

Amendment No.

CHAMBER ACTION

Senate

House

.

---

1 Representative Caldwell offered the following:

2  
3 **Amendment (with title amendment)**

4 Between lines 287 and 288, insert:

5 Section 13. Section 373.042, Florida Statutes, is amended  
6 to read:

7 373.042 Minimum flows and minimum water levels.-

8 (1) Within each section, or within the water management  
9 district as a whole, the department or the governing board shall  
10 establish the following:

11 (a) Minimum flow for all surface watercourses in the area.  
12 The minimum flow for a given watercourse is ~~shall be~~ the limit  
13 at which further withdrawals would be significantly harmful to  
14 the water resources or ecology of the area.

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

15 (b) Minimum water level. The minimum water level ~~is shall~~  
16 ~~be~~ the level of groundwater in an aquifer and the level of  
17 surface water at which further withdrawals would be  
18 significantly harmful to the water resources or ecology of the  
19 area.

20  
21 The minimum flow and minimum water level shall be calculated by  
22 the department and the governing board using the best  
23 information available. When appropriate, minimum flows and  
24 minimum water levels may be calculated to reflect seasonal  
25 variations. The department and the governing board shall ~~also~~  
26 consider, and at their discretion may provide for, the  
27 protection of nonconsumptive uses in the establishment of  
28 minimum flows and minimum water levels.

29 (2) (a) If a minimum flow or minimum water level has not  
30 been adopted for an Outstanding Florida Spring, a water  
31 management district or the department shall use the emergency  
32 rulemaking authority provided in paragraph (c) to adopt a  
33 minimum flow or minimum water level no later than July 1, 2017,  
34 except for the Northwest Florida Water Management District,  
35 which shall use such authority to adopt minimum flows and  
36 minimum water levels for Outstanding Florida Springs no later  
37 than July 1, 2026.

38 (b) For Outstanding Florida Springs identified on a water  
39 management district's priority list developed pursuant to  
40 subsection (3) which have the potential to be affected by

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

41 withdrawals in an adjacent district, the adjacent district or  
42 districts and the department shall collaboratively develop and  
43 implement a recovery or prevention strategy for an Outstanding  
44 Florida Spring not meeting an adopted minimum flow or minimum  
45 water level.

46 (c) The Legislature finds as provided in s. 373.801(3)(b)  
47 that the adoption of minimum flows and minimum water levels or  
48 recovery or prevention strategies for Outstanding Florida  
49 Springs requires immediate action. The department and the  
50 districts are authorized, and all conditions are deemed to be  
51 met, to use emergency rulemaking provisions pursuant to s.  
52 120.54(4) to adopt minimum flows and minimum water levels  
53 pursuant to this subsection and recovery or prevention  
54 strategies adopted concurrently with a minimum flow or minimum  
55 water level pursuant to s. 373.805(2).

56 (3)~~(2)~~ By November 15, 1997, and annually thereafter, each  
57 water management district shall submit to the department for  
58 review and approval a priority list and schedule for the  
59 establishment of minimum flows and minimum water levels for  
60 surface watercourses, aquifers, and surface waters within the  
61 district. The priority list and schedule shall identify those  
62 listed water bodies for which the district will voluntarily  
63 undertake independent scientific peer review; any reservations  
64 proposed by the district to be established pursuant to s.  
65 373.223(4); and those listed water bodies that have the  
66 potential to be affected by withdrawals in an adjacent district

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

67 for which the department's adoption of a reservation pursuant to  
68 s. 373.223(4) or a minimum flow or minimum water level pursuant  
69 to subsection (1) may be appropriate. By March 1, 2006, and  
70 annually thereafter, each water management district shall  
71 include its approved priority list and schedule in the  
72 consolidated annual report required by s. 373.036(7). The  
73 priority list shall be based upon the importance of the waters  
74 to the state or region and the existence of or potential for  
75 significant harm to the water resources or ecology of the state  
76 or region, and shall include those waters which are experiencing  
77 or may reasonably be expected to experience adverse impacts.  
78 Each water management district's priority list and schedule  
79 shall include all first magnitude springs, and all second  
80 magnitude springs within state or federally owned lands  
81 purchased for conservation purposes. The specific schedule for  
82 establishment of spring minimum flows and minimum water levels  
83 shall be commensurate with the existing or potential threat to  
84 spring flow from consumptive uses. Springs within the Suwannee  
85 River Water Management District, or second magnitude springs in  
86 other areas of the state, need not be included on the priority  
87 list if the water management district submits a report to the  
88 Department of Environmental Protection demonstrating that  
89 adverse impacts are not now occurring nor are reasonably  
90 expected to occur from consumptive uses during the next 20  
91 years. The priority list and schedule is not subject to any  
92 proceeding pursuant to chapter 120. Except as provided in

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

93 subsection (4) ~~(3)~~, the development of a priority list and  
94 compliance with the schedule for the establishment of minimum  
95 flows and minimum water levels pursuant to this subsection  
96 satisfies the requirements of subsection (1).

97 ~~(4)~~ ~~(3)~~ Minimum flows or minimum water levels for priority  
98 waters in the counties of Hillsborough, Pasco, and Pinellas  
99 shall be established by October 1, 1997. Where a minimum flow or  
100 minimum water level for the priority waters within those  
101 counties has not been established by the applicable deadline,  
102 the secretary of the department shall, if requested by the  
103 governing body of any local government within whose jurisdiction  
104 the affected waters are located, establish the minimum flow or  
105 minimum water level in accordance with the procedures  
106 established by this section. The department's reasonable costs  
107 in establishing a minimum flow or minimum water level shall,  
108 upon request of the secretary, be reimbursed by the district.

109 ~~(5)~~ ~~(4)~~ A water management district shall provide the  
110 department with technical information and staff support for the  
111 development of a reservation, minimum flow or minimum water  
112 level, or recovery or prevention strategy to be adopted by the  
113 department by rule. A water management district shall apply any  
114 reservation, minimum flow or minimum water level, or recovery or  
115 prevention strategy adopted by the department by rule without  
116 the district's adoption by rule of such reservation, minimum  
117 flow or minimum water level, or recovery or prevention strategy.

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

118        ~~(6)~~(5)(a) Upon written request to the department or  
119 governing board by a substantially affected person, or by  
120 decision of the department or governing board, ~~before~~ ~~prior to~~  
121 the establishment of a minimum flow or minimum water level and  
122 ~~before~~ ~~prior to~~ the filing of any petition for administrative  
123 hearing related to the minimum flow or minimum water level, all  
124 scientific or technical data, methodologies, and models,  
125 including all scientific and technical assumptions employed in  
126 each model, used to establish a minimum flow or minimum water  
127 level shall be subject to independent scientific peer review.  
128 Independent scientific peer review means review by a panel of  
129 independent, recognized experts in the fields of hydrology,  
130 hydrogeology, limnology, biology, and other scientific  
131 disciplines, to the extent relevant to the establishment of the  
132 minimum flow or minimum water level.

133        (b) If independent scientific peer review is requested, it  
134 shall be initiated at an appropriate point agreed upon by the  
135 department or governing board and the person or persons  
136 requesting the peer review. If no agreement is reached, the  
137 department or governing board shall determine the appropriate  
138 point at which to initiate peer review. The members of the peer  
139 review panel shall be selected within 60 days of the point of  
140 initiation by agreement of the department or governing board and  
141 the person or persons requesting the peer review. If the panel  
142 is not selected within the 60-day period, the time limitation  
143 may be waived upon the agreement of all parties. If no waiver

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

144 occurs, the department or governing board may proceed to select  
145 the peer review panel. The cost of the peer review shall be  
146 borne equally by the district and each party requesting the peer  
147 review, to the extent economically feasible. The panel shall  
148 submit a final report to the governing board within 120 days  
149 after its selection unless the deadline is waived by agreement  
150 of all parties. Initiation of peer review pursuant to this  
151 paragraph shall toll any applicable deadline under chapter 120  
152 or other law or district rule regarding permitting, rulemaking,  
153 or administrative hearings, until 60 days following submittal of  
154 the final report. Any such deadlines shall also be tolled for 60  
155 days following withdrawal of the request or following agreement  
156 of the parties that peer review will no longer be pursued. The  
157 department or the governing board shall give significant weight  
158 to the final report of the peer review panel when establishing  
159 the minimum flow or minimum water level.

160 (c) If the final data, methodologies, and models,  
161 including all scientific and technical assumptions employed in  
162 each model upon which a minimum flow or level is based, have  
163 undergone peer review pursuant to this subsection, by request or  
164 by decision of the department or governing board, no further  
165 peer review shall be required with respect to that minimum flow  
166 or minimum water level.

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

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

170        (7)~~(6)~~ If a petition for administrative hearing is filed  
171 under chapter 120 challenging the establishment of a minimum  
172 flow or minimum water level, the report of an independent  
173 scientific peer review conducted under subsection (5) ~~(4)~~ is  
174 admissible as evidence in the final hearing, and the  
175 administrative law judge must render the order within 120 days  
176 after the filing of the petition. The time limit for rendering  
177 the order shall not be extended except by agreement of all the  
178 parties. To the extent that the parties agree to the findings of  
179 the peer review, they may stipulate that those findings be  
180 incorporated as findings of fact in the final order.

181        (8) The rules adopted pursuant to this section are not  
182 subject to s. 120.541(3).

183        Section 14. Section 373.0421, Florida Statutes, is amended  
184 to read:

185        373.0421 Establishment and implementation of minimum flows  
186 and minimum levels.—

187        (1) ESTABLISHMENT.—

188        (a) *Considerations.*—When establishing minimum flows and  
189 minimum water levels pursuant to s. 373.042, the department or  
190 governing board shall consider changes and structural  
191 alterations to watersheds, surface waters, and aquifers and the  
192 effects such changes or alterations have had, and the  
193 constraints such changes or alterations have placed, on the  
194 hydrology of an affected watershed, surface water, or aquifer,

329715

Approved For Filing: 4/22/2015 1:45:47 PM



Amendment No.

195 provided that nothing in this paragraph shall allow significant  
196 harm as provided by s. 373.042(1) caused by withdrawals.

197 (b) *Exclusions.*—

198 1. The Legislature recognizes that certain water bodies no  
199 longer serve their historical hydrologic functions. The  
200 Legislature also recognizes that recovery of these water bodies  
201 to historical hydrologic conditions may not be economically or  
202 technically feasible, and that such recovery effort could cause  
203 adverse environmental or hydrologic impacts. Accordingly, the  
204 department or governing board may determine that setting a  
205 minimum flow or minimum water level for such a water body based  
206 on its historical condition is not appropriate.

207 2. The department or the governing board is not required  
208 to establish minimum flows or minimum water levels pursuant to  
209 s. 373.042 for surface water bodies less than 25 acres in area,  
210 unless the water body or bodies, individually or cumulatively,  
211 have significant economic, environmental, or hydrologic value.

212 3. The department or the governing board shall not set  
213 minimum flows or minimum water levels pursuant to s. 373.042 for  
214 surface water bodies constructed before ~~prior to~~ the requirement  
215 for a permit, or pursuant to an exemption, a permit, or a  
216 reclamation plan which regulates the size, depth, or function of  
217 the surface water body under the provisions of this chapter,  
218 chapter 378, or chapter 403, unless the constructed surface  
219 water body is of significant hydrologic value or is an essential  
220 element of the water resources of the area.

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

221  
222 The exclusions of this paragraph shall not apply to the  
223 Everglades Protection Area, as defined in s. 373.4592(2)(i).

224 (2) If the existing flow or water level in a water body is  
225 below, or is projected to fall within 20 years below, the  
226 applicable minimum flow or minimum water level established  
227 pursuant to s. 373.042, the department or governing board,  
228 concurrent with the adoption of the minimum flow or minimum  
229 water level and as part of the regional water supply plan  
230 described in s. 373.709, shall adopt and ~~expeditiously~~ implement  
231 a recovery or prevention strategy, which includes the  
232 development of additional water supplies and other actions,  
233 consistent with the authority granted by this chapter, to:

234 (a) Achieve recovery to the established minimum flow or  
235 minimum water level as soon as practicable; or

236 (b) Prevent the existing flow or water level from falling  
237 below the established minimum flow or minimum water level.

238  
239 The recovery or prevention strategy must ~~shall~~ include a phased-  
240 in approach ~~phasing~~ or a timetable which will allow for the  
241 provision of sufficient water supplies for all existing and  
242 projected reasonable-beneficial uses, including development of  
243 additional water supplies and implementation of conservation and  
244 other efficiency measures concurrent with and, to the maximum  
245 extent practical, ~~and~~ to offset, reductions in permitted  
246 withdrawals, consistent with ~~the provisions of~~ this chapter. The

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

247 recovery or prevention strategy may not depend solely on water  
248 shortage restrictions declared pursuant to s. 373.175 or s.  
249 373.246.

250 (3) To ensure that sufficient water is available for all  
251 existing and future reasonable-beneficial uses and the natural  
252 systems, the applicable regional water supply plan prepared  
253 pursuant to s. 373.709 shall be amended to include any water  
254 supply development project or water resource development project  
255 identified in a recovery or prevention strategy. Such amendment  
256 shall be approved concurrently with relevant portions of the  
257 recovery or prevention strategy.

258 (4) The water management district shall notify the  
259 department if an application for a water use permit is denied  
260 based upon the impact that the use will have on an adopted  
261 minimum flow or minimum water level. Upon receipt of such  
262 notice, the department shall, as soon as practicable and in  
263 cooperation with the water management district, conduct a review  
264 of the applicable regional water supply plan prepared pursuant  
265 to s. 373.709. Such review shall include an assessment by the  
266 department of the adequacy of the plan in addressing the  
267 legislative intent of s. 373.705(2)(b) which provides that  
268 sufficient water be available for all existing and future  
269 reasonable-beneficial uses and natural systems and that the  
270 adverse effects of competition for water supplies be avoided. If  
271 the department determines, based upon this review, that the  
272 regional water supply plan does not adequately address the

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

273 legislative intent of s. 373.705(2)(b), the water management  
274 district shall immediately initiate an update of the plan  
275 consistent with s. 373.709.

276 (5)(3) The provisions of this section are supplemental to  
277 any other specific requirements or authority provided by law.  
278 Minimum flows and minimum water levels shall be reevaluated  
279 periodically and revised as needed.

280 Section 15. Subsection (3) is added to section 373.219,  
281 Florida Statutes, to read:

282 373.219 Permits required.—

283 (3) For Outstanding Florida Springs, the department shall  
284 adopt uniform rules for issuing permits which prevent  
285 groundwater withdrawals that are harmful to the water resources  
286 and adopt by rule a uniform definition of the term "harmful to  
287 the water resources" to provide water management districts with  
288 minimum standards necessary to be consistent with the overall  
289 water policy of the state. This subsection does not prohibit a  
290 water management district from adopting a definition that is  
291 more protective of the water resources consistent with local or  
292 regional conditions and objectives.

293 Section 16. Subsection (6) is added to section 373.223,  
294 Florida Statutes, to read:

295 373.223 Conditions for a permit.—

296 (6) A new consumptive use permit, or the renewal or  
297 modification of a consumptive use permit, that authorizes  
298 groundwater withdrawals of 100,000 gallons or more per day from

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

299 a well with an inside diameter of 8 inches or more shall be  
300 monitored for water usage at intervals using methods determined  
301 by the applicable water management district, and the results of  
302 such monitoring shall be reported to the applicable water  
303 management district at least annually. The water management  
304 districts may adopt rules to implement this subsection.

305 Section 17. Section 373.2234, Florida Statutes, is amended  
306 to read:

307 373.2234 Preferred water supply sources.—

308 (1) The governing board of a water management district is  
309 authorized to adopt rules that identify preferred water supply  
310 sources for consumptive uses for which there is sufficient data  
311 to establish that a preferred source will provide a substantial  
312 new water supply to meet the existing and projected reasonable-  
313 beneficial uses of a water supply planning region identified  
314 pursuant to s. 373.709(1), while sustaining existing water  
315 resources and natural systems. At a minimum, such rules must  
316 contain a description of the preferred water supply source and  
317 an assessment of the water the preferred source is projected to  
318 produce.

319 (2) (a) If an applicant proposes to use a preferred water  
320 supply source, that applicant's proposed water use is subject to  
321 s. 373.223(1), except that the proposed use of a preferred water  
322 supply source must be considered by a water management district  
323 when determining whether a permit applicant's proposed use of

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

324 water is consistent with the public interest pursuant to s.  
325 373.223(1)(c).

326 (b) The governing board of a water management district  
327 shall consider the identification of preferred water supply  
328 sources for water users for whom access to or development of new  
329 water supplies is not technically or financially feasible.  
330 Identification of preferred water supply sources for such water  
331 users must be consistent with s. 373.016.

332 (c) A consumptive use permit issued for the use of a  
333 preferred water supply source must be granted, when requested by  
334 the applicant, for at least a 20-year period and may be subject  
335 to the compliance reporting provisions of s. 373.236(4).

336 (3) (a) ~~Nothing in This section does not: shall be~~  
337 ~~construed to~~

338 1. Exempt the use of preferred water supply sources from  
339 ~~the provisions of ss. 373.016(4) and 373.223(2) and (3); or be~~  
340 ~~construed to~~

341 2. Provide that permits issued for the use of a  
342 nonpreferred water supply source must be issued for a duration  
343 of less than 20 years or that the use of a nonpreferred water  
344 supply source is not consistent with the public interest; ~~or-~~

345 3. ~~Additionally, nothing in this section shall be~~  
346 ~~interpreted to~~ Require the use of a preferred water supply  
347 source or to restrict or prohibit the use of a nonpreferred  
348 water supply source.

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

349       **(b)** Rules adopted by the governing board of a water  
350 management district to implement this section shall specify that  
351 the use of a preferred water supply source is not required and  
352 that the use of a nonpreferred water supply source is not  
353 restricted or prohibited.

354       Section 18. Subsection (2) of section 373.233, Florida  
355 Statutes, is amended to read:

356       373.233 Competing applications.—

357       **(2)(a)** ~~If in the event that~~ two or more competing  
358 applications qualify equally under ~~the provisions of~~ subsection  
359 (1), the governing board or the department shall give preference  
360 to a renewal application over an initial application.

361       **(b)** If two or more competing applications qualify equally  
362 under subsection (1) and none of the competing applications is a  
363 renewal application, the governing board or the department shall  
364 give preference to the application for the use where the source  
365 is nearest to the area of use or application consistent with s.  
366 373.016(4)(a).

367 -----  
368  
369                   **T I T L E   A M E N D M E N T**

370 Remove line 50 and insert:  
371 appropriation; amending s. 373.042, F.S.; requiring  
372 the Department of Environmental Protection or the  
373 governing board of a water management district to  
374 adopt a minimum flow or minimum water level for an

329715

Approved For Filing: 4/22/2015 1:45:47 PM

Amendment No.

375 Outstanding Florida Spring using emergency rulemaking  
376 authority under certain circumstances; requiring  
377 collaboration in the development and implementation of  
378 recovery or prevention strategies under certain  
379 circumstances; authorizing the department to use  
380 emergency rulemaking procedures under certain  
381 circumstances; amending s. 373.0421, F.S.; directing  
382 the department or the water management district  
383 governing boards to adopt and implement certain  
384 recovery or prevention strategies concurrent with the  
385 adoption of minimum flows and minimum water levels;  
386 providing criteria for such recovery or prevention  
387 strategies; requiring certain amendments to regional  
388 water supply plans to be concurrent with relevant  
389 portions of the recovery or prevention strategy;  
390 directing water management districts to notify the  
391 department when water use permit applications are  
392 denied for a specified reason; providing for the  
393 review and update of regional water supply plans in  
394 such cases; amending s. 373.219, F.S.; requiring the  
395 department to adopt a uniform definition of the term  
396 "harmful to the water resources" for Outstanding  
397 Florida Springs; amending s. 373.223, F.S.; requiring  
398 that consumptive use permits authorizing withdrawals  
399 of 100,000 gallons or more be monitored and that the  
400 results of such monitoring be reported to the water

329715

Approved For Filing: 4/22/2015 1:45:47 PM



Amendment No.

401 management district at least annually; authorizing  
402 water management districts to adopt rules for such  
403 monitoring and reporting; amending s. 373.2234, F.S.;  
404 directing water management district governing boards  
405 to consider the identification of preferred water  
406 supply sources for certain water users; amending s.  
407 373.233, F.S.; providing conditions under which the  
408 department and water management district governing  
409 boards are directed to give preference to certain  
410 applications; providing an effective date.

329715

Approved For Filing: 4/22/2015 1:45:47 PM