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 Committee on Agriculture

BILL:	SB 536
INTRODUCER:	Senator Simpson
SUBJECT:	Reclaimed Water
DATE:	February 3, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Pre-meeting**
2.			EP	

I. Summary:

SB 536 directs the Florida Department Agriculture and Consumer Services (DACS) and the Florida Department of Environmental Protection (DEP), in cooperation with the five water management districts (WMDs), to conduct a study and submit a report on expanding the use of reclaimed water in Florida, including stormwater and excess surface water. The bill identifies the elements the report must address, including:

- factors that complicate or constrain the use of reclaimed water;
- areas where the use of reclaimed water is necessary;
- recommendations for permit incentives for the use of reclaimed water; and
- a determination of the feasibility, benefit, and cost estimate of needed infrastructure.

The bill directs DACS and DEP to hold a public meeting to gather input on the study design. In addition, the departments must provide the public an opportunity to comment on the report before it is submitted to the Governor, President of the Senate, and Speaker of the House of Representatives. The report must be submitted by December 1, 2015.

II. Present Situation:

Reclaimed water is wastewater that has been treated to remove harmful organisms and substances such as bacteria, viruses, and heavy metals. The degree of treatment depends upon where the reclaimed water will be used. Reclaimed water is clear, odorless, and safe. However, it can only be used for nondrinking water purposes in Florida. Examples of uses include:

- landscape and commercial agricultural irrigation, (the most common type of use);
- groundwater recharge;
- industrial uses such as cooling, process, or wash waters;
- fire protection; and

- wetlands creation, restoration, and enhancement.[1]

For nearly 100 years, highly treated reclaimed water has been used in the United States. In 1912, the first small urban reuse system began with the irrigation of Golden Gate Park in San Francisco. In 1966, Florida constructed the Tallahassee Reclaimed Water Farm. Since then, reuse within Florida has successfully grown to include more than 440 systems that reclaim 725 million gallons of water per day (mgd), more than any other state.[2]

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.[3] 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.[4] Of these enumerated alternative water sources, the Legislature expressly encourages the use of reclaimed water as an alternative water source "whenever practicable."[5]

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.[6] 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.[7]

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, 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 725 million gallons of reclaimed water each day to conserve freshwater supplies and replenish our rivers, streams, lakes and the aquifer."[8]

Section 373.250(3)(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

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[1] Florida Department of Agriculture and Consumer Services, *Senate Bill 536 Agency Analysis* (January 22, 2014) (on file with the Senate Agriculture Committee).
[2] *Southwest Florida Water Management District*. www.watereuse.org/files/s/docs/reclaimed_water_lev2_08_09.pdf (last visited January 29, 2014).
[3] *See* s. 373.2234, F.S.
[4] Section 373.223(3)(c), F.S.
[5] Section 373.016(4)(a), F.S.
[6] Rule 62-610.200(48), F.A.C.
[7] DEP, *Water Reuse*, http://www.dep.state.fl.us/water/reuse/index.htm (last visited January 29, 2014).
[8] *Supra* note 7.

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.[9]

As required in statute and implemented in the DEP's Water Resource Implementation Rule,[10] the WMDs must designate water resource caution areas[11] 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.[12] 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.[13]

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.[14] With respect to Florida's "Home Rule Power,"[15] the provisions of the Water Resource Implementation Rule provide that the rule itself may not preempt any local water reuse programs.[16]

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.[17] Mandatory reuse zones have been established in three WMDs –

[9] Section 373.250(3)(a)-(b), F.S.
[10] *See generally* Rule 62-40, F.A.C.
[11] 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.
[12] Rule 40C-23.001, F.A.C.
[13] Rule 40A-2.802, F.A.C.
[14] Rule 62-40.416(2), F.A.C.
[15] 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."
[16] Rule 62-40.416(2), F.A.C.
[17] 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

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.[18]

III. Effect of Proposed Changes:

Section 1 requires the Department of Agriculture and Consumer Services and the Department of Environmental Protection, in cooperation with the five water management districts, to conduct a study on expanding the use of reclaimed water in Florida. The report must identify obstacles to its use, recommend permitting incentives, and discuss the feasibility, benefit, and cost of needed infrastructures for reclaimed water. The bill also directs the departments to hold a public meeting to gather input on the study design and to provide the public with the opportunity to comment on the report before it is submitted to the Governor, President of the Senate, and the Speaker of the House of Representatives. The report must be submitted by December 1, 2015.

Section 2 provides that this act shall take effect July 1, 2014.

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.

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[.]"

[18] 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 January 29, 2014).

C. Government Sector Impact:

The Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the water management districts may incur some travel expenses associated with interagency and public meetings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.