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LEGISLATIVE ACTION

Senate

House

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Floor: WD

03/09/2012 11:18 PM

Senator Garcia moved the following:

Senate Amendment (with title amendment)

Between lines 29 and 30

insert:

Section 2. Subsections (17) through (26) of section 373.019, Florida Statutes, are renumbered as subsections (19) through (28), respectively, and new subsections (17) and (18) are added to that section to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(17) "Reclaimed water" means water that has received at least secondary treatment and basic disinfection and is reused



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14 after flowing out of a domestic wastewater treatment facility.
15 Reclaimed water is not subject to regulation pursuant to s.
16 373.175 or part II of this chapter until it has been discharged
17 into waters as defined in s. 403.031(13).

18 (18) "Reclaimed water distribution system" means a network
19 of pipes, pumping facilities, storage facilities, and
20 appurtenances designed to convey and distribute reclaimed water
21 from one or more domestic wastewater treatment facilities to one
22 or more users of reclaimed water.

23 Section 3. Section 373.250, Florida Statutes, is amended to
24 read:

25 373.250 Reuse of reclaimed water.—

26 (1) (a) The encouragement and promotion of water
27 conservation and reuse of reclaimed water, as defined by the
28 department and used in this chapter, are state objectives and
29 considered to be in the public interest. The Legislature finds
30 that the use of reclaimed water provided by domestic wastewater
31 treatment plants permitted and operated under a reuse program
32 approved by the department is environmentally acceptable and not
33 a threat to public health and safety.

34 (b) The Legislature recognizes that the interest of the
35 state to sustain water resources for the future through the use
36 of reclaimed water must be balanced with the need of reuse
37 utilities to operate and manage reclaimed water systems in
38 accordance with a variety and range of circumstances, including
39 regulatory and financial considerations, which influence the
40 development and operation of reclaimed water systems across the
41 state.

42 (2) Reclaimed water is an alternative water supply as



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43 defined in s. 373.019(1) and is eligible for alternative water
44 supply funding. A contract for state or district funding
45 assistance for the development of reclaimed water as an
46 alternative water supply may include provisions listed under s.
47 373.707(9). The use of reclaimed water may not be excluded from
48 regional water supply planning under s. 373.709.

49 ~~(3)-(2)(a) For purposes of this section, "uncommitted" means~~
50 ~~the average amount of reclaimed water produced during the three~~
51 ~~lowest-flow months minus the amount of reclaimed water that a~~
52 ~~reclaimed water provider is contractually obligated to provide~~
53 ~~to a customer or user.~~

54 ~~(b)~~ Reclaimed water may be presumed available to a
55 consumptive use permit applicant when a utility exists which
56 provides reclaimed water, which has determined that it has
57 uncommitted reclaimed water capacity, and which has distribution
58 facilities, which are initially provided by the utility at its
59 cost, to the site of the affected applicant's proposed use.

60 (b) A water management district may not require a permit
61 for the use of reclaimed water. However, when a use includes
62 surface water or groundwater, the permit for such sources may
63 include conditions that govern the use of the permitted sources
64 in relation to the feasibility or use of reclaimed water.

65 (c) A water management district may require the use of
66 reclaimed water in lieu of all or a portion of a proposed use of
67 surface water or groundwater by an applicant when the use of
68 ~~uncommitted~~ reclaimed water is available; is environmentally,
69 economically, and technically feasible; and is of such quality
70 and reliability as is necessary to the user. However, a water
71 management district may neither specify any user to whom the



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72 reuse utility must provide reclaimed water nor restrict the use
73 of reclaimed water provided by a reuse utility to a customer in
74 a permit or, unless requested by the reuse utility, in a water
75 shortage order or water shortage emergency order ~~this paragraph~~
76 ~~does not authorize a water management district to require a~~
77 ~~provider of reclaimed water to redirect reclaimed water from one~~
78 ~~user to another or to provide uncommitted water to a specific~~
79 ~~user if such water is anticipated to be used by the provider, or~~
80 ~~a different user selected by the provider, within a reasonable~~
81 ~~amount of time.~~

82 (d) The South Florida Water Management District shall
83 require the use of reclaimed water made available by the
84 elimination of wastewater ocean outfall discharges as provided
85 for in s. 403.086(9) in lieu of surface water or groundwater
86 when the use of ~~uncommitted~~ reclaimed water is available; is
87 environmentally, economically, and technically feasible; and is
88 of such quality and reliability as is necessary to the user.
89 Such reclaimed water may also be required in lieu of other
90 alternative sources. In determining whether ~~or not~~ to require
91 such reclaimed water in lieu of other alternative sources, the
92 water management district shall consider existing infrastructure
93 investments in place or obligated to be constructed by an
94 executed contract or similar binding agreement as of July 1,
95 2011, for the development of other alternative sources.

96 (4) ~~(3)~~ The water management district shall, in consultation
97 with the department, adopt rules to implement this section. Such
98 rules shall include, but not be limited to:

99 (a) Provisions to permit use of water from other sources in
100 emergency situations or if reclaimed water becomes unavailable,



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101 for the duration of the emergency or the unavailability of
102 reclaimed water. These provisions shall also specify the method
103 for establishing the quantity of water to be set aside for use
104 in emergencies or when reclaimed water becomes unavailable. The
105 amount set aside is subject to periodic review and revision. The
106 methodology shall take into account the risk that reclaimed
107 water may not be available in the future, the risk that other
108 sources may be fully allocated to other uses in the future, the
109 nature of the uses served with reclaimed water, the extent to
110 which the applicant intends to rely upon reclaimed water, and
111 the extent of economic harm which may result if other sources
112 are not available to replace the reclaimed water. It is the
113 intent of this paragraph to ensure that users of reclaimed water
114 have the same access to ground or surface water and will
115 otherwise be treated in the same manner as other users of the
116 same class not relying on reclaimed water.

117 ~~(b) A water management district shall not adopt any rule~~
118 ~~which gives preference to users within any class of use~~
119 ~~established under s. 373.246 who do not use reclaimed water over~~
120 ~~users within the same class who use reclaimed water.~~

121 (b)(e) Provisions to require permit applicants that are not
122 reuse utilities to provide, as part of their reclaimed water
123 feasibility evaluation for a nonpotable use, written
124 documentation from a reuse utility addressing the availability
125 of reclaimed water. This requirement shall apply when the
126 applicant's proposed use is within an area that is or may be
127 served with reclaimed water by a reuse utility within a 5-year
128 horizon, as established by the reuse utility and provided to the
129 district. If the applicable reuse utility fails to respond or



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130 does not provide the information required under paragraph (c)
131 ~~(d)~~ within 30 days after receipt of the request, the applicant
132 shall provide to the district a copy of the written request and
133 a statement that the utility failed to provide the requested
134 information. The district is not required to adopt, by rule, the
135 area where written documentation from a reuse utility is
136 required, but the district shall publish the area, and any
137 updates thereto, on the district's website. This paragraph may
138 not be construed to limit the ability of a district to require
139 the use of reclaimed water or to limit a utility's ability to
140 plan reclaimed water infrastructure.

141 (c) ~~(d)~~ Provisions specifying the content of the
142 documentation required in paragraph (b) ~~(e)~~, including
143 sufficient information regarding the availability and costs
144 associated with the connection to and the use of reclaimed
145 water, to facilitate the permit applicant's reclaimed water
146 feasibility evaluation.

147
148 A water management district may not adopt any rule that gives
149 preference to users within any class of use established under s.
150 373.246 who do not use reclaimed water over users within the
151 same class who use reclaimed water.

152 (5) (a) No later than October 1, 2012, the department shall
153 initiate rulemaking to adopt revisions to the water resource
154 implementation rule, as defined in s. 373.019(23), which shall
155 include:

156 1. Criteria for the use of a proposed impact offset derived
157 from the use of reclaimed water when a water management district
158 evaluates an application for a consumptive use permit. As used



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159 in this subparagraph, the term "impact offset" means the use of
160 reclaimed water to reduce or eliminate a harmful impact that has
161 occurred or would otherwise occur as a result of other surface
162 water or groundwater withdrawals.

163 2. Criteria for the use of substitution credits where a
164 water management district has adopted rules establishing
165 withdrawal limits from a specified water resource within a
166 defined geographic area. As used in this subparagraph, the term
167 "substitution credit" means the use of reclaimed water to
168 replace all or a portion of an existing permitted use of
169 resource-limited surface water or groundwater, allowing a
170 different user or use to initiate a withdrawal or increase its
171 withdrawal from the same resource-limited surface water or
172 groundwater source provided that the withdrawal creates no net
173 adverse impact on the limited water resource or creates a net
174 positive impact if required by water management district rule as
175 part of a strategy to protect or recover a water resource.

176 (b) Within 60 days after the final adoption by the
177 department of the revisions to the water resource implementation
178 rule required under paragraph (a), each water management
179 district shall initiate rulemaking to incorporate those
180 revisions by reference into the rules of the district.

181 (6)(4) Reuse utilities and the applicable water management
182 district or districts are encouraged to periodically coordinate
183 and share information concerning the status of reclaimed water
184 distribution system construction, the availability of reclaimed
185 water supplies, and existing consumptive use permits in areas
186 served by the reuse utility.

187 (7)(5) ~~Nothing in~~ This section does not impair or limit the



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188 authority of ~~shall impair~~ a water management district ~~district's~~
189 authority to plan for and regulate consumptive uses of water
190 under this chapter or regulate the use of surface water or
191 groundwater to supplement a reclaimed water system.

192 (8) ~~(6)~~ This section applies to applications for new
193 consumptive use permits and renewals and modifications of
194 existing consumptive use permits.

195 Section 4. This act does not:

196 (1) Impair or limit the authority of the Department of
197 Environmental Protection to regulate water quality, including
198 reclaimed water, pursuant to chapter 403, Florida Statutes, or
199 to require a reuse feasibility study pursuant to s. 403.064,
200 Florida Statutes.

201 (2) Impair or limit the authority of a water management
202 district to conduct regional water supply planning pursuant
203 chapter 373, Florida Statutes.

204 (3) Affect any requirement that may be applicable to
205 funding of alternative water supply development, including
206 reclaimed water, pursuant to s. 373.707, Florida Statutes.

207 (4) Affect or limit any applicable provisions regarding the
208 setting of rates by public and private water utilities pursuant
209 to chapter 153 or chapter 180, Florida Statutes, or s. 367.081,
210 Florida Statutes.

211 (5) Affect or impair the powers of the Governor under the
212 State Constitution; general law, including, but not limited to,
213 chapter 14, Florida Statutes; and police powers of the state to
214 adopt and enforce emergency rules, regulations, and orders.

215 Section 5. Paragraph (d) of subsection (1) of section
216 373.036, Florida Statutes, is amended to read:



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217 373.036 Florida water plan; district water management
218 plans.—

219 (1) FLORIDA WATER PLAN.—In cooperation with the water
220 management districts, regional water supply authorities, and
221 others, the department shall develop the Florida water plan. The
222 Florida water plan shall include, but not be limited to:

223 (d) Goals, objectives, and guidance for the development and
224 review of programs, rules, and plans relating to water
225 resources, based on statutory policies and directives. The state
226 water policy rule, renamed the water resource implementation
227 rule pursuant to s. 373.019(25) ~~373.019(23)~~, shall serve as this
228 part of the plan. Amendments or additions to this part of the
229 Florida water plan shall be adopted by the department as part of
230 the water resource implementation rule. In accordance with s.
231 373.114, the department shall review rules of the water
232 management districts for consistency with this rule. Amendments
233 to the water resource implementation rule must be adopted by the
234 secretary of the department and be submitted to the President of
235 the Senate and the Speaker of the House of Representatives
236 within 7 days after publication in the Florida Administrative
237 Weekly. Amendments shall not become effective until the
238 conclusion of the next regular session of the Legislature
239 following their adoption.

240 Section 6. Subsection (1) of section 373.421, Florida
241 Statutes, is amended to read:

242 373.421 Delineation methods; formal determinations.—

243 (1) The Environmental Regulation Commission shall adopt a
244 unified statewide methodology for the delineation of the extent
245 of wetlands as defined in s. 373.019(27) ~~373.019(25)~~. This



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246 methodology shall consider regional differences in the types of
247 soils and vegetation that may serve as indicators of the extent
248 of wetlands. This methodology shall also include provisions for
249 determining the extent of surface waters other than wetlands for
250 the purposes of regulation under s. 373.414. This methodology
251 shall not become effective until ratified by the Legislature.
252 Subsequent to legislative ratification, the wetland definition
253 in s. 373.019(27) ~~373.019(25)~~ and the adopted wetland
254 methodology shall be binding on the department, the water
255 management districts, local governments, and any other
256 governmental entities. Upon ratification of such wetland
257 methodology, the Legislature preempts the authority of any water
258 management district, state or regional agency, or local
259 government to define wetlands or develop a delineation
260 methodology to implement the definition and determines that the
261 exclusive definition and delineation methodology for wetlands
262 shall be that established pursuant to s. 373.019(27) ~~373.019(25)~~
263 and this section. Upon such legislative ratification, any
264 existing wetlands definition or wetland delineation methodology
265 shall be superseded by the wetland definition and delineation
266 methodology established pursuant to this chapter. Subsequent to
267 legislative ratification, a delineation of the extent of a
268 surface water or wetland by the department or a water management
269 district, pursuant to a formal determination under subsection
270 (2), or pursuant to a permit issued under this part in which the
271 delineation was field-verified by the permitting agency and
272 specifically approved in the permit, shall be binding on all
273 other governmental entities for the duration of the formal
274 determination or permit. All existing rules and methodologies of



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275 the department, the water management districts, and local
276 governments, regarding surface water or wetland definition and
277 delineation shall remain in full force and effect until the
278 common methodology rule becomes effective. However, this shall
279 not be construed to limit any power of the department, the water
280 management districts, and local governments to amend or adopt a
281 surface water or wetland definition or delineation methodology
282 until the common methodology rule becomes effective.

283 Section 7. Paragraphs (r) and (u) of subsection (1) of
284 section 403.813, Florida Statutes, are amended to read:

285 403.813 Permits issued at district centers; exceptions.—

286 (1) A permit is not required under this chapter, chapter
287 373, chapter 61-691, Laws of Florida, or chapter 25214 or
288 chapter 25270, 1949, Laws of Florida, for activities associated
289 with the following types of projects; however, except as
290 otherwise provided in this subsection, nothing in this
291 subsection relieves an applicant from any requirement to obtain
292 permission to use or occupy lands owned by the Board of Trustees
293 of the Internal Improvement Trust Fund or any water management
294 district in its governmental or proprietary capacity or from
295 complying with applicable local pollution control programs
296 authorized under this chapter or other requirements of county
297 and municipal governments:

298 (r) The removal of aquatic plants, the removal of tussocks,
299 the associated replanting of indigenous aquatic plants, and the
300 associated removal from lakes of organic detrital material when
301 such planting or removal is performed and authorized by permit
302 or exemption granted under s. 369.20 or s. 369.25, provided
303 that:



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304 1. Organic detrital material that exists on the surface of
305 natural mineral substrate shall be allowed to be removed to a
306 depth of 3 feet or to the natural mineral substrate, whichever
307 is less;

308 2. All material removed pursuant to this paragraph shall be
309 deposited in an upland site in a manner that will prevent the
310 reintroduction of the material into waters in the state except
311 when spoil material is permitted to be used to create wildlife
312 islands in freshwater bodies of the state when a governmental
313 entity is permitted pursuant to s. 369.20 to create such islands
314 as a part of a restoration or enhancement project;

315 3. All activities are performed in a manner consistent with
316 state water quality standards; and

317 4. No activities under this exemption are conducted in
318 wetland areas, as defined in ~~by~~ s. 373.019(27) ~~373.019(25)~~,
319 which are supported by a natural soil as shown in applicable
320 United States Department of Agriculture county soil surveys,
321 except when a governmental entity is permitted pursuant to s.
322 369.20 to conduct such activities as a part of a restoration or
323 enhancement project.

324
325 The department may not adopt implementing rules for this
326 paragraph, notwithstanding any other provision of law.

327 (u) Notwithstanding any provision to the contrary in this
328 subsection, a permit or other authorization under chapter 253,
329 chapter 369, chapter 373, or this chapter is not required for an
330 individual residential property owner for the removal of organic
331 detrital material from freshwater rivers or lakes that have a
332 natural sand or rocky substrate and that are not Aquatic



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333 Preserves or for the associated removal and replanting of
334 aquatic vegetation for the purpose of environmental enhancement,
335 providing that:

336 1. No activities under this exemption are conducted in
337 wetland areas, as defined in by s. 373.019(27) ~~373.019(25)~~,
338 which are supported by a natural soil as shown in applicable
339 United States Department of Agriculture county soil surveys.

340 2. No filling or peat mining is allowed.

341 3. No removal of native wetland trees, including, but not
342 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

343 4. When removing organic detrital material, no portion of
344 the underlying natural mineral substrate or rocky substrate is
345 removed.

346 5. Organic detrital material and plant material removed is
347 deposited in an upland site in a manner that will not cause
348 water quality violations.

349 6. All activities are conducted in such a manner, and with
350 appropriate turbidity controls, so as to prevent any water
351 quality violations outside the immediate work area.

352 7. Replanting with a variety of aquatic plants native to
353 the state shall occur in a minimum of 25 percent of the
354 preexisting vegetated areas where organic detrital material is
355 removed, except for areas where the material is removed to bare
356 rocky substrate; however, an area may be maintained clear of
357 vegetation as an access corridor. The access corridor width may
358 not exceed 50 percent of the property owner's frontage or 50
359 feet, whichever is less, and may be a sufficient length
360 waterward to create a corridor to allow access for a boat or
361 swimmer to reach open water. Replanting must be at a minimum



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362 density of 2 feet on center and be completed within 90 days
363 after removal of existing aquatic vegetation, except that under
364 dewatered conditions replanting must be completed within 90 days
365 after reflooding. The area to be replanted must extend waterward
366 from the ordinary high water line to a point where normal water
367 depth would be 3 feet or the preexisting vegetation line,
368 whichever is less. Individuals are required to make a reasonable
369 effort to maintain planting density for a period of 6 months
370 after replanting is complete, and the plants, including
371 naturally recruited native aquatic plants, must be allowed to
372 expand and fill in the revegetation area. Native aquatic plants
373 to be used for revegetation must be salvaged from the
374 enhancement project site or obtained from an aquatic plant
375 nursery regulated by the Department of Agriculture and Consumer
376 Services. Plants that are not native to the state may not be
377 used for replanting.

378 8. No activity occurs any farther than 100 feet waterward
379 of the ordinary high water line, and all activities must be
380 designed and conducted in a manner that will not unreasonably
381 restrict or infringe upon the riparian rights of adjacent upland
382 riparian owners.

383 9. The person seeking this exemption notifies the
384 applicable department district office in writing at least 30
385 days before commencing work and allows the department to conduct
386 a preconstruction site inspection. Notice must include an
387 organic-detrital-material removal and disposal plan and, if
388 applicable, a vegetation-removal and revegetation plan.

389 10. The department is provided written certification of
390 compliance with the terms and conditions of this paragraph



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391 within 30 days after completion of any activity occurring under
392 this exemption.

393 Section 8. Subsection (6) of section 556.102, Florida
394 Statutes, is amended to read:

395 556.102 Definitions.—As used in this act:

396 (6) "Excavate" or "excavation" means any manmade cut,
397 cavity, trench, or depression in the earth's surface, formed by
398 removal of earth, intended to change the grade or level of land,
399 or intended to penetrate or disturb the surface of the earth,
400 including land beneath the waters of the state, as defined in s.
401 373.019(22) ~~373.019(20)~~, and the term includes pipe bursting and
402 directional drilling or boring from one point to another point
403 beneath the surface of the earth, or other trenchless
404 technologies.

405
406 ===== T I T L E A M E N D M E N T =====

407 And the title is amended as follows:

408 Delete line 9

409 and insert:

410 its expiration; amending s. 373.019, F.S.; defining
411 the terms "reclaimed water" and "reclaimed water
412 distribution system"; amending s. 373.250, F.S.;

413 providing legislative findings relating to the use of
414 reclaimed water; providing that reclaimed water is an
415 alternative water supply and eligible for such
416 funding; authorizing specified contract provisions for
417 the development of reclaimed water as an alternative
418 water supply; prohibiting the exclusion of reclaimed
419 water use from regional water supply planning;



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420 deleting a definition for the term "uncommitted";
421 providing for the determination of uncommitted
422 reclaimed water capacity by certain utilities;
423 prohibiting water management districts from requiring
424 permits for the use of reclaimed water; authorizing
425 permit conditions for certain surface water and
426 groundwater sources; authorizing water management
427 districts to require the use of reclaimed water under
428 certain conditions; prohibiting water management
429 districts from requiring or restricting services
430 provided by reuse utilities; providing an exception;
431 clarifying which permit applicants are required to
432 submit certain information; requiring the Department
433 of Environmental Protection and each water management
434 district to initiate rulemaking to adopt specified
435 revisions to the water resource implementation rule;
436 revising applicability; providing for construction of
437 the act; amending ss. 373.036, 373.421, 403.813, and
438 556.102, F.S.; conforming cross-references to changes
439 made by the act; providing an effective date.