

By Senator Altman

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1 A bill to be entitled
2 An act relating to water resources; directing the
3 Department of Transportation to establish a Water and
4 Wastewater Utilities Relocation Study Committee;
5 specifying committee membership; providing that
6 members of the committee serve without compensation;
7 establishing duties for the committee; providing
8 reporting requirements; providing for the expiration
9 of the committee; amending s. 373.114, F.S.;
10 transferring review of water management district rules
11 from the Florida Land and Water Adjudicatory
12 Commission to the Department of Environmental
13 Protection; establishing review procedures and
14 standards; deleting provisions related to commission
15 review of water management district rules; amending
16 ss. 373.139, 373.217, 373.2295, and 373.4275, F.S.;
17 conforming provisions to changes made by the act;
18 reenacting s. 373.036(1)(d), F.S., relating to the
19 Florida water plan, to incorporate the amendment made
20 to s. 373.114, F.S., in a reference thereto; repealing
21 s. 373.245, F.S., relating to supplemental damages
22 connected with consumptive use permit violations;
23 providing retroactive applicability; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Water and Wastewater Utilities Relocation Study
29 Committee.—

30 (1) From the funds appropriated to the Department of
31 Transportation, the Water and Wastewater Utilities Relocation
32 Study Committee, a committee as defined in s. 20.03, Florida

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33 Statutes, is established to review, study, and make
34 recommendations concerning the need for improved coordination
35 and funding of the relocation of:

36 (a) Water and sewer facilities; and

37 (b) Public utility facilities that are located within the
38 public right-of-way if such relocation is required due to a
39 construction or an improvement of roads and bridges in this
40 state.

41 (2) The committee shall be composed of nine members. The
42 Governor, the President of the Senate, the Speaker of the House
43 of Representatives, and the Secretary of Transportation shall
44 each appoint one member. The remaining members shall consist of
45 one representative each from the Florida Association of
46 Counties, the Florida League of Cities, the Florida Section of
47 the American Water Works Association, the Florida Water
48 Environment Association, and the Florida Transportation Builders
49 Association. Members shall serve without compensation and are
50 not entitled to payment of or reimbursement for per diem or
51 travel expenses.

52 (3) The committee shall:

53 (a) Identify and categorize a statewide estimate of the
54 historical, current, and anticipated costs associated with the
55 relocation of water, sewer, and public utilities inside and
56 outside the rights-of-way held by state agencies, counties,
57 municipalities, or local water or sewer districts resulting from
58 work associated with highway projects.

59 (b) Determine as accurately as possible the percentage of
60 the statewide cost estimate identified in paragraph (a)
61 attributable to the Department of Transportation projects,

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62 regional highway authority projects, and local government
63 projects.

64 (c) Identify potential sources of sustainable funds that
65 may be used by state agencies, counties, municipalities, local
66 water or sewer districts, or public utilities for utility
67 relocation costs, including, but not limited to, existing state
68 and federal loan and grant programs, appropriations from the
69 General Revenue Fund, contributions from public utilities, and
70 other sustainable sources.

71 (d) Identify any legal obstacles that impact the ability of
72 state agencies, counties, municipalities, or local water or
73 sewer districts to fund the relocation of utilities.

74 (e) Investigate the creation of a utilities relocation
75 trust fund to assist in relocation costs through loans, grants,
76 matching funds, or other means and identify the appropriate
77 entity to administer the trust fund, the terms and conditions
78 under which funding might be provided, and the general criteria
79 that would be used in evaluating funding applications.

80 (f) Identify ways to improve coordination and reduce
81 negative impacts through the use of communication, technology,
82 and improved management techniques.

83 (g) Recommend changes to public policy, regulations, rules,
84 or statutes that would increase the availability of funding or
85 reduce costs associated with utility relocations resulting from
86 road and bridge projects.

87 (4) The committee shall submit a report of its findings and
88 recommendations to the Governor, the President of the Senate,
89 and the Speaker of the House of Representatives by December 15,
90 2016, at which time the committee shall expire.

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91 Section 2. Section 373.114, Florida Statutes, is amended to
92 read:

93 373.114 Department Land and Water Adjudicatory Commission,
94 review of district rules and orders; department review of
95 district rules. The department has exclusive authority to review
96 rules of the water management districts, excluding rules
97 relating to the internal management of the districts, to ensure
98 consistency with the water resource implementation rule adopted
99 by the department. Within 30 days after adoption or revision of
100 any water management district rule, the department may initiate
101 review of such rule pursuant to this section.

102 (1) Within 30 days after a district has adopted or revised
103 a rule, any affected person may request that a hearing be held
104 before the secretary of the department by filing a request for
105 hearing with the department and serving a copy of the request on
106 the water management district. At this hearing, evidence and
107 argument may be presented relating to the consistency of the
108 rule with the water resource implementation rule.

109 (2) If the department finds that the district rule is
110 inconsistent with the water resource implementation rule, it may
111 order the water management district to initiate rulemaking to
112 amend or repeal the rule.

113 ~~(1) Except as provided in subsection (2), the Governor and~~
114 ~~Cabinet, sitting as the Land and Water Adjudicatory Commission,~~
115 ~~have the exclusive authority to review any order or rule of a~~
116 ~~water management district, other than a rule relating to an~~
117 ~~internal procedure of the district or a final order resulting~~
118 ~~from an evidentiary hearing held under s. 120.569 or s. 120.57~~
119 ~~or a rule that has been adopted after issuance of a final order~~

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120 ~~resulting from an evidentiary hearing held under s. 120.56, to~~
121 ~~ensure consistency with the provisions and purposes of this~~
122 ~~chapter. Subsequent to the legislative ratification of the~~
123 ~~delineation methodology pursuant to s. 373.421(1), this~~
124 ~~subsection also shall apply to an order of the department, or a~~
125 ~~local government exercising delegated authority, pursuant to ss.~~
126 ~~373.403-373.443, except an order pertaining to activities or~~
127 ~~operations subject to conceptual plan approval pursuant to~~
128 ~~chapter 378 or a final order resulting from an evidentiary~~
129 ~~hearing held under s. 120.569 or s. 120.57.~~

130 ~~(a) Such review may be initiated by the department or by a~~
131 ~~party to the proceeding below by filing a request for review~~
132 ~~with the Land and Water Adjudicatory Commission and serving a~~
133 ~~copy on the department and on any person named in the rule or~~
134 ~~order within 20 days after adoption of the rule or the rendering~~
135 ~~of the order. For the purposes of this section, the term "party"~~
136 ~~means any affected person who submitted oral or written~~
137 ~~testimony, sworn or unsworn, of a substantive nature which~~
138 ~~stated with particularity objections to or support for the rule~~
139 ~~or order that are cognizable within the scope of the provisions~~
140 ~~and purposes of this chapter. In order for the commission to~~
141 ~~accept a request for review initiated by a party below, with~~
142 ~~regard to a specific order, three members of the commission must~~
143 ~~determine on the basis of the record below that the activity~~
144 ~~authorized by the order would substantially affect natural~~
145 ~~resources of statewide or regional significance. Review of an~~
146 ~~order may also be accepted if three members of the commission~~
147 ~~determine that the order raises issues of policy, statutory~~
148 ~~interpretation, or rule interpretation that have regional or~~

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149 ~~statewide significance from the standpoint of agency precedent.~~
150 ~~The party requesting the commission to review an order must~~
151 ~~allege with particularity, and the commission must find, that:~~

152 ~~1. The order is in conflict with statutory requirements; or~~
153 ~~2. The order is in conflict with the requirements of a duly~~
154 ~~adopted rule.~~

155 ~~(b) Review by the Land and Water Adjudicatory Commission is~~
156 ~~appellate in nature and shall be based solely on the record~~
157 ~~below unless the commission determines that a remand for a~~
158 ~~formal evidentiary proceeding is necessary to develop additional~~
159 ~~findings of fact. If there is no evidentiary administrative~~
160 ~~proceeding resulting from a remand or referral for findings of~~
161 ~~fact by the commission, then the facts contained in the proposed~~
162 ~~agency action or proposed water management district action,~~
163 ~~including any technical staff report, shall be deemed~~
164 ~~undisputed. The matter shall be heard by the commission not more~~
165 ~~than 60 days after receipt of the request for review, unless~~
166 ~~waived by the parties; provided, however, such time limit shall~~
167 ~~be tolled by a referral or remand pursuant to this paragraph.~~
168 ~~The commission may refer a request for review to the Division of~~
169 ~~Administrative Hearings for the production of findings of fact,~~
170 ~~limited to those needed to render the decision requested, to~~
171 ~~supplement the record, if a majority of the commission~~
172 ~~determines that supplementary findings of fact are essential to~~
173 ~~determine the consistency of a rule or order with the provisions~~
174 ~~and purposes of this chapter. Alternatively, the commission may~~
175 ~~remand the matter to the agency below for additional findings of~~
176 ~~fact, limited to those needed to render the decision requested,~~
177 ~~to supplement the record, if a majority of the commission~~

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178 ~~determines that supplementary findings of fact are essential to~~
179 ~~determine the consistency of a rule or order with the provisions~~
180 ~~and purposes of this chapter. Such proceedings must be conducted~~
181 ~~and the findings transmitted to the commission within 90 days of~~
182 ~~the remand or referral.~~

183 ~~(c) If the Land and Water Adjudicatory Commission~~
184 ~~determines that a rule of a water management district is not~~
185 ~~consistent with the provisions and purposes of this chapter, it~~
186 ~~may require the water management district to initiate rulemaking~~
187 ~~proceedings to amend or repeal the rule. If the commission~~
188 ~~determines that an order is not consistent with the provisions~~
189 ~~and purposes of this chapter, the commission may rescind or~~
190 ~~modify the order or remand the proceeding for further action~~
191 ~~consistent with the order of the Land and Water Adjudicatory~~
192 ~~Commission only if the commission determines that the activity~~
193 ~~authorized by the order would substantially affect natural~~
194 ~~resources of statewide or regional significance. In the case of~~
195 ~~an order which does not itself substantially affect natural~~
196 ~~resources of statewide or regional significance, but which~~
197 ~~raises issues of policy that have regional or statewide~~
198 ~~significance from the standpoint of agency precedent, the~~
199 ~~commission may direct the district to initiate rulemaking to~~
200 ~~amend its rules to assure that future actions are consistent~~
201 ~~with the provisions and purposes of this chapter without~~
202 ~~modifying the order.~~

203 ~~(d) In a review under this section of a construction permit~~
204 ~~issued pursuant to a conceptual permit under part IV, which~~
205 ~~conceptual permit is issued after July 1, 1993, a party to the~~
206 ~~review may not raise an issue which was or could have been~~

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207 ~~raised in a review of the conceptual permit under this section.~~

208 ~~(e) A request for review under this section shall not be a~~
209 ~~precondition to the seeking of judicial review pursuant to s.~~
210 ~~120.68 or the seeking of an administrative determination of rule~~
211 ~~validity pursuant to s. 120.56.~~

212 ~~(f) The Florida Land and Water Adjudicatory Commission may~~
213 ~~adopt rules to set forth its procedures for reviewing an order~~
214 ~~or rule of a water management district consistent with the~~
215 ~~provisions of this section.~~

216 ~~(g) For the purpose of this section, it shall be presumed~~
217 ~~that activity authorized by an order will not affect resources~~
218 ~~of statewide or regional significance if the proposed activity:~~

219 ~~1. Occupies an area less than 10 acres in size, and~~

220 ~~2. Does not create impervious surfaces greater than 2 acres~~
221 ~~in size, and~~

222 ~~3. Is not located within 550 feet of the shoreline of a~~
223 ~~named body of water designated as Outstanding Florida Waters,~~
224 ~~and~~

225 ~~4. Does not adversely affect threatened or endangered~~
226 ~~species.~~

227
228 ~~This paragraph shall not operate to hold that any activity that~~
229 ~~exceeds these limits is presumed to affect resources of~~
230 ~~statewide or regional significance. The determination of whether~~
231 ~~an activity will substantially affect resources of statewide or~~
232 ~~regional significance shall be made on a case-by-case basis,~~
233 ~~based upon facts contained in the record below.~~

234 ~~(2) The department shall have the exclusive authority to~~
235 ~~review rules of the water management districts, other than rules~~

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236 ~~relating to internal management of the districts, to ensure~~
237 ~~consistency with the water resource implementation rule as set~~
238 ~~forth in the rules of the department. Within 30 days after~~
239 ~~adoption or revision of any water management district rule, the~~
240 ~~department shall initiate a review of such rule pursuant to this~~
241 ~~section.~~

242 ~~(a) Within 30 days after adoption of a rule, any affected~~
243 ~~person may request that a hearing be held before the secretary~~
244 ~~of the department, at which hearing evidence and argument may be~~
245 ~~presented relating to the consistency of the rule with the water~~
246 ~~resource implementation rule, by filing a request for hearing~~
247 ~~with the department and serving a copy on the water management~~
248 ~~district.~~

249 ~~(b) If the department determines that the rule is~~
250 ~~inconsistent with the water resource implementation rule, it may~~
251 ~~order the water management district to initiate rulemaking~~
252 ~~proceedings to amend or repeal the rule.~~

253 ~~(c) An order of the department requiring amendment or~~
254 ~~repeal of a rule may be appealed to the Land and Water~~
255 ~~Adjudicatory Commission by the water management district or any~~
256 ~~other party to the proceeding before the secretary.~~

257 Section 3. Paragraph (c) of subsection (3) of section
258 373.139, Florida Statutes, is amended to read:

259 373.139 Acquisition of real property.—

260 (3) The initial 5-year work plan and any subsequent
261 modifications or additions thereto shall be adopted by each
262 water management district after a public hearing. Each water
263 management district shall provide at least 14 days' advance
264 notice of the hearing date and shall separately notify each

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265 county commission within which a proposed work plan project or
266 project modification or addition is located of the hearing date.

267 (c) The Secretary of Environmental Protection shall release
268 acquisition moneys from the appropriate account or trust fund to
269 a district following receipt of a resolution adopted by the
270 governing board identifying the lands being acquired and
271 certifying that such acquisition is consistent with the 5-year
272 work plan of acquisition and other provisions of this section.
273 The governing board also shall provide to the Secretary of
274 Environmental Protection a copy of all certified appraisals used
275 to determine the value of the land to be purchased. Each parcel
276 to be acquired must have at least one appraisal. Two appraisals
277 are required when the estimated value of the parcel exceeds \$1
278 million. However, when both appraisals exceed \$1 million and
279 differ significantly, a third appraisal may be obtained. If the
280 purchase price is greater than the appraisal price, the
281 governing board shall submit written justification for the
282 increased price. The Secretary of Environmental Protection may
283 withhold moneys for any purchase that is not consistent with the
284 5-year plan or the intent of this section or that is in excess
285 of appraised value. The governing board may appeal any denial to
286 the Florida Land and Water Adjudicatory Commission pursuant to
287 s. 380.07 ~~s. 373.114~~.

288 Section 4. Section 373.217, Florida Statutes, is amended to
289 read:

290 373.217 Superseded laws and regulations.—

291 (1) It is the intent of the Legislature to provide a means
292 whereby reasonable programs for the issuance of permits
293 authorizing the consumptive use of particular quantities of

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294 water may be authorized by the Department of Environmental
295 Protection, subject to judicial review and ~~also subject to~~
296 ~~review by the Governor and Cabinet, sitting as the Land and~~
297 ~~Water Adjudicatory Commission~~ as provided in s. 373.114.

298 (2) It is the further intent of the Legislature that this
299 part provides ~~II of the Florida Water Resources Act of 1972, as~~
300 ~~amended, as set forth in ss. 373.203-373.249, shall provide the~~
301 exclusive authority for requiring permits for the consumptive
302 use of water and for authorizing transportation thereof pursuant
303 to s. 373.223(2).

304 (3) If any provision of this ~~part II of the Florida Water~~
305 ~~Resources Act of 1972, as amended, as set forth in ss. 373.203-~~
306 ~~373.249,~~ is in conflict with any other provision, limitation, or
307 restriction that ~~which~~ is now in effect under any law or
308 ordinance of this state or any political subdivision or
309 municipality, or any rule or regulation adopted ~~promulgated~~
310 thereunder, this ~~part II~~ shall govern and control, and such
311 other law or ordinance or rule or regulation adopted ~~promulgated~~
312 thereunder shall be deemed superseded for the purpose of
313 regulating the consumptive use of water. However, this section
314 shall not be construed to supersede the provisions of the
315 Florida Electrical Power Plant Siting Act.

316 (4) Other than as provided in subsection (3) of this
317 section, this ~~part II of the Florida Water Resources Act of~~
318 ~~1972, as amended,~~ preempts the regulation of the consumptive use
319 of water as defined in this act.

320 Section 5. Subsection (8) of section 373.2295, Florida
321 Statutes, is amended to read:

322 373.2295 Interdistrict transfers of groundwater.-

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323 (8) The department shall issue a final order which is
324 subject to review pursuant to s. 120.68 ~~or s. 373.114~~.

325 Section 6. Subsections (1) and (3) of section 373.4275,
326 Florida Statutes, are amended to read:

327 373.4275 Review of consolidated orders.—

328 (1) Beginning on the effective date of the rules adopted
329 under s. 373.427(1), review of any consolidated order rendered
330 pursuant to s. 373.427(1) is ~~shall be~~ governed by the provisions
331 ~~of~~ s. 373.114(1). However, the term "party" means ~~shall mean~~ any
332 person who participated as a party in a proceeding under ss.
333 120.569 and 120.57 on the concurrently reviewed authorizations,
334 permits, waivers, variances, or approvals, or any affected
335 person who submitted to the department, water management
336 district, or board of trustees oral or written testimony, sworn
337 or unsworn, of a substantive nature which stated with
338 particularity objections to or support for the authorization,
339 permit, waiver, variance, or approval, if provided ~~that~~ such
340 testimony was cognizable within the scope of this chapter or the
341 applicable provisions of chapter 161, chapter 253, or chapter
342 258 when the consolidated notice of intent includes an
343 authorization, permit, waiver, variance, or approval under those
344 chapters. In such cases, the standard of review must ~~shall~~ also
345 ensure consistency with the applicable provisions and purposes
346 of chapter 161, chapter 253, or chapter 258 when the
347 consolidated order includes an authorization, permit, waiver,
348 variance, or approval under those chapters. If the consolidated
349 order subject to review includes approval or denial of
350 proprietary authorization to use submerged lands on which the
351 board of trustees has previously acted, as described in s.

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352 373.427(2), the scope of review under this section may ~~shall~~ not
353 encompass such proprietary decision, but the standard of review
354 shall also ensure consistency with the applicable provisions and
355 purposes of chapter 161 when the consolidated order includes a
356 permit, waiver, or approval under that chapter.

357 (a) The final order issued under this section must ~~shall~~
358 contain separate findings of fact and conclusions of law, and a
359 ruling that individually addresses each authorization, permit,
360 waiver, variance, and approval that was the subject of the
361 review.

362 (b) If a consolidated order includes proprietary
363 authorization under chapter 253 or chapter 258 to use submerged
364 lands owned by the Board of Trustees of the Internal Improvement
365 Trust Fund for an activity for which the authority has been
366 delegated to take final agency action without action of the
367 board of trustees, the following additional provisions and
368 exceptions to s. 373.114(1) apply:

369 ~~1. The Governor and Cabinet shall sit concurrently as the~~
370 ~~Land and Water Adjudicatory Commission and the Board of Trustees~~
371 ~~of the Internal Improvement Trust Fund in exercising the~~
372 ~~exclusive authority to review the order;~~

373 ~~1.2.~~ The review may ~~also~~ be initiated by the Governor or
374 any member of the Cabinet within 20 days after the rendering of
375 the order ~~in which case the other provisions of s. 373.114(1)(a)~~
376 ~~regarding acceptance of a request for review do not apply;~~ and

377 ~~2.3.~~ If the Governor and Cabinet find that an authorization
378 to use submerged lands is not consistent with chapter 253 or
379 chapter 258, any authorization, permit, waiver, or approval
380 authorized or granted by the consolidated order must be

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381 rescinded or modified or the proceeding must be remanded for
382 further action consistent with the order issued under this
383 section.

384 (3) ~~As with an appeal under s. 373.114,~~ The proper
385 initiation of discretionary review under this section tolls the
386 time for seeking judicial review under s. 120.68.

387 Section 7. For the purpose of incorporating the amendment
388 made by this act to section 373.114, Florida Statutes, in a
389 reference thereto, paragraph (d) of subsection (1) of section
390 373.036, Florida Statutes, is reenacted to read:

391 373.036 Florida water plan; district water management
392 plans.—

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

397 (d) Goals, objectives, and guidance for the development and
398 review of programs, rules, and plans relating to water
399 resources, based on statutory policies and directives. The state
400 water policy rule, renamed the water resource implementation
401 rule pursuant to s. 373.019(25), shall serve as this part of the
402 plan. Amendments or additions to this part of the Florida water
403 plan shall be adopted by the department as part of the water
404 resource implementation rule. In accordance with s. 373.114, the
405 department shall review rules of the water management districts
406 for consistency with this rule. Amendments to the water resource
407 implementation rule must be adopted by the secretary of the
408 department and be submitted to the President of the Senate and
409 the Speaker of the House of Representatives within 7 days after

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410 publication in the Florida Administrative Register. Amendments
411 shall not become effective until the conclusion of the next
412 regular session of the Legislature following their adoption.

413 Section 8. Section 373.245, Florida Statutes, is repealed.

414 Section 9. The repeal of s. 373.245, Florida Statutes,
415 applies retroactively to any civil action in which trial has not
416 commenced as of the effective date of this act.

417 Section 10. This act shall take effect upon becoming a law.