

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 1098

INTRODUCER: Senator Cruz and others

SUBJECT: Fees/Bottled Water Companies/Department of Environmental Protection

DATE: January 17, 2020

REVISED: _____

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

I. Summary:

SB 1098 requires the Department of Environmental Protection (DEP) to assess bottled water companies a fee of five cents per gallon on water extracted for the production of bottled water, including natural water and water from an approved source. DEP must deposit the fees into the Water Protection and Sustainability Program Trust Fund. The bill does not apply to bottled water companies extracting less than 55 million gallons per calendar year.

SB 1096 creates the section of law containing the fee, and establishes requirements relating to the fee. SB 1098 only takes effect if SB 1096 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

Water Protection and Sustainability Program

The Water Protection and Sustainability Program Trust Fund exists within DEP, and its purpose is to implement the Water Protection and Sustainability Program.³⁰ DEP is required to distribute revenues deposited into or appropriated to the trust fund for alternative water supply development or the water storage facility revolving loan fund.³¹ Revenues deposited into the trust fund must be made available to assist water management districts with alternative water supply development and conservation projects that result in quantifiable water savings pursuant to the Water Protection and Sustainability Program.³² DEP administers the water storage facility revolving loan fund, which provides funding assistance to local governments or water supply entities to develop or construct water storage facilities to increase the availability of sufficient water for existing and future reasonable-beneficial uses and natural systems.³³

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).

³⁰ Sections 403.890 and 403.891, F.S.

³¹ Section 403.890, F.S.

³² Section 373.707(6)-(8), F.S.

³³ Section 373.475, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 500.458, F.S., as created in SB 1096, entitled “Bottled water; extraction monitoring; fee; fine.”

The bill requires the Department of Environmental Protection (DEP) to assess bottled water companies a fee of five cents per gallon on water extracted for the production of bottled water, including natural water and water from an approved source. DEP must deposit the fees into the Water Protection and Sustainability Program Trust Fund. The bill does not apply to bottled water companies extracting less than 55 million gallons per calendar year.

Section 2 states that the act shall take effect July 1, 2020, if SB 1096 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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.³⁴ A state tax or fee that is so imposed, authorized, or raised must be contained in a separate bill that contains no other subject.³⁵ 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.”³⁶

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.

³⁴ FLA. CONST. art. VII, s. 19.

³⁵ *Id.*

³⁶ *Id.*

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires certain bottled water companies to pay five cents per gallon on water extracted for the production of bottled water. Therefore, the bill may have a negative, indeterminate fiscal impact on private bottled water companies.

Based on data received from the water management districts, there are currently 25 CUPs for bottled water use statewide.³⁷ Based on the most recent available data for quantities of actual use of water by the permittees for the production of bottled water, it appears a large portion of the permittees would be exempt from the fee in SB 1098 due to actual annual use being below 55 million gallons per year.

C. Government Sector Impact:

The bill requires DEP to assess certain fees and deposit them into a trust fund, which may involve rulemaking. This may cause DEP to incur additional costs.

The bill may cause substantial funding to be deposited into the Water Protection and Sustainability Program Trust Fund, increasing funding for the authorized uses of that fund. Therefore, the bill may have a positive, indeterminate fiscal impact on the public sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 12 and 35 of the bill, there are blank spaces that should be filled in with "1096."

VIII. Statutes Affected:

This bill substantially amends section 500.458 of the Florida Statutes, as created in SB 1096.

³⁷ Southwest Florida WMD, *Water Use Fact Sheet*, 3 (2020) (on file with the Environment and Natural Resources Committee); Suwanee River WMD, *Bottled Water Permitting Data Received Jan. 15, 2020* (on file with the Environment and Natural Resources Committee); South Florida WMD, *Bottled Water Permitting Data Received Jan. 10, 2020* (on file with the Environment and Natural Resources Committee); Northwest Florida WMD, *Bottled Water Permitting Data Received Jan. 10, 2020* (on file with the Environment and Natural Resources Committee); St. John's River WMD, *Bottled Water Permitting Data Received Jan. 16, 2020* (on file with the Environment and Natural Resources Committee).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
