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 Environmental Preservation and Conservation Committee

BILL:	CS/SB 1086
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Garcia
SUBJECT:	Reclaimed Water
DATE:	February 7, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) addresses the regulation and use of reclaimed water: Specifically, the CS:

- defines "reclaimed water" and "reclaimed water distribution system";
- provides legislative findings related to the use of reclaimed water;
- provides that reclaimed water is an alternative water supply (AWS) and eligible for such funding;
- authorizes specified contract provisions for the development of reclaimed water as an alternative water supply;
- deletes a definition for the term "uncommitted";
- provides for the determination of uncommitted reclaimed water capacity by certain utilities;
- prohibits water management districts from requiring permits for the use of reclaimed water;
- authorizes permit conditions for certain surface water and groundwater sources in relation to using reclaimed water;
- authorizes water management districts (WMDs) to require the use of reclaimed water under certain conditions;

- prohibits water management districts from requiring or restricting services provided by reuse utilities;
- excludes reuse utilities from providing written reclaimed water feasibility evaluations;
- requires the Department of Environmental Protection (DEP) and each WMD to initiate rulemaking to adopt specified revisions to the water resource implementation rule;
- authorizes the DEP to regulate the use of surface water or groundwater to supplement a reclaimed water system;
- expands application of s. 373.250, F.S., to modification of existing consumptive use permits (CUPs); and
- clarifies limitations of the act.

This bill substantially amends ss. 373.019 and 373.250 of the Florida Statutes, and creates an unnumbered section of law.

II. Present Situation:

"Water" and "Waters in the State"

Under current Florida law, "waters in the state" are considered basic public resources benefiting the entire state.[1] The statutes define "water" or "waters in the state" as "all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as coastal waters within the jurisdiction of the state."[2]

In the "Declaration of Policy" for ch. 373, F.S., the Legislature acknowledges that, in the past, Florida's water resources were not adequately conserved or otherwise realized for their full beneficial use. In response, the Legislature delegated authority to the DEP and WMDs to sustainably manage water resources.[3] To that end, the DEP and WMDs have the authority to allocate water resources throughout the state to meet all reasonable-beneficial uses.[4] The DEP and the WMDs regulate use of water resources through issuance of consumptive use permits (CUPs) based upon statutory authority contained in ch. 373, F.S., commonly known as the Florida Water Resources Act of 1972.

The DEP defines reclaimed water by rule as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater (i.e., sewage) treatment facility.[5] An attempt by St. Johns River WMD in 2008 to adopt rules to regulate reclaimed water through the CUP process illustrates the unresolved question regarding the extent of the DEP's and the WMDs' regulatory authority over reclaimed water. The St. Johns River WMD proposed rulemaking that, if adopted, would have included reclaimed water among water regulated by the WMD by general permit for purposes of landscape and agricultural irrigation,

[3] Section 373.016(2), F.S.
[3] Section 373.016(2), F.S.
[3] Section 373.016(2), F.S.
[4] Section 373.016(4)(a), F.S.
[5] Rule 62-610.200(48), F.A.C.

by address, time of day, and day of the week.[6] The Florida League of Cities contested the St. Johns River WMD's delegated legislative authority to promulgate these rules, and, two months after proposing the rulemaking, it decided not to pursue adoption of the regulations.[7] Nevertheless, the DEP asserts that, although they have not historically done so, the WMDs may require a CUP solely for the use of reclaimed water.[8]

Consumptive Use Permitting

Section 373.236(5), F.S., authorizes CUPs for the development of AWS projects. A WMD or the DEP may impose reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the issuing WMD or the DEP and is not harmful to the water resources of the area.[9]

A CUP establishes the duration and type of water use as well as the maximum amount that may be withdrawn. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- be a "reasonable-beneficial use" as defined in s. 373.019(16), F.S.;
- not interfere with any presently existing legal use of water; and
- be consistent with the public interest.

The Three-Prong Test

"Reasonable-beneficial use" is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."[10] The Legislature has declared water a public resource belonging to the public, therefore, wasteful uses of water are not allowed even if there are sufficient resources to meet all other users.

To that end, the DEP has promulgated the Water Resource Implementation Rule that incorporates interpretive criteria for implementing the reasonable-beneficial use standard based on common law and on water management needs.[11] These criteria include consideration of the quantity of water requested; the need, purpose, and value of the use; and the suitability of the source. The criteria also consider the extent and amount of harm caused, whether that harm extends to other lands, and the practicality of mitigating that harm by adjusting the quantity or method of use. Particular consideration is given to the use or reuse of lower quality water, and

[6] *See* Letter from Suzanne G. Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee to Thomas M. Beason, General Counsel, Florida Department of Environmental Protection (Dec. 9, 2008).
[7] Letter from Rebecca A. O'Hara, Legislative Director, Florida League of Cities, Inc. to Suzanne Printy, Chief Staff Attorney, The Florida Legislature Joint Administrative Procedures Committee (Dec. 5, 2009).
[8] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[9] *See* s. 373.219, F.S.
[10] Section 373.019(16), F.S.
[11] *See generally* Rule 62-40, F.A.C.

the long-term ability of the source to supply water without sustaining harm to the surrounding environment and natural resources.[12]

The second element of the three-prong test protects the rights of existing legal uses of water for the duration of their permits.[13] New CUPs cannot be issued if they would conflict with an existing legal use. This criterion is only protective of water users that actually withdraw water, not passive users of water resources.[14]

The final element of the three-prong test requires water use to be consistent with the "public interest." While the DEP's Water Resource Implementation Rule provides criteria for determining the "public interest," determination of a public interest is made on a case-by-case basis during the permitting process.[15] However, the WMDs and the DEP have broad authority to determine which uses best serve the public interest if there are not sufficient resources to fulfill all applicants' CUPs. In the event that two or more competing applications are deemed to be equally in the public interest, the WMDs or the DEP gives preference to renewal applications.[16]

Reclaimed Water

In an effort to conserve the state's potable surface and groundwater resources, the statutes authorize the WMDs to restrict water use to the lowest quality water source appropriate for the specific use and to adopt rules that identify preferred water supply sources for consumptive uses.[17] The WMD may consider all economically and technically feasible alternatives to the proposed water source, including alternative water sources – desalination, aquifer storage and recovery, and reuse of nonpotable reclaimed water.[18] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[19]

The DEP defines "reclaimed water" as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.[20] In essence, water reuse involves taking domestic wastewater (i.e., sewage), giving it a high degree of treatment, and using the resulting high-quality reclaimed water for a new, beneficial purpose. Extensive treatment and disinfection during this process ensure that public health and environmental quality are protected.[21]

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[12] *Southwest Florida Water Management District v. Charlotte County*, 774 So. 2d 903, 911 (Fla. 2d DCA 2001) (upholding the WMD's use of criteria for implementing the reasonable-beneficial use standard).
[13] Section 373.223(1)(b), F.S.
[14] *See Harloff v. City of Sarasota*, 575 So. 2d 1324 (Fla. 2d DCA 1991) (holding a municipal wellfield was an existing legal user and should be afforded protection). In contrast, *see West Coast Regional Water Supply Authority v. Southwest Florida Water Management District*, 89 ER F.A.L.R. 166 (Final Order, Aug. 30, 1989) (holding a farmer who passively relied on a higher water table to grow nonirrigated crops and standing surface water bodies to water cattle was not an existing legal user).
[15] *See generally* Rule 62-40, F.A.C.
[16] *See* s. 373.233, F.S.
[17] *See* s. 373.2234, F.S.
[18] Section 373.223(3)(c), F.S.
[19] Section 373.016(4)(a), F.S.
[20] Rule 62-610.200(48), F.A.C.
[21] DEP, *Water Reuse*, http://www.dep.state.fl.us/water/reuse/index.htm (last visited Feb. 3, 2012).

Reclaimed water is an important alternative water source in Florida in light of mounting pressures on the state's fresh water resources, principally surface water and groundwater. The use of reclaimed water saves water that would otherwise need to be withdrawn from surface water and groundwater sources to meet nonpotable supply needs such as agricultural or residential irrigation,[22] power generation, or recreation (e.g., golf courses or waterparks). Additionally, reclaiming waste water reduces reliance on traditional wastewater disposal methods such as surface water discharges, ocean outfalls, or deep well injection wells. The DEP asserts that, "Florida is leading the nation – reusing 660 million gallons of reclaimed water each day to conserve freshwater supplies and replenish our rivers, streams, lakes and the aquifer."[23]

Section 373.250(2)(c), F.S., authorizes a WMD to require the use of reclaimed water in lieu of surface water or groundwater when the use of uncommitted reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. Reclaimed water is presumed to be available to a CUP applicant when a reclaimed water provider has "uncommitted" reclaimed water capacity and there are distribution facilities provided by the utility to the site of the proposed use. Uncommitted reclaimed water is defined as the average amount of reclaimed water produced during the lowest-flow months, less the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide a customer or user. However, by its express terms, this provision does not authorize a WMD to require a provider of reclaimed water to redirect reclaimed water from one user to another or to provide uncommitted water to a specific user if such water is anticipated to be used by the provider, or a different user selected by the provider, within a reasonable amount of time.[24]

As required in statute and implemented in the DEP's Water Resource Implementation Rule,[25] the WMDs must designate water resource caution areas[26] within which CUP permit holders are required to use a "reasonable" amount of reclaimed water, unless using it is not "economically, environmentally or technically feasible." For example, the entire St. Johns River WMD has been designated a water resource conservation area, and WMD rules require reclaimed water to be used throughout the district if it is readily available and feasible.[27] In contrast, the Northwest Florida WMD has designated only two water resource caution areas – the coastal areas of Santa Rosa, Okaloosa, and Walton Counties and the Upper Telogia Creek Drainage Basin of Gadsden County. Applicants in those two areas who propose to withdraw water from the Floridan aquifer are required to use reclaimed water unless its use is not economically, environmentally, or technically feasible as determined by the WMD.[28]

Currently, WMD year-round irrigation restrictions do not apply to irrigation with reclaimed water. In recent years, discussions have been held in some WMDs regarding the possibility of

[22] In central Florida, for instance, studies have shown that irrigation accounted for 64% of the residential use volume for all monitored homes. (Florida Section of the American Water Works Association, *Florida's Water Survival Handbook for the Future* 60 (2009) (citing Journal of Irrigation and Drainage Engineering, Vol. 133, Issue 5, pp. 427-94 (2007)).)
[23] *Supra* note 24.
[24] Section 373.250(2)(a)-(b), F.S.
[25] *See generally* Rule 62-40, F.A.C.
[26] Water resource caution areas are designated where water supply problems currently exist or are expected to exist within the next 20 years. Section 373.0363, F.S., and Rule 62-40.416, F.A.C.
[27] Rule 40C-23.001, F.A.C.
[28] Rule 40A-2.802, F.A.C.

imposing restrictions on the use of reclaimed water for irrigation purposes. However, reclaimed water utilities expressed concerns that such restrictions would create operational problems for the utilities, because wastewater flows do not vary according to weather conditions while the need for irrigation does vary. As a result, irrigation restrictions may cause a reuse utility to increase discharges of reclaimed water to surface waters, possibly in violation of the utility's National Pollutant Discharge Elimination System (NPDES) permit, or require the construction of expensive storage capacity for the utility's reclaimed water supply.[29]

For areas outside of designated water resource caution areas, the DEP encourages local governments to implement programs for the use of reclaimed water. Specifically, the WMDs are encouraged to establish incentives, such as longer permit duration and cost-sharing, for local governments and other interested parties to implement programs for reclaimed water use.[30] With respect to Florida's "Home Rule Power,"[31] the provisions of the Water Resource Implementation Rule provide that the rule itself may not preempt any local water reuse programs.[32]

Additionally, mandatory reuse zones established by local government ordinance may require a person living within the area to connect when available with any alternative water supply system, including reclaimed water.[33] Mandatory reuse zones have been established in three WMDs – South Florida, Suwannee River and St. Johns River – mostly for irrigation. In the St. Johns River WMD, the conflict between the WMD's authority and the "Home Rule Power" of the local government was resolved by including language in local ordinances requiring reclaimed water use, unless the WMD required otherwise. This allowed the utility to use the most logical, lowest quality source, which sometimes may be another source, such as stormwater.[34]

Impact Offsets and Substitution Credits

The WMDs are already regulating water use in areas around the state that have experienced the harmful effects of overuse of both surface water and groundwater resources. They use a variety of planning and recovery strategies to manage healthy systems and restore impacted systems. The use of reclaimed water to supplement existing water resources is one tool that can help to sustain and recover water resources. Two concepts surrounding reclaimed water use are "impact offsets" and "substitution credits." Impact offsets are generally considered the use of reclaimed

[29] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).
[30] Rule 62-40.416(2), F.A.C.
[31] In Florida, "Home Rule Power" language was proposed in the 1968 Constitutional revision and was adopted by the people. After several legal challenges, the Florida Legislature adopted the Home Rule Powers Act in 1973, which ended challenges related to city and county powers. The Florida Constitution states in Art. VIII, § 2(b) for municipalities: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise power for municipal purposes except as otherwise provided by law."
[32] Rule 62-40.416(2), F.A.C.
[33] Section 125.01(k)1., F.S., authorizes counties to: "[p]rovide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs."; Section 180.02, F.S., provides that cities that may " create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any … alternative water supply system, including, … reclaimed water[.]"
[34] DEP, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings* (2009), available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Feb. 3, 2012).

water as an alternative water supply that reduces or eliminates a harmful impact that has or will occur as the result of a surface water or groundwater withdrawal. Substitution credit is the use of reclaimed water that replaces all or part of an existing permitted use of surface water or groundwater within a resource-limited area. Substitution credits may be transferred to a different user or use.[35] The South Florida and Southwest Florida WMDs have already adopted rules similar to impact offsets and substitution credits.

The working group that evaluated the use of impact offsets and substitution credits recommended seven key attributes:[36]

- The terms should have consistent definitions across WMDs.
- Substitution credits must be limited to particular geographic areas for which the water management districts have adopted rules that limit withdrawals from a specified water resource, and that address the applicability and use of substitution credits.
- The substitution credit or impact offset is part of a water use permit; therefore, to obtain and use the credit or offset, all water management district permitting requirements must be met. In addition, the duration of the credit or offset is limited to the duration of the water use permit in which it is incorporated.
- The entity providing the reclaimed water to substitute for an existing withdrawal will receive the substitution credit if it has a demonstrated need for the water.
- Substitution credits recognized in a water use permit cannot be "transferred" to other users, except in the same limited manner as the permit itself.
- There should be a consistent approach in determining the amount of the substitution credit.
- There should be a consistent approach in identifying acceptable impact offsets.

When taken together, these recommendations form the framework of how these additional regulatory tools may function to reduce impacts to surface water and groundwater resources.

Examples of resource-limited areas in which the concept of substitution credits has already been implemented are the Southern Water Use Caution Area in Southwest Florida WMD, the Lower East Coast Everglades and Northern Palm Beach/Loxahatchee River Watershed regions, and the Lake Okeechobee Service Area in South Florida WMD.[37] According to the DEP, these WMDs have "formalized mechanisms to allow reclaimed water to be provided as a substitution for groundwater withdrawals, thus allowing another entity to use new or additional groundwater without increasing the overall water withdrawals in a region."[38]

Alternative Water Supply Funding

Between fiscal years 2005-2006 and 2007-2008, the Legislature authorized the allocation of over $217 million among the five WMDs to develop alternative water supply projects. Reclaimed water development projects made up the bulk of project types that were funded over these four years, comprising 202 of the 324 funded projects. Over this period, the funding waned

[35] DEP et al., *Purple Paper: Reclaimed Water, Credits, and Offsets* (undated) (on file with the Senate Committee on Environmental Preservation and Conservation).
[36] *Id*.
[37] *Id*., at 2.
[38] DEP, *House Bill 639 Draft Analysis* (Dec. 1, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation).

significantly. In fiscal year 2005-2006, $100 million was allocated among the five WMDs, but by fiscal year 2007-2008, that figure dropped to $5.54 million. The Legislature has not provided any alternative water supply funding at the state level since fiscal year 2008-09.[39]

Environmental Considerations

The adverse environmental impacts of consumptive water use are essential considerations in the permitting process. Indeed, the Legislature expressly provided that the policy of the State Water Resource Plan is "to preserve natural resources, fish, and wildlife."[40] This statute is consistent with Article II, Section 7(a) of the Florida Constitution, which states that "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and excessive and unnecessary noise and for the conservation and protection of natural resources."

Water Needs of Natural Systems

Excessive use of surface water or groundwater may trigger a cascade of adverse environmental impacts including: salt water intrusion that can degrade water quality; changes in salinity levels in estuaries that can kill off oyster and grass beds; "drying out" of wetlands and lakes that can lead to habitat loss; and reduced spring and river flows that can diminish recreational values like fishing or ecotourism, which rely on a robust and biologically diverse ecology. To avoid adverse environmental impacts, the DEP and WMDs are statutorily mandated to establish minimum flow levels (MFLs) for surface and groundwaters which set the threshold at which further withdrawals could significantly harm the water resources or ecology of the area.[41] To date, the five WMDs have collectively adopted over 300 MFLs for water bodies across the state.[42]

A WMD may deny a CUP because the desired uses are "undesirable because of the nature of the activity or the amount of water required."[43] For example, in *Osceola County v. St. Johns River Water Management District*,[44] the WMD denied a wellfield permit because of the potential adverse effects of a drawdown of the aquifer on wetlands. The hearing officer found that the predicted drawdown of 0.14 feet could significantly harm herbaceous wetlands, and the applicant was denied a permit because he failed to sufficiently assess those impacts or propose adequate mitigation efforts.[45]

Water Quality Standards

Water quality and pollution is primarily regulated through Florida's implementation of the federal Clean Water Act (CWA).[46] The CWA requires states or the U.S. Environmental Protection Agency (EPA) to establish water quality standards for surface waters and prohibits the

[39] DEP, *Water Project Funding in Florida*, http://www.dep.state.fl.us/water/waterprojectfunding/ (last visited Feb. 3, 2012).
[40] Section 373.016(3)(g), F.S.
[41] Section 373.042(1)(a)-(b), F.S.
[42] Since 1992, the five WMDs have adopted 322 minimum flow levels or reservations.
[43] Section 373.036(4), F.S.
[44] *Osceola County v. St. Johns River Water Management District*, 92 ER F.A.L.R. 109 (Final Order, June 10, 1992).
[45] *See* Richard Hamman, *Consumptive Use Permitting Criteria*, Florida Environmental and Land Use Law. 14.2, 14.2-7 (August 2001).
[46] 33 U.S.C. s. 1251 et seq.

discharge of any pollutant into navigable waters from a point source, such as a pipe, man-made ditch, or large animal feeding operation, without an NPDES permit. Non-point sources, such as fertilizer and pesticide runoff, are not required to obtain an NPDES permit and are not directly regulated under the CWA. The DEP sought and received authority from the EPA to implement water quality programs in Florida under state laws. Therefore, the DEP now adopts water quality standards subject to EPA approval and administers the NPDES permit program.

Specifically, the CWA requires states to establish water quality standards and review those standards every three years. States must also identify impaired waters that are not meeting established water quality standards and establish total maximum daily loads (TMDLs) of pollutants for those waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards. To enforce TMDLs, the DEP establishes water quality-based effluent limitations (WQBELs) and incorporates these limitations into NPDES permits.

TMDLs and WQBELs can be established for a broad range of pollutants. In Florida, particular attention is paid to nutrient levels, principally the levels of nitrogen and phosphorus. While nitrogen and phosphorus are essential for aquatic organisms to live and grow, excessive levels of these nutrients may result in harmful algal blooms, nuisance aquatic weed proliferation, or an imbalance in the natural community of flora and fauna. Unnatural sources of nitrogen and phosphorus include sewage disposal systems (treatment works or septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and runoff from urban and agricultural areas.

In 2008 environmental advocacy groups filed suit against the EPA alleging that excessive nutrient levels were impairing Florida's surface waterbodies and that EPA was failing to comply with the CWA by not requiring Florida to adopt more stringent numeric nutrient criteria in lieu of the state's current EPA-approved narrative criteria. Following a determination by the EPA that numeric nutrient criteria were necessary to protect waters in the state and entry of a court-approved settlement agreement, in November, 2010, EPA issued a final rule adopting numeric nutrient criteria for Florida's lakes, springs, and inland flowing waters with the exception of south Florida canals (mostly south of Lake Okeechobee). These rules are scheduled to take effect in March 2012. In response to EPA's final rule, the DEP recently proposed a rule containing numeric nutrient criteria and is proceeding through the rule adoption process. If adopted by the DEP, ratified by the Legislature, and approved by the EPA, DEP's adopted numeric nutrient criteria will replace the criteria in the EPA's final rule.

Unless reclaimed water is extensively treated, it invariably contains nutrients (i.e., nitrogen and phosphorus). When reclaimed water is used for irrigation or discharged into other surface waters, it may eventually flow or seep into an impaired surface waterbody. Therefore, the DEP's authority to regulate the effluent and nutrient levels in reclaimed water is an important component in maintaining chemical, physical, and biological integrity of surface waters. In light of this fact, wastewater treatment facilities that produce reclaimed water for land application must obtain wastewater permits and are subject to treatment standards (e.g., effluent limitations and pH standards), monitoring, and reporting requirements.[47] Specifically, the DEP may require

[47] Rule 62-600.530, F.A.C.

additional levels of treatment depending on the ultimate use (beyond the minimum) to protect the potential receiving surface waters from exceeding their established TMDLs.[48]

Reclaimed Water Working Group

The Reclaimed Water Working Group is a collective of several interested parties[49] that, over the past several years, has convened to discuss the role of reclaimed water in meeting Florida's projected water demands. The working group's express objective was "to optimize the use and continued development of reclaimed water as an alternative water supply to the extent environmentally, technically, and economically feasible in order to meet water supply demands." According to the DEP, portions of the bill reflect the recommendations of the working group.

III. Effect of Proposed Changes:

Section 1 amends s. 373.019, to define "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." It is the same as the current DEP definition. However, included in this definition is a new prohibition against regulating reclaimed water under s. 373.175, F.S., or ch. 373, part II, F.S., until it has been discharged into "waters" as defined in s. 403.031(13), F.S. The CS also defines "reclaimed water distribution system" as "a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more domestic water treatment facilities to one or more users of reclaimed water."

Section 2 amends s. 373.250, F.S., to limit the DEP's and WMDs' regulation and use of reclaimed water. The bill provides legislative recognition that the state must balance the use of reclaimed water to sustain water resources into the future with the need of reuse utilities to operate and maintain reclaimed water systems in accordance with a variety of circumstances. It clarifies that reclaimed water is an AWS and is eligible for AWS funding. If a reclaimed water project is contracted for by the state or a WMD, it may include any of the four conditions listed under 373.707(9), F.S.:

- metering of reclaimed water for certain uses;
- implementation of certain rate structures;
- implementation of educational programs on water use; and
- development of location data for key reuse facilities.

The bill deletes the definition for "uncommitted," which meant the excess water during the three lowest-flow months after all contractually obligated water was provided to users. Instead, the bill specifies that a reuse utility may determine when it has uncommitted reclaimed water capacity. The bill prohibits the WMDs from requiring a permit for use of reclaimed water. However, a CUP for surface water or groundwater may include conditions that govern the use of those sources in relation to the feasibility or use of reclaimed water.

[48] Rule 62-600.530(3)(b), F.A.C.

[49] The Reclaimed Water Working Group consisted of the DEP, the WMDs, Florida Water Environment Association- Utility Council, American Water Works Association, Florida League of Cities, Florida Association of Counties, and individual utilities.

The bill authorizes a WMD to require the use of reclaimed water to replace all or a portion of surface water or groundwater use when reclaimed water is available and meets other existing criteria. In addition, the bill prohibits a WMD from directing to whom a reuse utility must provide reclaimed water, or restricting the use of reclaimed water in a CUP, water shortage order, or water shortage emergency unless a reuse utility requests such action.

The bill exempts reuse utilities from having to provide, as part of a reclaimed water use feasibility evaluation for nonpotable use, written documentation addressing the availability of reclaimed water.

The bill directs the DEP to initiate rulemaking to adopt revisions to the water resource implementation rule by October 1, 2012. Within 60 days after the DEP adopt revisions to the rule, the WMDs are directed to initiate rulemaking to incorporate those rule revisions by reference. The revisions must include:

- criteria for the use of a proposed impact offset derived from the use of reclaimed water when a WMD evaluates a CUP application; and
- criteria for the use of substitution credits where a WMD has limited surface water and groundwater withdrawals from a specified resource in a specific geographic area.

As used for the creation of criteria, "impact offset" means, "the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals." The bill also defines "substitution credit" as:

> the use of reclaimed water to all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

The bill specifies that s. 373.250, F.S., does not impair a WMD's ability to regulate the use of surface water or groundwater to supplement a reclaimed water system. Lastly, the bill expands application of this section to all modifications of CUPs. Currently, the section only applies to applications for new CUPs or renewals of existing CUPs.

Section 3 creates an unnumbered section of law that limits application of the act. Specifically, the CS clarifies that the act does not:

- Impair or limit the DEP's or WMDs' authority to regulate water quality, including reclaimed water;
- Impair or limit the DEP's or WMDs' authority to require a reuse feasibility study;
- Impair or limit the WMD's authority to conduct regional water supply planning;
- Affect any requirement that may be applicable to AWS funding;
- Affect or limit any applicable provisions related to setting of rates by public and private water utilities; or
- Affect or impair the powers of the Governor to take certain actions.

Sections 4, 5, 6 and 7 amend ss. 373.036, 373.421, 403.813 and 556.102, F.S., respectively, to conform cross-references to the added definitions contained in this CS.

Section 8 provides an effective date of July 1, 2012.

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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the DEP and WMDs to initiate rulemaking to adopt rules. They have estimated they can meet any additional costs with existing staff and resources.

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 Environmental Preservation and Conservation on February 6, 2012:

- deletes the definitional change to "water" and "waters in the state" that excluded reclaimed water;
- defines "reclaimed water" and "reclaimed water distribution system";
- clarifies limitations of the act; and
- conforms cross-references.

B. Amendments:

None.