

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 Environment and Natural Resources

BILL: SB 1096

INTRODUCER: Senator Cruz and others

SUBJECT: Bottled Water

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Pre-meeting
2.			AG	
3.			RC	

I. Summary:

SB 1096 requires the Department of Environmental Protection (DEP) to monitor the consumptive use permits for all bottled water companies to ensure compliance with the limits of allowable water extraction. In order to ensure compliance, water must be measured in gallons at the bottling facility. The bill requires DEP to adopt rules to implement and enforce the bill.

The bill requires that a daily fine not to exceed \$500 be imposed for each day a company withholds payment of the fees imposed under the section created by the bill. The bill does not apply to bottled water companies extracting less than 55 million gallons per calendar year.

SB 1098 adds to the section of law created by SB 1096 a fee of five cents per gallon on water extracted for the production of bottled water. SB 1096 only takes effect if SB 1098 or similar legislation is adopted in the same legislative session and goes into effect.

II. Present Situation:

Regulation of Bottled Water

The U.S. Food and Drug Administration regulates the bottled water industry for safety and water quality.¹ Bottled water is water intended for human consumption that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.² A “bottled water plant” is an establishment in which bottled water is prepared for sale.³ In Florida, the regulation of bottled water plants is preempted to the state.⁴ The Department of Agriculture and Consumer Service’s (DACS) Division of Food Safety regulates bottling, labeling, and handling at bottled water plants.⁵ DACS requires bottled water plants to obtain a food permit, which must be renewed annually.⁶

Florida law requires that bottled water come from an “approved source,” which is defined as any source of water that complies with the federal Safe Drinking Water Act.⁷ Bottled water must be processed in conformance with the applicable federal regulations.⁸ It must conform to specific federal standards for water quality, label statements, and adulteration.⁹ If the label bears a name or trademark containing terms such as “springs,” “well,” or “natural” then the label must also state the source of the water, if the correct source is not indicated in the name or trademark.¹⁰ The person operating the bottled water plant is responsible for all water sampling and analysis.¹¹

¹ 21 C.F.R. pt. 129; 21 C.F.R. s. 165.110; FDA, *FDA Regulates the Safety of Bottled Water Beverages Including Flavored Water and Nutrient-Added Water Beverages*, <https://www.fda.gov/food/buy-store-serve-safe-food/fda-regulates-safety-bottled-water-beverages-including-flavored-water-and-nutrient-added-water> (last visited Jan. 6, 2020).

² Section 500.03(1)(d), F.S. Florida law defines “bottled water” using the description provided in federal regulation; 21 C.F.R. s. 165.110(a)(1). The full description of “bottled water” in the federal regulation is: “water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. Fluoride may be optionally added within the limitations established in § 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as “water,” “carbonated water,” “disinfected water,” “filtered water,” “seltzer water,” “soda water,” “sparkling water,” and “tonic water.” The processing and bottling of bottled water shall comply with applicable regulations in part 129 of this chapter.”

³ Section 500.03(1)(e), (n), and (p), F.S.

⁴ Section 500.511, F.S.; see s. 367.022(1), F.S. The sale, distribution, or furnishing of bottled water is not regulated by the Florida Public Service Commission as a utility.

⁵ Section 500.12, F.S.; see DACS, *Food Establishments*, <https://www.fdacs.gov/Business-Services/Food-Establishments> (last visited Jan. 6, 2020); see DEP, *Source & Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Jan. 6, 2020).

⁶ Section 500.12(1)(b) and (c), F.S.; Fla. Admin. Code R. 5K-4.020(4)(b). The annual permitting fee for a bottled water plant is \$500.

⁷ Sections 500.03(1)(c) and 500.147(3), F.S.; see s. 500.03(1)(w), F.S. “Natural water” is defined as “bottled spring water, artesian well water, or well water that has not been altered with water from another source or that has not been modified by mineral addition or deletion, except for alteration that is necessary to treat the water through ozonation or an equivalent disinfection and filtration process.”

⁸ Section 500.147(3), F.S.; 21 C.F.R. pt. 129.

⁹ Section 500.147(3), F.S.; 21 C.F.R. s. 165.110; see DACS, Division of Food Safety, *Bottled Water Testing Requirements*, <https://www.fdacs.gov/content/download/72733/file/Bottled-Water-Testing-Requirements.pdf> (last visited Jan. 6, 2020).

¹⁰ Section 500.11(1)(o), F.S.

¹¹ Section 500.147(3), F.S.

Consumptive Use Permits

Consumptive use is any use of water which reduces the supply from which it is withdrawn or diverted.¹² A consumptive use permit (CUP), also known as a water use permit (WUP), establishes the duration and type of water use as well as the maximum quantity of water that may be withdrawn.¹³ The Department of Environmental Protection (DEP) and the water management districts are authorized to issue CUPs and impose reasonable conditions as necessary to assure such use is consistent with DEP or district goals and is not harmful to the water resources of the area.¹⁴ This authority is primarily delegated to the water management districts, which implement extensive CUP programs within their respective jurisdictions.¹⁵ To obtain a CUP, an applicant must establish that the proposed use of water:

- Is a reasonable-beneficial use;¹⁶
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.¹⁷

Each of the five water management districts publishes an applicant's handbook, incorporated by reference into their respective rules, identifying the procedures and information used by district staff for review of CUP applications.¹⁸ Generally, there are two types of CUP permits: general permits that may be granted by rule based on regulatory thresholds for factors such as withdrawal volume or pipe diameter, and individual permits requiring applications when regulatory thresholds are exceeded.¹⁹ The districts have different schedules for application processing fees, which can vary based on total requested withdrawal amounts or type of application.²⁰ DEP and the districts are authorized to grant permits for a period of up to twenty years, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit.²¹

¹² Fla. Admin. Code R. 62-40.210(4).

¹³ Chapter 373, part II, F.S.

¹⁴ Section 373.219, F.S. No permit is required for domestic consumption of water by individual users.

¹⁵ Section 373.216, F.S.; Fla Admin. Code Chapters 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2.

¹⁶ Section 373.019(16), F.S. "Reasonable-beneficial use" is defined as "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"; Fla. Admin. Code R. 62-40.410. DEP rules contain a list of factors that must be considered when determining whether a water use is a reasonable-beneficial use.

¹⁷ Section 373.223, F.S.; see s. 373.229, F.S. Permit applications must contain certain specified information.

¹⁸ South Florida WMD, *Applicant's Handbook for Water Use Permit Applications* (2015)[hereinafter *SFWMD WUP Handbook*], available at https://www.sfwmd.gov/sites/default/files/documents/wu_applicants_handbook.pdf; Southwest Florida WMD, *Water Use Permit - Applicant's Handbook Part B* (2015)[hereinafter *SWFWMD WUP Handbook*], available at https://www.swfwmd.state.fl.us/sites/default/files/medias/documents/WUP_Applicants_Handbook_Part_B.pdf; St. John's River WMD, *Applicant's Handbook: Consumptive Uses of Water* (2018)[hereinafter *SJRWMD CUP Handbook*], available at <https://www.sjrwmd.com/static/permitting/CUP-Handbook-20180829.pdf>; Northwest Florida WMD, *Water Use Permit Applicant's Handbook* (2015)[hereinafter *NFWWMD WUP Handbook*], available at https://www.nfwwater.com/content/download/8605/71075/Applicant_Handbook_201504.pdf; Suwannee River WMD, *Water Use Permit Applicant's Handbook* (2019)[hereinafter *SRWMD WUP Handbook*], available at https://www.flrules.org/gateway/readRefFile.asp?refId=11315&filename=REFERENCE%20MATERIAL_WUP%20Applicant%27s%20Handbook%20FINAL%2010-31-2019.pdf.

¹⁹ See Michael T. Olexa et al., University of Florida, Institute of Food and Agricultural Sciences, *Handbook of Florida Water Regulation: Consumptive Use*, 2 (2017), available at <https://edis.ifas.ufl.edu/pdffiles/FE/FE60400.pdf>; The water management districts' respective rules contain various exemptions from CUP permitting, such as for firefighting purposes.

²⁰ See s. 373.109, F.S.

²¹ Section 373.236, F.S.

The water management districts are required to include appropriate monitoring efforts as part of their CUP programs.²² CUPs must be monitored when they authorize groundwater withdrawals of 100,000 gallons or more per day from a well with an inside diameter of 8 inches or more.²³ Such monitoring must be at intervals and must use methods determined by the applicable district.²⁴ The results of such monitoring must be reported to the applicable district at least annually.²⁵ The districts' respective CUP applicant handbooks contain various monitoring standards, which may include thresholds for required monitoring, reporting requirements, and specific standards for metering.²⁶ Generally, pursuant to the handbooks, the permittee is responsible for required monitoring of withdrawal quantities.

Minimum Flows and Minimum Water Levels

Minimum Flows and Minimum Water Levels (MFLs) are adopted standards that identify the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.²⁷ DEP and the water management districts are required to establish MFLs, based on priority lists, for surface water courses, aquifers, and surface waters.²⁸ By establishing the limit at which further withdrawals would be significantly harmful, the MFLs provide a benchmark to help establish excess quantities of water that are available from priority water bodies. A key goal of establishing an MFL is to ensure there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.²⁹

III. Effect of Proposed Changes:

Section 1 creates s. 500.458, F.S., entitled “Bottled water; extraction monitoring; fine.”

The bill requires the Department of Environmental Protection (DEP) to monitor the consumptive use permits for all bottled water companies to ensure compliance with the limits of allowable water extraction for natural water and water from an approved source. In order to ensure compliance, water must be measured in gallons at the bottling facility. The bill requires DEP to adopt rules to implement and enforce the requirements in the bill.

The bill requires that a daily fine not to exceed \$500 be imposed for each day a company withholds payment of the fees imposed under s. 500.458, F.S.

The bill exempts bottled water companies extracting less than 55 million gallons per calendar year from these requirements.

²² Section 373.216, F.S.

²³ Section 373.223(6), F.S. The water management districts are authorized to adopt or enforce certain rules in lieu of these requirements, in accordance with the statute.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *SFWMD WUP Handbook*, at 93-98; *SWFWMD WUP Handbook*, at 70-71, 76-92; *SJRWMD CUP Handbook*, at 4-1-4-3; *NFWMD WUP Handbook*, at 63-64; *SRWMD WUP Handbook*, at 43-44, 50.

²⁷ Section 373.042, F.S.

²⁸ Sections 373.042 and 373.0421, F.S.; Fla. Admin. Code R. 62-40.473.

²⁹ *see* DEP, *Minimum Flows and Minimum Water Levels and Reservations*, <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 9, 2020).

Section 2 states that the act shall take effect July 1, 2020, if SB 1098 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1098 adds a fee to s. 500.458, F.S.³⁰

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, section 19 of the Florida Constitution requires any legislation imposing or authorizing a new state tax or fee, or raising an existing state tax or fee, to be approved by two-thirds of the membership of both houses of the Legislature.³¹ A state tax or fee that is so imposed, authorized, or raised must be contained in a separate bill that contains no other subject.³² The constitutional language describes “fee” as “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”³³

SB 1098 imposes a fee of 5 cents per gallon on water extracted for the production of bottled water. The fee is added to s. 500.458, F.S., which is created by SB 1096 and includes all other provisions relating to the fee. The fee in SB 1098 is contained in a bill with no other subject, separate from SB 1096 to which it is linked, and SB 1098 must be approved by two-thirds of the membership of both houses of the Legislature.

E. Other Constitutional Issues:

None.

³⁰ Senate Bill 1098 adds the following language to s. 400.458, F.S.: “The department shall assess bottled water companies a fee of 5 cents per gallon on water extracted for the production of bottled water, including natural water and water from an approved source as defined in s. 500.03, and shall deposit the fees into the Water Protection and Sustainability Program Trust Fund under s. 403.890, F.S.”

³¹ FLA. CONST. art. VII, s. 19.

³² *Id.*

³³ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill requires that water extracted for bottled water be measured in gallons at the bottling facility and requires a daily fine for bottled water companies that do not pay certain fees for extraction. Therefore, the bill may have a negative, indeterminate fiscal impact on private bottled water companies.

C. Government Sector Impact:

The bill requires the Department of Environmental Protection (DEP) to perform certain monitoring of consumptive use permits to ensure compliance, impose daily fines in certain circumstances, and perform rulemaking to implement and enforce the newly created section. Therefore, the bill may cause DEP to incur additional costs.

The bill requires DEP to impose a daily fine of up to \$500 for failure to pay certain fees, which may have an indeterminate, positive fiscal impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 28 of the bill, there is a blank space that should be filled in with "1098."

VIII. Statutes Affected:

This bill creates section 500.458 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.