

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WITHDRAWN _____ (Y/N)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 Young offered the following:

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

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (17) through (26) of section
7 373.019, Florida Statutes, are renumbered as subsections (19)
8 through (28), respectively, and new subsections (17) and (18)
9 are added to that section to read:

10 373.019 Definitions.—When appearing in this chapter or in
11 any rule, regulation, or order adopted pursuant thereto, the
12 term:

13 (17) "Reclaimed water" means water that has received at
14 least secondary treatment and basic disinfection and is reused
15 after flowing out of a domestic wastewater treatment facility.
16 Reclaimed water is not subject to regulation pursuant to s.
17 373.175 or part II of this chapter until it has been discharged
18 into waters as defined in s. 403.031(13).

Amendment No.

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

24 Section 2. Section 373.250, Florida Statutes, is amended
25 to read:

26 373.250 Reuse of reclaimed water.—

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

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

43 (2) Reclaimed water is an alternative water supply as
44 defined in s. 373.019(1) and is eligible for alternative water
45 supply funding. A contract for state or district funding

Amendment No.

46 assistance for the development of reclaimed water as an
47 alternative water supply may include provisions listed under s.
48 373.707(9). The use of reclaimed water may not be excluded from
49 regional water supply planning under s. 373.709.

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

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

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

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

Amendment No.

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

83 (d) The South Florida Water Management District shall
84 require the use of reclaimed water made available by the
85 elimination of wastewater ocean outfall discharges as provided
86 for in s. 403.086(9) in lieu of surface water or groundwater
87 when the use of ~~uncommitted~~ reclaimed water is available; is
88 environmentally, economically, and technically feasible; and is
89 of such quality and reliability as is necessary to the user.
90 Such reclaimed water may also be required in lieu of other
91 alternative sources. In determining whether ~~or not~~ to require
92 such reclaimed water in lieu of other alternative sources, the
93 water management district shall consider existing infrastructure
94 investments in place or obligated to be constructed by an
95 executed contract or similar binding agreement as of July 1,
96 2011, for the development of other alternative sources.

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

081293 - FINAL AMENDMENT HB 639 RECLAIMED WATER in State Affairs
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Amendment No.

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

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

122 (b)-(e) Provisions to require permit applicants that are
123 not reuse utilities to provide, as part of their reclaimed water
124 feasibility evaluation for a nonpotable use, written
125 documentation from a reuse utility addressing the availability
126 of reclaimed water. This requirement shall apply when the

Amendment No.

127 applicant's proposed use is within an area that is or may be
128 served with reclaimed water by a reuse utility within a 5-year
129 horizon, as established by the reuse utility and provided to the
130 district. If the applicable reuse utility fails to respond or
131 does not provide the information required under paragraph (c)
132 ~~(d)~~ within 30 days after receipt of the request, the applicant
133 shall provide to the district a copy of the written request and
134 a statement that the utility failed to provide the requested
135 information. The district is not required to adopt, by rule, the
136 area where written documentation from a reuse utility is
137 required, but the district shall publish the area, and any
138 updates thereto, on the district's website. This paragraph may
139 not be construed to limit the ability of a district to require
140 the use of reclaimed water or to limit a utility's ability to
141 plan reclaimed water infrastructure.

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

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

Amendment No.

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
157 derived from the use of reclaimed water when a water management
158 district evaluates an application for a consumptive use permit.
159 As used in this subparagraph, the term "impact offset" means the
160 use of reclaimed water to reduce or eliminate a harmful impact
161 that has occurred or would otherwise occur as a result of other
162 surface 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.

081293 - FINAL AMENDMENT HB 639 RECLAIMED WATER in State Affairs
(2).docx

Published On: 1/31/2012 6:00:54 PM

Amendment No.

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
188 the authority of ~~shall impair~~ a water management district
189 ~~district's authority~~ to plan for and regulate consumptive uses
190 of water under this chapter or regulate the use of surface water
191 or 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 3. 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 to
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.

Amendment No.

207 (4) Affect or limit any applicable provisions regarding
208 the setting of rates by public and private water utilities
209 pursuant to chapter 153, Florida Statutes, chapter 180, Florida
210 Statutes, or s. 367.08, Florida Statutes.

211 (5) Affect or impair the powers of the Governor under the
212 constitution, statutory laws, including but not limited to
213 chapter 14, Florida Statutes and police powers to promulgate and
214 enforce emergency rules, regulations, and orders.

215 Section 4. Paragraph (d) of subsection (1) of section
216 373.036, Florida Statutes, is amended to read:

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
224 and 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)~~ ~~(23)~~, shall serve as this part of
228 the plan. Amendments or additions to this part of the Florida
229 water plan shall be adopted by the department as part of the
230 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

Amendment No.

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 5. 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(25). This methodology shall
246 consider regional differences in the types of soils and
247 vegetation that may serve as indicators of the extent of
248 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)~~(25)~~ and the adopted wetland methodology shall
254 be binding on the department, the water management districts,
255 local governments, and any other governmental entities. Upon
256 ratification of such wetland methodology, the Legislature
257 preempts the authority of any water management district, state
258 or regional agency, or local government to define wetlands or
259 develop a delineation methodology to implement the definition
260 and determines that the exclusive definition and delineation

081293 - FINAL AMENDMENT HB 639 RECLAIMED WATER in State Affairs
(2).docx

Published On: 1/31/2012 6:00:54 PM

Amendment No.

261 methodology for wetlands shall be that established pursuant to
262 s. 373.019(27)~~(25)~~ and this section. Upon such legislative
263 ratification, any existing wetlands definition or wetland
264 delineation methodology shall be superseded by the wetland
265 definition and delineation methodology established pursuant to
266 this chapter. Subsequent to legislative ratification, a
267 delineation of the extent of a surface water or wetland by the
268 department or a water management district, pursuant to a formal
269 determination under subsection (2), or pursuant to a permit
270 issued under this part in which the delineation was field-
271 verified by the permitting agency and specifically approved in
272 the permit, shall be binding on all other governmental entities
273 for the duration of the formal determination or permit. All
274 existing rules and methodologies of the department, the water
275 management districts, and local governments, regarding surface
276 water or wetland definition and delineation shall remain in full
277 force and effect until the common methodology rule becomes
278 effective. However, this shall not be construed to limit any
279 power of the department, the water management districts, and
280 local governments to amend or adopt a surface water or wetland
281 definition or delineation methodology until the common
282 methodology rule becomes effective.

283 Section 6. Paragraph (r) of subsection (1) of section
284 403.813, Florida Statutes, is 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

Amendment No.

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

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
309 be 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;

081293 - FINAL AMENDMENT HB 639 RECLAIMED WATER in State Affairs
(2).docx

Published On: 1/31/2012 6:00:54 PM

Amendment No.

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

317 4. No activities under this exemption are conducted in
318 wetland areas, as defined by s. 373.019 ~~(27)~~ ~~(25)~~, which are
319 supported by a natural soil as shown in applicable United States
320 Department of Agriculture county soil surveys, except when a
321 governmental entity is permitted pursuant to s. 369.20 to
322 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 Section 7. Subsection (6) of section 556.102, Florida
328 Statutes, is amended to read:

329 556.102 Definitions.—As used in this act:

330 (6) "Excavate" or "excavation" means any manmade cut,
331 cavity, trench, or depression in the earth's surface, formed by
332 removal of earth, intended to change the grade or level of land,
333 or intended to penetrate or disturb the surface of the earth,
334 including land beneath the waters of the state, as defined in s.
335 373.019 ~~(22)~~ ~~(20)~~, and the term includes pipe bursting and
336 directional drilling or boring from one point to another point
337 beneath the surface of the earth, or other trenchless
338 technologies.

339 Section 8. This act shall take effect July 1, 2012.

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Amendment No.

342 -----

343 **T I T L E A M E N D M E N T**

344 Remove the entire title and insert:

345 A bill to be entitled

346 An act relating to reclaimed water; amending s.
347 373.019, F.S.; defining the terms "reclaimed water"
348 and "reclaimed water distribution system"; amending s.
349 373.250, F.S.; providing legislative findings relating
350 to the use of reclaimed water; providing that
351 reclaimed water is an alternative water supply and
352 eligible for such funding; authorizing specified
353 contract provisions for the development of reclaimed
354 water as an alternative water supply; prohibiting the
355 exclusion of reclaimed water for consideration in
356 regional water supply planning; deleting a definition
357 for the term "uncommitted"; providing for the
358 determination of uncommitted reclaimed water capacity
359 by certain utilities; prohibiting water management
360 districts from requiring permits for the use of
361 reclaimed water; authorizing permit conditions for
362 certain surface water and groundwater sources;
363 authorizing water management districts to require the
364 use of reclaimed water under certain conditions;
365 prohibiting water management districts from requiring
366 or restricting services provided by reuse utilities;
367 providing an exception; clarifying which permit
368 applicants are required to submit certain information;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 639 (2012)

Amendment No.

369 requiring the Department of Environmental Protection
370 and each water management district to initiate
371 rulemaking to adopt specified revisions to the water
372 resource implementation rule; revising applicability;
373 providing for construction of the act; amending ss.
374 373.036, 373.421, 403.813, and 556.102, F.S.;
375 conforming cross-references to changes made by the
376 act; providing an effective date.