

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1389 (CS/SB 1858)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Agriculture & Natural Resources Subcommittee; Perman and others (Environmental Preservation and Conservation; Altman)	115 Y's	0 N's
COMPANION BILLS:	CS/SB 1858	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1389 passed the House on February 16, 2012. The bill was amended by the Senate on March 9, 2012, and subsequently passed the House on March 9, 2012. The bill includes the substance of CS/CS/HB 1379.

Current law encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands. However, owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill also specifies that when an agreement is entered into between a water management district or the Department of Environmental Protection (DEP) and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S. The baseline condition documented in the agreement must be considered the extent of the wetlands and other surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

The bill also creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The bill requires this study committee to "identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions." In addition, the bill requires the committee to consider other issues. (See Effect of Proposed Changes)

The committee is composed of 18 Florida residents and is comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives. The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and any appropriate agencies, a report detailing its findings and making specific legislative and rulemaking recommendations. The bill provides for termination of the committee on June 30, 2013.

The bill could provide a savings in state and local government expenditures for water supply development and water quality improvements, but potential savings are indeterminate as the number, size, and nature of agreements with private land owners are unknown. The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund

The bill was approved by the Governor on April 27, 2012, ch. 2012-187, Laws of Florida. The effective date of the bill is July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1389z1.ANRS.DOCX

DATE: April 30, 2012

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Section 1

Current Situation

Section 373.4595(1)(n), F.S., encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. During periods of abnormally high rainfall, agricultural lands in normal production can provide temporary water storage that protects urban areas from flooding. In many regions of South Florida, significant areas of agricultural lands lie fallow during a large part of the wet season. In these areas, the fields alleviate flood conditions. Also, ranch areas containing both improved and unimproved pasturelands may provide flood protection to urban areas by retaining water on these lands as part of normal farming operations. The ability to hold floodwaters on agricultural lands for longer periods than water can be held in an urban setting also assists the overall hydrologic system in maintaining recharge rates over more extended periods of time.¹

Since 2005, the South Florida Water Management District has been working with a number of agencies, including the DEP and the Department of Agriculture and Consumer Services (DACCS), along with ranchers to store excess surface water on private, public, and tribal lands. The Dispersed Water Management Program encourages property owners to retain water on their land rather than drain it, accept and detain regional runoff, or do both. Management of the water reduces the amount of water delivered into Lake Okeechobee during the wet season and discharged to coastal estuaries for flood protection. Dispersed water is defined as shallow water distributed across parcel landscapes using simple structures. Private landowner involvement typically includes cost-share cooperative projects, easements or payment for environmental services.² Owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property, however, for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

Since October, 2011, 131,500 acre-feet of water retention/storage has been made available through a combination of public and private projects. There are more than 100 participating landowners providing water retention or storage ranging from 1 acre-foot to 30,000 acre-feet.³

Effect of Proposed Changes

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill specifies that when an agreement is entered into between a water management district or the DEP and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be

¹ Department of Agriculture and Consumer Services website, www.floridaagwaterpolicy.com/PDF/Florida_Agricultural_Water_Policy_Report.pdf - 2006-09-19

² South Florida Water Management District's Dispersed Water Management Program Fact Sheet, www.sfwmd.gov/portal/page/portal/.../jtf_dispersed_water_mgmt.pdf

³ *Id*

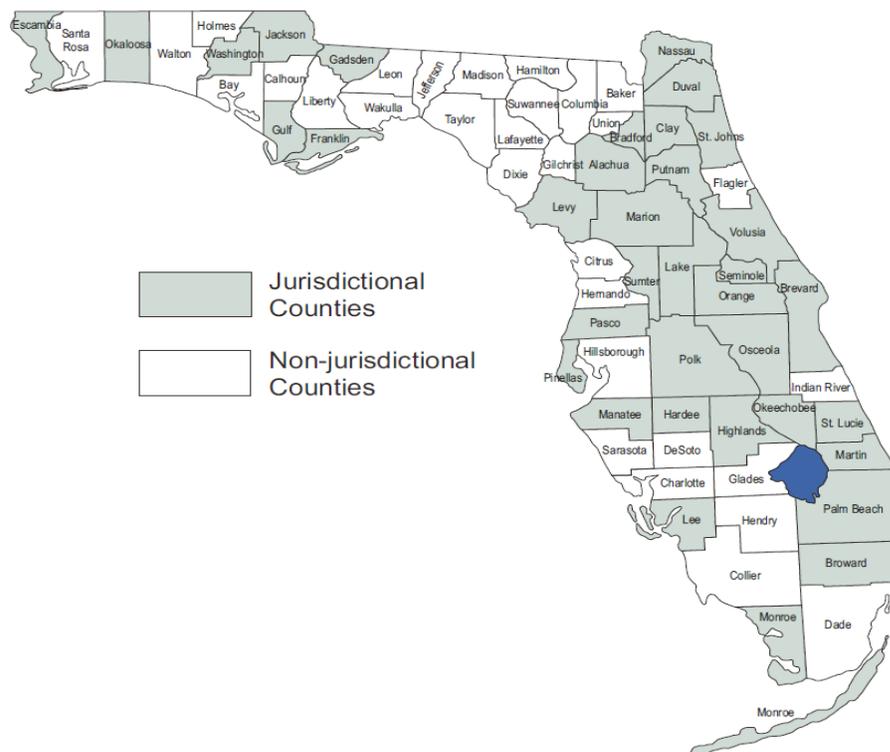
conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S.⁴ The baseline condition documented in the agreement must be considered the extent of the wetlands and other surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

Section 2.

Current Situation

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.⁵ With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.⁶ The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverse county boundaries, except for systems owned and regulated by intergovernmental authorities.⁷ Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.⁸

The map below identifies those counties in which the PSC currently exercises jurisdiction and can be found at <http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf>.



⁴ Section 373.421, F.S., establishes criteria for adopting a unified statewide methodology for the delineation of wetlands in the state. Chapter 62-340, F.A.C., was adopted to implement this statute.

⁵ Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.

⁶ Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

⁷ *Id.*

⁸ Section 367.022(2), F.S.

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:⁹

- Class A – Operating revenues greater than \$1,000,000
- Class B – Operating revenues greater than \$200,000 but less than \$1,000,000
- Class C – Operating revenues less than \$200,000

Currently, there are approximately 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.¹⁰ The letter stated, in part:

As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would "provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities" and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, "to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates."¹¹ In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.¹²

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.¹³ This proposal, drafted by the PSC's staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC's facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2013.

⁹ Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

¹⁰ http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf

¹¹ <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf>

¹² Workshop Transcript, pp.2-3. <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf>

¹³ <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf>

Effect of Proposed Changes

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The committee consists of 18 members, all of whom must be Florida residents and 15 of which are voting members. The voting members consist of:

- One Senator appointed by the President of the Senate.
- One Representative appointed by the Speaker of the House of Representatives.
- Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor.
- One representative of a Class B investor-owned water or wastewater utility, appointed by the Governor.
- One representative of a Class C investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class A investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class B or C investor-owned water or wastewater utility appointed by the Governor.
- One representative of a water management district appointed by the Governor.
- One representative of the Florida Section of the American Water Works Association appointed by the Governor.
- One representative of the Florida Rural Water Association appointed by the Governor.
- One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor.
- One representative of a governmental authority that was created pursuant to chapter 163, Florida Statutes appointed by the Governor.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor.
- One representative of a county health department appointed by the Governor.

The three remaining, nonvoting members are:

- The chair of the Public Service Commission, or a commissioner designated by the chair of the PSC, who shall serve as chair of the committee.
- The Secretary of Environmental Protection or his or her designee.
- The Public Counsel or his or her designee.

The appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The bill provides that the study committee must “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions.” In addition, the bill requires the committee to consider:

- The ability of a small investor-owned water and wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately-owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.

- Other issues that the committee identifies during its investigation.

The bill requires that the study committee shall meet a minimum of four times at a time and place determined by the chair. At least two meetings must be held in an area “centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates.” The bill provides that the public shall be given the opportunity to speak at these meetings.

The bill requires the PSC to provide staff, information, assistance, and facilities as deemed necessary by the study committee to perform its duties. Funding for the committee will come from the Florida Public Service Regulatory Trust Fund. Members of the committee will not be compensated but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report detailing its findings and making specific legislative recommendations, including proposed legislation. If the committee finds that an issue may effectively be addressed through agency rulemaking, the committee must submit its report and recommendations, including proposed rules, to the appropriate agencies. The bill provides for termination of the committee on June 30, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Environmental Protection, the bill could provide a savings in state expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

The bill requires the Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the DEP, the bill could provide a savings in local expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could provide some economic benefit to agricultural landowners by increasing their ability to store water and provide water quality benefits on their land without incurring the permitting restrictions associated with creating wetlands.

D. FISCAL COMMENTS:

None.