

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1149 Environmental Regulation  
**SPONSOR(S):** Natural Resources & Public Lands Subcommittee; Payne  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 1 N, As CS	Moore	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 1 N	White	Pigott
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The bill revises policies relating to Florida's environmental regulation by:

- Providing examples of reclaimed water use that may create an impact offset to include those that prevent or stop further saltwater intrusion, raise aquifer levels, improve the water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply;
- Requiring the Department of Environmental Protection (DEP) to revise the water resource implementation rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a consumptive use permit (CUP) or may be used to address additional water resource constraints imposed by the adoption of a recovery or prevention strategy;
- Including the reuse of reclaimed water through aquifer recharge as a critical component of meeting the state's existing and future water supply needs while sustaining natural systems;
- Requiring DEP and water management districts (WMD) to develop and enter into a memorandum of agreement no later than December 1, 2018, providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP, to be used solely at the permit applicant's request;
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material;
- Defining "residential recycling collector;"
- Requiring counties and municipalities to address the contamination of recyclable material in contracts with material recovery facilities (MRF) for processing of residential recyclable material;
- Requiring local government contracts with a residential recycling collector or MRF to define "contaminated recyclable material" in a manner that is appropriate for the local community, based on available recyclable material markets;
- Requiring local government contracts with a residential recycling collector or MRF to include strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed, procedures for identifying, documenting, managing, and rejecting contaminated recyclable materials, and remedies that will be used for contaminated recyclable material;
- Providing applicability of these contract requirements in any local government contract with a residential recycling collector or MRF executed or renewed after the effective date of the act;
- Prohibiting local governments from requiring additional verification from DEP that a particular activity meets a permit exception; and
- Revising the permit exception for the replacement or repair of existing docks and piers to allow for the repair or replacement if it is in approximately the same location, no larger in size than the existing dock or pier, and no additional aquatic resources are adversely and permanently impacted.

The bill has an insignificant negative fiscal impact on state government and a positive fiscal impact on local governments and the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1149c.ANR

DATE: 2/6/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Reuse of Reclaimed Water in Consumptive Use Permitting

###### Present Situation

###### *Reclaimed Water*

Reclaimed water<sup>1</sup> is water from a domestic wastewater<sup>2</sup> treatment facility, which has received at least secondary treatment<sup>3</sup> and basic disinfection for reuse.<sup>4</sup>

###### *Water Resource Implementation Rule*

The water resource implementation rule, ch. 62-40, F.A.C., sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.<sup>5</sup> The Legislature required the Department of Environmental Protection (DEP) to initiate rulemaking by October 1, 2012, to revise the rule to include:

- Criteria for the use of a proposed impact offset<sup>6</sup> derived from the use of reclaimed water when a water management district (WMD) evaluated an application for a consumptive use permit (CUP); and
- Criteria for the use of substitution credits<sup>7</sup> where a WMD had adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.<sup>8</sup>

The revisions to the water resource implementation rule can be found in rules 62-40.416(7) and (8), F.A.C., respectively.

###### *Consumptive Use Permitting*

Before using waters of the state,<sup>9</sup> a person must apply for and obtain a CUP from the applicable WMD<sup>10</sup> or the DEP. The WMD or DEP may impose reasonable conditions necessary to assure that such use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.<sup>11</sup> To obtain a CUP, an applicant must establish that the proposed use of water is

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<sup>1</sup> s. 373.019(17), F.S.; Rule 62-610.200(48), F.A.C.

<sup>2</sup> Rule 62-610.200(15), F.A.C.

<sup>3</sup> Rule 62-610.200(54), F.A.C.

<sup>4</sup> Rules 62-610.200(12), 62-600.200(18), and 62-600.440(5), F.A.C.

<sup>5</sup> s. 373.019(25), and 373.036, F.S.

<sup>6</sup> s. 373.250(5)(a)1, F.S., defines “impact offset” to mean the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.

<sup>7</sup> s. 373.250(5)(a)2, F.S., defines “substitution credit” to mean the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

<sup>8</sup> s. 373.250(5)(a)1-2, F.S.

<sup>9</sup> s. 373.019(22), F.S., defines “water” or “waters of the state” to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

<sup>10</sup> s. 373.216, F.S.; see chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.

<sup>11</sup> s. 373.219(1), F.S.; An individual solely using water for domestic consumption is exempt from CUP requirements.

a reasonable-beneficial use,<sup>12</sup> will not interfere with any presently existing legal use of water, and is consistent with the public interest.<sup>13</sup>

### *Recovery or Prevention Strategy*

If, at the time a minimum flow<sup>14</sup> or minimum water level<sup>15</sup> (MFL) is initially established for a water body or is revised, and the existing flow or water level in the water body is below, or is projected to fall within 20 years below, the applicable MFL, the DEP or WMD must concurrently adopt or modify and implement a recovery or prevention strategy. If a MFL has been established for a water body and the existing flow or water level in the water body falls below, or is projected to fall within 20 years below, the applicable MFL, the DEP or the WMD must expeditiously adopt a recovery or prevention strategy.<sup>16</sup>

A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL. A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.<sup>17</sup>

### Effect of the Proposed Changes

The bill amends s. 373.250(5), F.S., regarding the reuse of reclaimed water, to delete the obsolete rulemaking provision that directs DEP to initiate rulemaking to develop criteria for the use of impact offsets and substitution credits under the water resource implementation rule.

The bill amends s. 373.250(5)(a)1., F.S., providing examples of reclaimed water use that may create an impact offset to include those that prevent or stop further saltwater intrusion; raise aquifer levels; improve the water quality of an aquifer; or augment surface water to increase the quantity of water available for water supply.

The bill creates s. 373.250(5)(a)3., F.S., requiring the water resource implementation rule to include criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

## **Reuse of Reclaimed Water and Pollution Control**

### Present Situation

#### *Aquifer Recharge*

Aquifer recharge is the underground injection and storage of water into an aquifer. It is primarily considered a water resource development and conservation strategy used to preserve and enhance

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<sup>12</sup> s. 373.019(16), F.S., defines "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

<sup>13</sup> s. 373.223(1), F.S.

<sup>14</sup> s. 373.042(1)(a), F.S., the minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

<sup>15</sup> s. 373.042(1)(b), F.S., the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area..

<sup>16</sup> s. 373.0421(2), F.S.

<sup>17</sup> *Id.*

water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.<sup>18</sup> Aquifer recharge wells include:

- Recharge wells used to replenish, augment, or store water in an aquifer;
- Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells used to inject fluids into a zone which does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and
- Connector wells used to connect two aquifers to allow interchange of water between those aquifers.<sup>19</sup>

### *Reclaimed Water Facility Permitting*

Any facility or activity that discharges wastes into waters of the state, or which will reasonably be expected to be a source of water pollution, must obtain a wastewater permit from DEP.<sup>20</sup> DEP may issue construction permits for wastewater systems, treatment works, or reuse or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by DEP rule. Upon a demonstration that a system constructed in accordance with a construction permit issued operates as designed, DEP must issue a permit for operation of the system.<sup>21</sup>

### *Underground Injection Control Permitting*

DEP has general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.<sup>22</sup> DEP regulates the disposal of appropriately treated fluids via underground injection wells through its underground injection control (UIC) program. The UIC permitting program prevents degradation of the quality of aquifers adjacent to the injection zone. Subsurface injection, the practice of emplacing fluids in a permeable underground aquifer by gravity flow or under pressure through an injection well, is one of a variety of wastewater disposal or reuse methods used in the state.<sup>23</sup>

### Effect of the Proposed Changes

The bill amends s. 403.064(1), F.S., providing legislative findings, regarding the reuse of reclaimed water, to include reuse through aquifer recharge as a critical component of meeting the state's existing and future water supply needs while sustaining natural systems.

The bill creates s. 403.064(17), F.S., requiring DEP and the WMDs to develop and enter into a memorandum of agreement (MOA) providing for coordinated review of any reclaimed water project requiring a reclaimed water facility permit, a UIC permit, and a CUP no later than December 1, 2018. The bill requires the MOA to provide such coordinated review solely at the applicant's request. The bill provides that the goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

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<sup>18</sup> DEP, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, pg. 83, <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf> (last visited Jan. 25, 2018).

<sup>19</sup> Rule 62-528.300(1)(e), F.A.C.

<sup>20</sup> s. 403.087(1), F.S.; Florida Water Permits, *Florida's Water Permitting Portal*, <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 25, 2018).

<sup>21</sup> s. 403.0881, F.S.; see chs. 62-610, and 62-620, F.A.C., for reuse and wastewater permitting requirements, respectively.

<sup>22</sup> s. 403.062, F.S.

<sup>23</sup> Florida Water Permits, *Florida's Water Permitting Portal*. <http://flwaterpermits.com/typesofpermits.html> (last visited Jan. 25, 2018); see ch. 62-528, F.A.C., for UIC permitting requirements.

## Recyclable Materials and Contamination

### Present Situation

Recycling is any process by which solid waste<sup>24</sup> or materials that would otherwise become solid waste are collected, separated or processed and reused or returned to use in the form of raw materials or intermediate or final products (e.g., crude oil, fuels, and fuel substitutes).<sup>25</sup> Recyclable materials are those materials that are capable of being recycled and would otherwise be processed or disposed of as solid waste.<sup>26</sup>

### *Local Government Recycling Programs*

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.<sup>27</sup> Recycling programs must recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility, and to offer these materials for recycling:

- Newspaper;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.

Local governments are also encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.<sup>28</sup>

### *Recycling Goal*

Each county must implement a recyclable materials recycling program with a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020 (recycling goal).<sup>29</sup> To assess the progress in meeting the recycling goal, counties are annually required to provide information to DEP regarding their annual solid waste management program and recycling activities.<sup>30</sup> The recycling goal for 2016 fell short, having achieving 56 percent.<sup>31</sup>

### *Local Government Contracting for Solid Waste*

A county or municipality may enter into a written agreement with other persons to fulfill some or all of its solid waste responsibilities.<sup>32</sup> In developing and implementing recycling programs, counties and municipalities are required to give consideration to the collection, marketing, and disposition of

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<sup>24</sup> s. 403.703(36), F.S., defines solid waste.

<sup>25</sup> s. 403.703(31), F.S.

<sup>26</sup> s. 403.706(30), F.S.

<sup>27</sup> s. 403.706(2)(a), F.S.

<sup>28</sup> s. 403.706(2)(g), F.S.

<sup>29</sup> s. 403.706(2)(a), F.S.

<sup>30</sup> s. 403.706(7), F.S.

<sup>31</sup> DEP, *Florida and the 2020 75% Recycling Goal*, [https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1\\_0\\_0.pdf](https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf) (last visited Jan. 25, 2018).

<sup>32</sup> s. 403.706(8), F.S.

recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their solid waste responsibilities.<sup>33</sup>

### *Curbside Recyclable Materials Collection*

In the development and implementation of a curbside recyclable materials collection program, a county or municipality is required to enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals (RFP) from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.<sup>34</sup>

### *Contamination of Recyclable Material*

Contamination of recyclable material occurs when residents place materials that are not recyclable into curbside recycling bins (e.g., plastic bags, styrofoam peanuts, and other increasingly popular thin plastics). While a material recovery facility (MRF)<sup>35</sup> is equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement needs. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling of unusable materials.<sup>36</sup>

### Effect of the Proposed Changes

The bill creates s. 403.706(22), F.S., requiring counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material, and with MRFs for processing of residential recyclable material. The bill requires that the contracts define the term, “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material.

The bill provides that a residential recycling collector may not be required to collect or transport contaminated recyclable material and defines a “residential recycling collector” as a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP for residential recyclable material include:

- The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;
- The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

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<sup>33</sup> s. 403.706(10), F.S.

<sup>34</sup> s. 403.706(9), F.S.

<sup>35</sup> s. 403.703(20), F.S., defines a MRF to mean a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

<sup>36</sup> DEP, *Florida and the 2020 75% Recycling Goal*, [https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1\\_0\\_0.pdf](https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf) (last visited Jan. 25, 2018).

- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill provides that a MRF is not required to process contaminated recyclable material. The bill requires that contracts between a MRF and a county or municipality for processing residential recyclable material define the term “contaminated recyclable material” and include:

- The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and
- The remedies that will be used if a container or load contains contaminated recyclable material.

The bill provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or MRF executed or renewed after the effective date of the act.

## **Verification of State Permit Exceptions**

### Present Situation

Current law provides exceptions from state environmental permitting<sup>37</sup> for certain types of projects.<sup>38</sup> Generally, these permit exceptions restrict how the project is undertaken, provide size and location requirements, or provide for maintenance, repair, or replacement of existing structures.<sup>39</sup> These exceptions do not relieve an applicant from obtaining permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a WMD or from complying with local pollution control programs, or other requirements of local governments.<sup>40</sup>

### Effect of Proposed Changes

The bill amends s. 403.813(1), F.S., prohibiting local governments from requiring additional verification from DEP that a particular activity meets a permit exception.

## **Dock and Pier Replacement and Repair Permit Exception**

### Present Situation

Currently, an exception from environmental permitting applies for the replacement or repair of existing docks and piers if fill<sup>41</sup> material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. The exception allows the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.<sup>42</sup> Other permit exceptions that allow for repair or replacement also require the repair or replacement to be of the same configuration, location, length, and dimensions. These include the repair or replacement of stormwater pipes or culverts,<sup>43</sup> open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width,<sup>44</sup> and insect control impoundment dikes, which are less than 100 feet in length.<sup>45</sup> Another permit

<sup>37</sup> See chs. 373 and 403, F.S.

<sup>38</sup> s. 403.803(1), F.S.

<sup>39</sup> s. 403.803(1)(a)-(v), F.S.

<sup>40</sup> s. 403.813(1), F.S.

<sup>41</sup> Filling means deposition of any material (such as sand, dock pilings or seawalls) in wetlands or other surface waters;

<https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-dredging-and-filling> (last visited Jan. 25, 2018).

<sup>42</sup> s. 403.813(1)(d), F.S.

<sup>43</sup> s. 403.813(1)(h), F.S.

<sup>44</sup> s. 403.813(1)(l), F.S.

<sup>45</sup> s. 403.813(1)(p), F.S.

exception, regarding the restoration of seawalls, allows for the restoration of the seawall to take place at the previous location or upland of, or within 18 inches waterward of the previous location.<sup>46</sup>

### Effect of the Proposed Changes

The bill amends s. 403.813(1)(d), F.S., regarding the exception for replacement or repair of existing docks or piers. The bill removes the requirement that a dock or pier replacement or repair remain in the same location and be of the same configuration and dimensions as the existing dock or pier. The bill provides that the repair or replacement of the dock or pier must be in *approximately* the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by the replacement.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 327.250, F.S., relating to reuse of reclaimed water.
- Section 2. Amends s. 403.064, F.S., relating to reuse of reclaimed water.
- Section 3. Amends s. 403.706, F.S., relating to local government solid waste responsibilities.
- Section 4. Amends s. 403.813, F.S., relating to permit exceptions.
- Section 5. Directs the Division of Law Revision and Information to replace the effective date of the act with the date the act becomes a law.
- Section 6. Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill will have an insignificant negative fiscal impact on the DEP related to rule-making. DEP indicates that this impact can be absorbed within existing resources.<sup>47</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill may have a positive fiscal impact on local governments that are no longer required to collect, transport, or process contaminated recyclable material. The bill may have a positive fiscal impact on local governments resulting from revisions to the water resource implementation rule creating criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a MFL recovery or prevention strategy.

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<sup>46</sup> s. 403.813(1)(e), F.S.

<sup>47</sup> Department of Environmental Protection, Agency Analysis of House Bill 1149, p. 6 (January 22, 2018).



The bill may have a positive fiscal impact on the local governments who implement a reclaimed water project that requires a reclaimed water facility permit, a UIC permit, and a CUP by utilizing the coordinated review process established by DEP and WMD MOA required by the bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector resulting from revisions to the water resource implementation rule creating criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a MFL recovery or prevention strategy.

The bill may have a positive fiscal impact on members of the private sector who implement a reclaimed water project that requires a reclaimed water facility permit, a UIC permit, and a CUP by utilizing the coordinated review process established by DEP and WMD MOA required by the bill.

The bill may have a positive fiscal impact on MRFs if the bill results in less contaminated recyclable material coming into the facility undermining their recycling processes.

The bill may have a positive fiscal impact on the private sector by prohibiting a local government from requiring verification from DEP or WMD on a permit exception under s. 403.813, F.S. The bill may also have a positive fiscal impact on the private sector by expanding the permit exception for the replacement or repair of existing docks and piers.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to revise the water resource implementation rule to create criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of a utility's or another user's CUP or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Recyclable Materials and Contamination

The bill may further hinder the recycling goal by requiring the definition of "contaminated recyclable material" to be appropriate for the local community, based on available markets for recyclable material. This could result in recyclable materials not being recycled simply because there is no market for them in the local community, however there may be a market outside of the local community.

The bill also uses the term “contaminated” in reference to recyclable materials, which may cause unintended confusion. Contamination traditionally has been associated with spills, discharges, and escapes of pollutants, dry cleaning solvents, and hazardous substances into the environment. The term “contaminant” means any physical, chemical, biological, or radiological substance present in any medium which may result in adverse effects to human health or the environment or which creates an adverse nuisance, organoleptic, or aesthetic condition in groundwater.<sup>48</sup> The term “contaminated site” means any contiguous land, sediment, surface water, or groundwater areas that contain contaminants that may be harmful to human health or the environment.<sup>49</sup> Contaminated sites trigger site rehabilitation<sup>50</sup> requirements<sup>51</sup> and contamination notification requirements.<sup>52</sup>

#### Verification of State Permit Exceptions

It is unclear as to what extent local governments are prohibited from verifying that a particular activity meets a permit exception from DEP or WMD. The bill appears to prohibit any verification, including a local government verifying with DEP or WMD whether a potential permit exception violation has occurred.

#### Dock and Pier Replacement and Repair Permit Exception

The bill allows the location of a replaced or repaired dock or pier to be in approximately the same location, which could make verification of this exception difficult to measure. Perhaps adding some measurable information such as that provided for the allowable placements for the restoration of seawalls<sup>53</sup> would be helpful.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2018, the Natural Resources & Public Lands Subcommittee adopted one amendment and reported the bill favorable with a committee substitute. The amendment removed and replaced section 3 of the bill, and provides as follows:

- Requires counties and municipalities to address the contamination of recyclable material in contracts with residential recycling collectors for collection or transportation of residential recyclable material, and with MRFs for processing of residential recyclable material;
- Requires that the contracts define the term “contaminated recyclable material” in a manner that is appropriate for the local community, based on the available markets for recyclable material;
- Provides that a residential recycling collector is not required to collect or transport contaminated recyclable material;
- Defines a “residential recycling collector” to mean a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality;
- Requires that contracts between a residential recycling collector and a county or municipality for the collection or transportation of residential recyclable material, and each RFP for residential recyclable material include:
  - The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;
  - The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

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<sup>48</sup> s. 376.301(10) and 376.79(6), F.S.

<sup>49</sup> s. 376.301(11), F.S.

<sup>50</sup> s. 376.301(43), F.S., defines site rehabilitation.

<sup>51</sup> See s. 376.30701, F.S., for site rehabilitation requirements.

<sup>52</sup> See s. 376.30702, F.S., for contamination notification requirements.

<sup>53</sup> s. 403.813(1)(e), F.S.

- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that a MRF is not required to process contaminated recyclable material;
- Requires that contracts between a MRF and a county or municipality for processing residential recyclable material include:
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container or load contains contaminated recyclable material; and
- Provides that the contract requirements apply to each contract between a municipality or county and a residential recycling collector or MRF executed or renewed after the effective date of the act.