonable assurance that the conditions for permit issuance~~  
122 ~~will be met. Such a permit shall require a compliance report by~~  
123 ~~the permittee every 5 years during the term of the permit. The~~  
124 ~~report shall contain sufficient data to maintain reasonable~~  
125 ~~assurance that the conditions for permit issuance applicable at~~  
126 ~~the time of district review of the compliance report are met.~~  
127 ~~After review of this report, the governing board or the~~  
128 ~~department may modify the permit to ensure that the use meets~~  
129 ~~the conditions for issuance. This subsection does not limit the~~  
130 ~~existing authority of the department or the governing board to~~  
131 ~~modify or revoke a consumptive use permit.~~

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

144 (6) If requested by an existing consumptive use permit  
145 holder, the governing board shall modify the permit to bring it

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146 into compliance with this section.

147 Section 2. Present subsections (4), (5), and (6) of section  
148 373.250, Florida Statutes, are renumbered as subsections (5),  
149 (6), and (7), respectively, and a new subsection (4) is added to  
150 that section, to read:

151 373.250 Reuse of reclaimed water.—

152 (4) (a) In evaluating an application for the consumptive use  
153 of water, other than for an agricultural use on land that has  
154 been classified as agricultural pursuant to s. 193.461, a water  
155 management district shall recognize a mandatory reuse zone that  
156 is created by the local government or a special district  
157 pursuant to applicable law and that requires persons specified  
158 by the local government or special district to connect to a  
159 reclaimed water system for irrigation and other nonpotable uses,  
160 as follows:

161 1. Where reclaimed water is available and technically and  
162 environmentally feasible for the proposed use, the water  
163 management district shall presume that reclaimed water is  
164 economically feasible in a mandatory reuse zone, and an  
165 applicant bears the burden of overcoming the presumption;

166 2 Any applicant in a mandatory reuse zone seeking  
167 authorization for a nonpotable use shall consider the  
168 feasibility of using available reclaimed water. This requirement  
169 applies to all regulated water uses, regardless of type of  
170 permit or authorization, excluding exemptions from permitting;  
171 and

172 3. In a mandatory reuse zone, the use of reclaimed water  
173 shall be prioritized over other water sources for nonpotable  
174 uses and shall be required if determined to be technically,

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175 environmentally, and economically feasible.

176 (b) This subsection does not limit the ability of a reuse  
177 utility, the local government, or a special district to restrict  
178 the use of potable water supplied by the potable water  
179 distribution system serving its customers for the purposes of  
180 irrigation or other nonpotable uses that may be met by reclaimed  
181 water. This subsection does not affect the authority of a water  
182 management district to consider the feasibility of using  
183 reclaimed water in any permit application for the agricultural  
184 use of water.

185 Section 3. Section 373.255, Florida Statutes, is created to  
186 read:

187 373.255 Sustainable water use permit.-

188 (1) Each water management district shall implement a  
189 sustainable water use permit program for public water utilities  
190 that:

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

193 (b) Encourages and facilitates the use of alternative water  
194 sources.

195 (c) Stores excess captured surface water flow or water from  
196 an alternative water supply as defined in s. 373.019(20) in off-  
197 stream reservoirs, aquifer storage and recovery wellfields, or  
198 other means of storage for recovery.

199 (d) Recovers stored water in order to reliably meet public  
200 demand.

201 (e) Provides for use of traditional groundwater as a  
202 supplemental source during drought conditions when stored water  
203 is reduced, to the extent necessary to meet the public demand

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204 for water in a reliable and efficient manner.

205 (f) Preserves traditional water supply sources for use by  
206 future generations.

207 (2) A public water utility applying for a sustainable water  
208 use permit must identify each source from which water is  
209 proposed to be withdrawn and demonstrate for each source that  
210 the withdrawal is a reasonable-beneficial use as defined in s.  
211 373.019, is consistent with the public interest, and will not  
212 interfere with any presently existing legal use of water.

213 (3) A sustainable water use permit:

214 (a) Shall specify all sources from which water may be  
215 withdrawn and the conditions under which such withdrawals may be  
216 made in order to meet the reasonable public water supply demands  
217 of the utility.

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

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

223 (4) Monitoring, compliance, and performance metrics for  
224 sustainable water use permits shall acknowledge and accommodate  
225 the natural variability and inherent uncertainty of the climate,  
226 weather, and hydrology of the relevant region while  
227 simultaneously enabling public water supply utilities to meet  
228 the potable water demands of their customers in a reliable,  
229 efficient, and cost-effective manner.

230 Section 4. Section 373.2234, Florida Statutes, is amended  
231 to read:

232 373.2234 Preferred water supply sources.—The governing



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233 board of a water management district is authorized to adopt  
234 rules that identify preferred water supply sources for  
235 consumptive uses for which there is sufficient data to establish  
236 that a preferred source will provide a substantial new water  
237 supply to meet the existing and projected reasonable-beneficial  
238 uses of a water supply planning region identified pursuant to s.  
239 373.709(1), while sustaining existing water resources and  
240 natural systems. At a minimum, such rules must contain a  
241 description of the preferred water supply source and an  
242 assessment of the water the preferred source is projected to  
243 produce. If an applicant proposes to use a preferred water  
244 supply source, that applicant's proposed water use is subject to  
245 s. 373.223(1), except that the proposed use of a preferred water  
246 supply source must be considered by a water management district  
247 when determining whether a permit applicant's proposed use of  
248 water is consistent with the public interest pursuant to s.  
249 373.223(1)(c). A consumptive use permit issued for the use of a  
250 preferred water supply source must be granted, when requested by  
251 the applicant, for at least a 20-year period ~~and may be subject~~  
252 ~~to the compliance reporting provisions of s. 373.236(4)~~. Nothing  
253 in this section shall be construed to exempt the use of  
254 preferred water supply sources from the provisions of ss.  
255 373.016(4) and 373.223(2) and (3), or be construed to provide  
256 that permits issued for the use of a nonpreferred water supply  
257 source must be issued for a duration of less than 20 years or  
258 that the use of a nonpreferred water supply source is not  
259 consistent with the public interest. Additionally, nothing in  
260 this section shall be interpreted to require the use of a  
261 preferred water supply source or to restrict or prohibit the use

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262 of a nonpreferred water supply source. Rules adopted by the  
263 governing board of a water management district to implement this  
264 section shall specify that the use of a preferred water supply  
265 source is not required and that the use of a nonpreferred water  
266 supply source is not restricted or prohibited.

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

269 373.243 Revocation of permits.—The governing board or the  
270 department may revoke a permit as follows:

271 (4) For nonuse of the water supply allowed by the permit  
272 for a period of 2 years or more, the governing board or the  
273 department may revoke the permit permanently and in whole unless  
274 the user can prove that his or her nonuse was due to extreme  
275 hardship caused by factors beyond the user's control. For a  
276 permit issued pursuant to s. 373.236 (5) ~~(7)~~, the governing board  
277 or the department may revoke the permit only if the nonuse of  
278 the water supply allowed by the permit is for a period of 4  
279 years or more.

280 Section 6. Paragraph (f) of subsection (8) of section  
281 373.707, Florida Statutes, is amended to read:

282 373.707 Alternative water supply development.—

283 (8)

284 (f) The governing boards shall determine those projects  
285 that will be selected for financial assistance. The governing  
286 boards may establish factors to determine project funding;  
287 however, significant weight shall be given to the following  
288 factors:

289 1. Whether the project provides substantial environmental  
290 benefits by preventing or limiting adverse water resource

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291 impacts.

292 2. Whether the project reduces competition for water  
293 supplies.

294 3. Whether the project brings about replacement of  
295 traditional sources in order to help implement a minimum flow or  
296 level or a reservation.

297 4. Whether the project will be implemented by a consumptive  
298 use permittee that has achieved the targets contained in a goal-  
299 based water conservation program approved pursuant to s.  
300 373.227.

301 5. The quantity of water supplied by the project as  
302 compared to its cost.

303 6. Projects in which the construction and delivery to end  
304 users of reuse water is a major component.

305 7. Whether the project will be implemented by a  
306 multijurisdictional water supply entity or regional water supply  
307 authority.

308 8. Whether the project implements reuse that assists in the  
309 elimination of domestic wastewater ocean outfalls as provided in  
310 s. 403.086(9).

311 9. Whether the county or municipality, or the multiple  
312 counties or municipalities, in which the project is located has  
313 implemented a high-water recharge protection tax assessment  
314 program as provided in s. 193.625.

315 10. Whether the project provides additional storage  
316 capacity of surface water flows to ensure sustainability of the  
317 public water supply.

318 Section 7. In consultation with the Department of  
319 Environmental Protection, each water management district is

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320 directed to examine options for improving the coordination  
321 between the consumptive use permitting process under part II of  
322 chapter 373, Florida Statutes, and the water supply planning  
323 process under part VII of chapter 373, Florida Statutes, by  
324 extending and reconciling the duration of issued consumptive use  
325 permits to provide for the simultaneous expiration and renewal  
326 of the permits, at the request of an applicant, on a rolling  
327 basin-specific basis. Each water management district shall  
328 report its findings and recommendations to the Governor, the  
329 President of the Senate, and the Speaker of the House of  
330 Representatives by January 1, 2012. This section does not affect  
331 the term of any consumptive use permit issued in accordance with  
332 Florida law.

333 Section 8. This act shall take effect July 1, 2011.