

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 157 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Porter offered the following:

3
4 **Amendment (with title amendment)**

5 Remove lines 37-52 and insert:

6 Section 1. Section 373.042(2) is amended and present
7 subsection (5) of section 373.042, Florida statutes, is
8 renumbered as subsection (6), and a new subsection (5) is added
9 to that section to read:

10 373.042 Minimum flows and levels.-

11 (2) By November 15, 1997, and annually thereafter, each
12 water management district shall submit to the department for
13 review and approval a priority list and schedule for the
14 establishment of minimum flows and levels for surface
15 watercourses, aquifers, and surface waters within the district.
16 The priority list shall ~~also~~ identify those listed water bodies
17 for which the district will voluntarily undertake independent
18 scientific peer review. The priority list and schedule shall
19 also identify any reservations proposed by the district to be

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20 established under s. 373.223(4). In addition, the priority list
21 and schedule shall identify those water bodies that have the
22 potential to be affected by withdrawals in an adjacent water
23 management district, and may be appropriate for department
24 adoption of the minimum flow or level under s. 373.042(1) or the
25 reservation under s.373.223(4).

26
27 By March 1, 2006, and annually thereafter, each water management
28 district shall include its approved priority list and schedule
29 in the consolidated annual report required by s. 373.036(7).
30 The priority list shall be based upon the importance of the
31 waters to the state or region and the existence of or potential
32 for significant harm to the water resources or ecology of the
33 state or region, and shall include those waters which are
34 experiencing or may reasonably be expected to experience adverse
35 impacts. Each water management district's priority list and
36 schedule shall include all first magnitude springs, and all
37 second magnitude springs within state or federally owned lands
38 purchased for conservation purposes. The specific schedule for
39 establishment of spring minimum flows and levels shall be
40 commensurate with the existing or potential threat to spring
41 flow from consumptive uses. Springs within the Suwannee River
42 Water Management District, or second magnitude springs in other
43 areas of the state, need not be included on the priority list if
44 the water management district submits a report to the Department
45 of Environmental Protection demonstrating that adverse impacts
46 are not now occurring nor are reasonably expected to occur from
47 consumptive uses during the next 20 years. The priority list

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48 and schedule shall not be subject to any proceeding pursuant to
49 chapter 120. Except as provided in subsection (3), the
50 development of a priority list and compliance with the schedule
51 for the establishment of minimum flows and levels pursuant to
52 this subsection shall satisfy the requirements of subsection
53 (1).

54 (3) Minimum flows or levels for priority waters in the
55 counties of Hillsborough, Pasco, and Pinellas shall be
56 established by October 1, 1997. Where a minimum flow or level
57 for the priority waters within those counties has not been
58 established by the applicable deadline, the secretary of the
59 department shall, if requested by the governing body of any
60 local government within whose jurisdiction the affected waters
61 are located, establish the minimum flow or level in accordance
62 with the procedures established by this section. The
63 department's reasonable costs in establishing a minimum flow or
64 level shall, upon request of the secretary, be reimbursed by the
65 district.

66 (4) (a) Upon written request to the department or governing
67 board by a substantially affected person, or by decision of the
68 department or governing board, prior to the establishment of a
69 minimum flow or level and prior to the filing of any petition
70 for administrative hearing related to the minimum flow or level,
71 all scientific or technical data, methodologies, and models,
72 including all scientific and technical assumptions employed in
73 each model, used to establish a minimum flow or level shall be
74 subject to independent scientific peer review. Independent
75 scientific peer review means review by a panel of independent,

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76 recognized experts in the fields of hydrology, hydrogeology,
77 limnology, biology, and other scientific disciplines, to the
78 extent relevant to the establishment of the minimum flow or
79 level.

80 (b) If independent scientific peer review is requested, it
81 shall be initiated at an appropriate point agreed upon by the
82 department or governing board and the person or persons
83 requesting the peer review. If no agreement is reached, the
84 department or governing board shall determine the appropriate
85 point at which to initiate peer review. The members of the peer
86 review panel shall be selected within 60 days of the point of
87 initiation by agreement of the department or governing board and
88 the person or persons requesting the peer review. If the panel
89 is not selected within the 60-day period, the time limitation
90 may be waived upon the agreement of all parties. If no waiver
91 occurs, the department or governing board may proceed to select
92 the peer review panel. The cost of the peer review shall be
93 borne equally by the district and each party requesting the peer
94 review, to the extent economically feasible. The panel shall
95 submit a final report to the governing board within 120 days
96 after its selection unless the deadline is waived by agreement
97 of all parties. Initiation of peer review pursuant to this
98 paragraph shall toll any applicable deadline under chapter 120
99 or other law or district rule regarding permitting, rulemaking,
100 or administrative hearings, until 60 days following submittal of
101 the final report. Any such deadlines shall also be tolled for
102 60 days following withdrawal of the request or following
103 agreement of the parties that peer review will no longer be

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104 pursued. The department or the governing board shall give
105 significant weight to the final report of the peer review panel
106 when establishing the minimum flow or level.

107 (c) If the final data, methodologies, and models, including
108 all scientific and technical assumptions employed in each model
109 upon which a minimum flow or level is based, have undergone peer
110 review pursuant to this subsection, by request or by decision of
111 the department or governing board, no further peer review shall
112 be required with respect to that minimum flow or level.

113 (d) No minimum flow or level adopted by rule or formally
114 noticed for adoption on or before May 2, 1997, shall be subject
115 to the peer review provided for in this subsection.

116 (5) A reservation, minimum flow or level, or recovery or
117 prevention strategy adopted by rule by the department shall be
118 applied by the water management districts, without adopting by
119 rule, the reservation, minimum flow or level, or recovery or
120 prevention strategy. The applicable water management districts
121 shall provide the department with technical information and
122 staff support for development and rule making for a reservation,
123 minimum flow or level, or recovery or prevention strategy that
124 will be adopted by rule by the department.

125 (~~6~~5) If a petition for administrative hearing is filed under
126 chapter 120 challenging the establishment of a minimum flow or
127 level, the report of an independent scientific peer review
128 conducted under subsection (4) is admissible as evidence in the
129 final hearing, and the administrative law judge must render the
130 order within 120 days after the filing of the petition. The
131 time limit for rendering the order shall not be extended except

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132 by agreement of all the parties. To the extent that the parties
133 agree to the findings of the peer review, they may stipulate
134 that those findings be incorporated as findings of fact in the
135 final order.

139
T I T L E A M E N D M E N T

140 Remove lines 3-9 and insert:

141 Amending s. 373.042, F.S.; requiring a priority list
142 and schedule to include reservations; requiring a
143 priority list and schedule to identify water bodies
144 that are affected by withdrawals from an adjoining
145 district; providing the Department of Environmental
146 Protection may adopt minimum flows and levels having
147 specific affects; requiring water management districts
148 to apply a specific reservation, minimum flow or
149 level, and recovery and prevention strategy; requiring
150 water management districts to provide support;
151 providing applicability; amending s.
152
153