

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 7062

INTRODUCER: Appropriations Committee and Environment and Natural Resources Committee

SUBJECT: Central Florida Water Initiative

DATE: April 18, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>AP</u>	<b>EN Submitted as Comm. Bill/Fav</b>
	<u>Reagan</u>	<u>Sadberry</u>		<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7062 ratifies the Department of Environmental Protection (DEP)'s rules for the Central Florida Water Initiative (CFWI), Rules 62-41.300, 62-41.301, 62-41.302, 62-41.303, 62-41.304, and 62-41.305, Florida Administrative Code.

Chapter 2016-1, Laws of Florida, required the DEP to establish:

- Uniform processes for conducting permit reviews, setting minimum flows and minimum water levels within the boundaries of the CFWI Area, and establishing a variance process;
- Uniform methods for calculating residential per capita water use;
- A uniform definition of the term "harmful to water resources;" and
- Annual conservation and residential per capita water use goals for consumptive use permits.

The Statement of Estimated Regulatory Costs (SERC) developed by the DEP determined that the proposed rule will likely increase regulatory costs in excess of \$1 million in the aggregate within five years after implementation of the rule. This amount triggers the statutory requirement for the rule to be ratified by the Legislature before it may go into effect.

Additionally, the bill:

- Provides a declaratory statement and determination by the Legislature that the act fulfills an important state interest.
- Revises the required rulemaking to include an annual supplemental irrigation requirement allocation for agricultural uses and a process for examining an agriculture user's average annual supplemental irrigation needs.

- Provides that these rules may not be construed to limit the ability of the department or a water management district to establish different supplemental irrigation requirements.
- Establishes a grant program within the DEP, subject to appropriation, for the CFWI, which will promote alternative water supply and protect groundwater resources. The bill requires the DEP to give priority to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or that can demonstrate a significant financial hardship exists as a result of complying with the rules applicable to the CFWI Area.
- Revises the priority system for the Drinking Water State Revolving Loan Fund to give special consideration to projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer under the CFWI.

The estimated cost to the St. Johns River, Southwest Florida, and South Florida Water Management Districts of implementing the proposed rule is \$637,000 and the estimated cost of monitoring and enforcing the proposed rule is \$64,000.

The act is effective upon becoming a law. At that time, the rule also becomes effective.

## II. Present Situation:

### Legislative Ratification

A rule is subject to legislative ratification if it:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.<sup>1</sup>

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.<sup>2</sup>

### *Statement of Estimated Regulatory Costs Requirements*

A Statement of Estimated Regulatory Costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. An SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or

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<sup>1</sup> Section 120.541(2)(a), F.S.

<sup>2</sup> Section 120.541(3), F.S.

- Is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within one year after the implementation of the rule.<sup>3</sup>

An SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.<sup>4</sup>

### **Consumptive Use Permits**

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Each CUP must be consistent with the objectives of the issuing Water Management District (WMD) or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area.<sup>5</sup> To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use”;<sup>6</sup>
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.<sup>7</sup>

### **Drinking Water State Revolving Loan Fund**

The Drinking Water State Revolving Loan Fund, administered by the DEP, provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities to provide safe drinking water and protect water quality.<sup>8</sup> An investor-owned public water system that is legally responsible for public water services and serves no more than 1,500 connections is eligible for a loan. An investor-owned public water system that serves more than 1,500

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<sup>3</sup> Section 120.54(3)(b)1., F.S.

<sup>4</sup> Section 120.541(2), F.S.

<sup>5</sup> Section 373.219, F.S.

<sup>6</sup> Section 373.019(16), F.S., defines reasonable-beneficial use 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.” *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.

<sup>7</sup> Section 373.233(1), F.S.; Fla. Admin. Code R. 62-40.410(1).

<sup>8</sup> Section 403.8533, F.S.

connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.<sup>9</sup>

Loan funding is based on a priority system that takes into account public health considerations, compliance, and affordability.<sup>10</sup> The priority system shall give special consideration to:

- Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;
- Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and
- Projects that contribute to the sustainability of regional water sources.<sup>11</sup>

### **Central Florida Water Initiative**

The Central Florida Water Initiative (CFWI) is a collaborative water supply planning effort involving the DEP, the St. Johns River Water Management District (SJRWMD), the South Florida Water Management District (SFWMD), the Southwest Florida Water Management District (SWFWMD), the Department of Agriculture and Consumer Services (DACS), regional public water supply utilities, and other stakeholders.<sup>12</sup> These groups have been tasked with addressing the current and long-term water supply needs of Central Florida without causing harm to the water resources and associated natural systems.<sup>13</sup>

The CFWI Planning Area covers five counties, including Orange, Osceola, Polk, Seminole, and southern Lake Counties.<sup>14</sup> The CFWI Planning Area is home to approximately 2.9 million people and supports tourism, agriculture, and an industrial and commercial sector.<sup>15</sup> The area's population is projected to reach 4.4 million by 2040. The total average (surface and ground) water use in the area is projected to increase from 667 million gallons per day (mgd) in 2015 to 908 mgd in 2040. Of this amount, groundwater represents 635 mgd and 855 mgd, respectively. Public supply constitutes the largest water use in the CFWI Area.<sup>16</sup>

The areas encompassed by the CFWI Planning Area have traditionally relied on groundwater from the Floridan aquifer system as the primary source of water. Evaluations predict that fresh groundwater resources alone will be insufficient to meet 2040 projected water demands and currently permitted allocations for withdrawal without resulting in unacceptable impacts to water resources and related natural systems.<sup>17</sup> These impacts can include drying out wetlands, reducing

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<sup>9</sup> Section 403.8532(3), F.S.

<sup>10</sup> Section 403.8532(9)(a), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Stakeholders include water utilities, environmental groups, business organizations, agricultural communities, and others.

<sup>13</sup> Section 373.0465(1)(c), F.S.

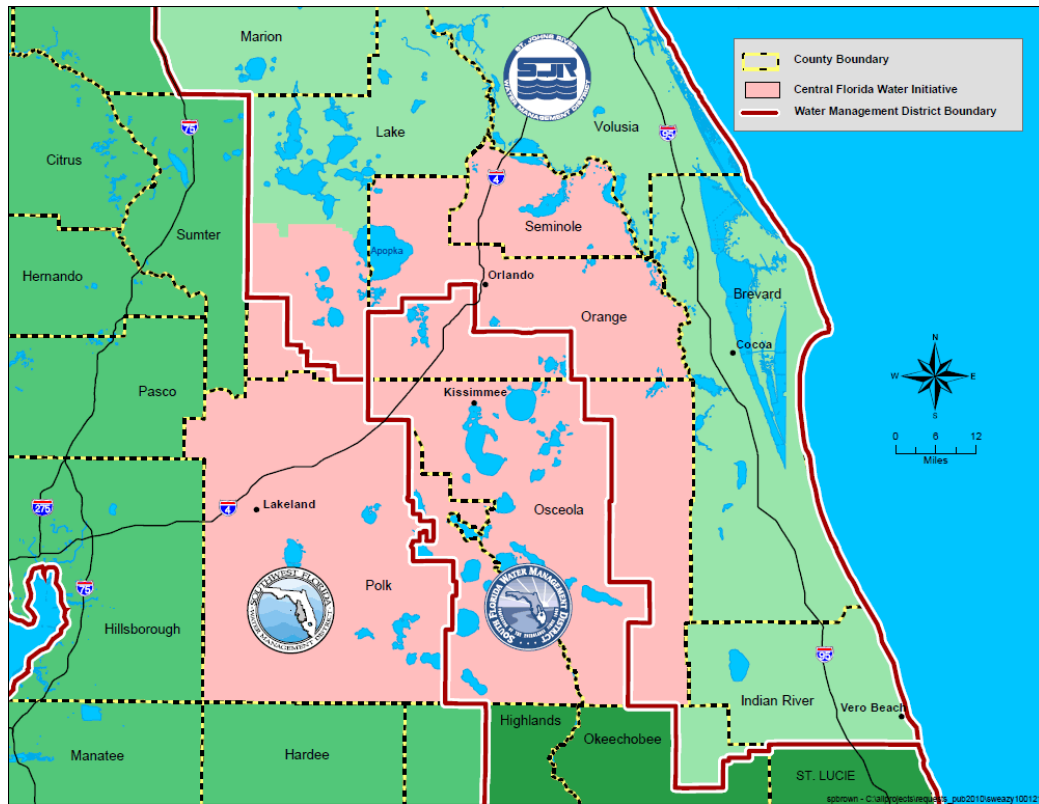
<sup>14</sup> Section 373.0465(2)(a), F.S.; Central Florida Water Initiative (CFWI), *What is CFWI?*, [https://cfwiwater.com/what\\_is\\_CFWI.html](https://cfwiwater.com/what_is_CFWI.html) (last visited Mar. 8, 2021).

<sup>15</sup> Central Florida Water Initiative (CFWI), *Regional Water Supply Plan 2020 Planning Document*, ii, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Mar. 9, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 90.

spring flows, lowering lake levels, and degrading groundwater quality from saltwater intrusion.<sup>18</sup> Alternative water sources will need to be developed to meet the projected demands.



Map of the CFWI Area

In the past, the three WMDs worked independently to resolve water resource issues, but the decisions of one district can affect the water resources of another.<sup>19</sup> In 2006, the three WMDs agreed to a Central Florida Coordination Area (CFCA) Action Plan to address the near-term and long-term development of water supplies in the central Florida region.<sup>20</sup> The CFWI was created in 2009, building on the CFCA Action Plan.<sup>21</sup> In November 2015, the WMDs’ respective governing boards approved the first ever joint regional water supply plan, the 2015 CFWI Regional Water Supply Plan (RWSP).<sup>22</sup>

The guiding principles for the CFWI process were initially designed to ensure sufficient water was available by:

<sup>18</sup> CFWI, *Value of Water*, [https://cfwiwater.com/value\\_of\\_water.html](https://cfwiwater.com/value_of_water.html) (last visited Mar. 8, 2021).

<sup>19</sup> CFWI, *Regional Water Supply Plan 2020 Planning Document*, i, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Mar. 9, 2021).

<sup>20</sup> CFWI, *Central Florida Water Initiative Guiding Document*, 2 (Jan. 30, 2015), available at [https://cfwiwater.com/pdfs/CFWI\\_Guiding\\_Document\\_2015-01-30.pdf](https://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf) (last visited Mar. 8, 2021).

<sup>21</sup> CFWI, *Regional Water Supply Plan 2020 Planning Document*, i, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Mar. 9, 2021).

<sup>22</sup> *Id.*

- Identifying the sustainable quantities of traditional groundwater sources available for water supplies that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Developing strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establishing consistent rules and regulations for the three WMDs that meet their collective goals, and implement the results of the CFWI.<sup>23</sup>

The guidelines were updated in April 2016, and adopted in the CFWI 2020 Guiding Document. The revised guiding principles include the following principles and goals:

- Review and update the 2015 CFWI RWSP, as well as the sustainable quantities of traditional groundwater sources available in the CFWI Area that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Monitor progress of regional strategies and solutions identified in the 2015 CFWI Plan.
- Review and update strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establish consistent rules and regulations for the three WMDs that meet the specified goals and implement the results of the CFWI.
- Encourage funding for regional strategies necessary to achieve the objectives of the CFWI.<sup>24</sup>

### **Chapter 2016-1, Laws of Florida**

The DEP, in consultation with the WMDs and DACS, is required to adopt uniform rules for application within the CFWI, to comply with requirements set forth in s. 373.0465(2)(d), F.S., enacted during the 2016 legislative session. The Legislature found that development of alternative water supply instead of a continued reliance on the Floridan aquifer would benefit existing and future water users and natural water systems.<sup>25</sup>

In developing the CFWI plan, the DEP, the WMDs, and the DACS are required to:

- Consider limitations on groundwater use and opportunities for new, increased, or redistributed groundwater uses that are consistent with CUP conditions;
- Establish a coordinated process for identifying water resources requiring new or revised conditions;
- Consider existing recovery or prevention strategies;
- Include a list of water supply options sufficient to meet the water needs of all existing and future reasonable-beneficial uses; and
- Identify, as necessary, which of the water supply sources are preferred water supply sources.<sup>26</sup>

The required rulemaking affects CUPs within the CFWI Area and provides for:

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<sup>23</sup> CFWI, *Central Florida Water Initiative Guiding Document*, 2 (Jan. 30, 2015), available at [https://cfwiwater.com/pdfs/CFWI\\_Guiding\\_Document\\_2015-01-30.pdf](https://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf) (last visited Mar. 8, 2021).

<sup>24</sup> CFWI, *Central Florida Water Initiative 2020 Guiding Document*, 3 (July 2017), available at <https://cfwiwater.com/pdfs/CFW-Guiding-Document%20-Oct-2018.pdf> (last visited Mar. 10, 2021).

<sup>25</sup> Section 373.0465(1)(d), F.S.

<sup>26</sup> Section 373.0465(2)(c), F.S.

- Uniform processes for conducting permit reviews, setting minimum flows and minimum water levels for certain areas within the boundaries of the CFWI Area, and establishing a variance process;
- Uniform methods for calculating residential per capita water use;
- A uniform definition of the term “harmful to water resources”; and
- Establishing annual conservation and residential per capita water use goals for CUPs.<sup>27</sup>

### **Rules 62-41.300-305, Florida Administrative Code**

The DEP issued its first notice of rule development on December 30, 2016. Between 2017 and 2020, the DEP hosted eight rule development workshops for different portions of the rule. The draft rule was published on November 19, 2020,<sup>28</sup> and a public hearing on the proposed rule was held on December 11, 2020.<sup>29</sup> The draft rule, which incorporates the CFWI Supplemental Applicant’s Handbook, was revised on February 9, 2021, to incorporate certain lower cost regulatory alternatives submitted by stakeholders.<sup>30</sup>

The proposed rules apply to CUP applicants and permittees with withdrawal points within the CFWI Area. The proposed rule issued by the DEP:

- Provides that the cumulative use of the Upper Floridan aquifer across the CFWI Area has caused detrimental effects to other users and the water resources of the state.<sup>31</sup>
- Sets out methods for calculating per capita water use and annual conservation goals.<sup>32</sup>
- Limits water withdrawals from the Upper Floridan aquifer to the demonstrated 2025 demand (the existing permitted allocation) for public supply, industrial/commercial/institutional, and mining/dewatering water uses.<sup>33</sup>
- Requires existing CUPs with withdrawal points within the CFWI Area to be modified to be consistent with the new rules.<sup>34</sup>
- Provides for temporary allocations of water required to meet the applicant’s reasonable demand beyond the demonstrated 2025 demand while implementing an offset, substitution credit, land use transition, or alternative water supply.<sup>35</sup>

<sup>27</sup> Section 373.0465(2)(d), F.S.

<sup>28</sup> Florida Administrative Register, Notice of Proposed Rule 62-41.300-305, Volume 46, Number 226 at 5019 (Nov. 19, 2020), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2020/46242/46242doc.pdf> (last visited Mar. 9, 2021).

<sup>29</sup> Department of Environmental Protection (DEP), *Central Florida Water Initiative Rulemaking Presentation* (Dec. 11, 2020), available at

[https://floridadep.gov/sites/default/files/CFWI%20NOPR%20Rulemaking%20Hearing\\_Staff%20Presentation\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20NOPR%20Rulemaking%20Hearing_Staff%20Presentation_0.pdf) (last visited Mar. 9, 2021).

<sup>30</sup> Florida Administrative Register, Notice of Proposed Rule 62-41.300-305, Volume 47, Number 26 at 733 (Feb. 9, 2021), available at <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2021/4726/4726doc.pdf> (last visited Mar. 10, 2021).

<sup>31</sup> Notice of Proposed Rule 62-41.301(4), available at [https://www.flrules.org/Gateway/View\\_notice.asp?id=23903533](https://www.flrules.org/Gateway/View_notice.asp?id=23903533) (last visited Mar. 10, 2021).

<sup>32</sup> Proposed CFWI Supplemental Applicant’s Handbook, 21-29, available at <https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook> (last visited Mar. 10, 2021).

<sup>33</sup> *Id.* at 30-31.

<sup>34</sup> Notice of Proposed Rule 62-41.301(4), available at [https://www.flrules.org/Gateway/View\\_notice.asp?id=23903533](https://www.flrules.org/Gateway/View_notice.asp?id=23903533) (last visited Mar. 10, 2021).

<sup>35</sup> Proposed CFWI Supplemental Applicant’s Handbook, 32, available at <https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook> (last visited Mar. 10, 2021).

- Provides for variances if there are unique circumstances or hydrogeological factors that make application of the rules unrealistic or impractical, meaning compliance with the rule would create a substantial hardship<sup>36</sup> or violate the principles of fairness.<sup>37</sup>
- Requires permit applicants to provide reasonable assurance that a proposed use will use the lowest quality water source suitable for the purpose.<sup>38</sup>
- Adopts existing recovery and prevention strategies.<sup>39</sup>

### *The DEP Statement of Estimated Regulatory Costs*

The DEP published an SERC on November 7, 2020.<sup>40</sup> The DEP estimates that the transactional cost of the proposed rule over the next five years will be \$18.6 million, in permittee, applicant, and consultant time spent in water supply, conservation planning, and investments by public supply utilities to reduce per capita water use, as well as materials.<sup>41</sup> However, according to the SERC, the costs to households and businesses located within the CFWI will be offset by the economic benefit to the CFWI economy, resulting in a net negative economic impact of less than \$1,000,000 over the five-year period.<sup>42</sup>

According to the DEP's SERC, due to the temporary allocations allowed for under the proposed rule, there will be little prospect of water shortages or impacts to expanded business operations, no impact to the number of Florida visitors, and no losses to a consumer value from the water shortage. However, there may be some impact to new businesses applying for a CUP.<sup>43</sup>

The estimated cost to the SJRWMD, SWFWMD, and SFWMD of implementing the proposed rule is \$637,000 and the estimated cost to agencies of monitoring and enforcing the proposed rule is \$64,000.<sup>44</sup>

The rules are anticipated to affect CUPs in the CFWI Area due to the prohibition of additional permitted water withdrawals from the Upper Floridan aquifer after 2025 for public supply and industrial/commercial/institutional water use permittees and applicants.<sup>45</sup> Thereafter, applicants and permittees would need to meet additional water demands with water from alternative

<sup>36</sup> "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

<sup>37</sup> "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Notice of Proposed Rule 62-41.303(3), available at [https://www.flrules.org/Gateway/View\\_notice.asp?id=23903533](https://www.flrules.org/Gateway/View_notice.asp?id=23903533) (last visited Mar. 10, 2021).

<sup>38</sup> Notice of Proposed Rule 62-41.301(2), available at [https://www.flrules.org/Gateway/View\\_notice.asp?id=23903533](https://www.flrules.org/Gateway/View_notice.asp?id=23903533) (last visited Mar. 10, 2021).

<sup>39</sup> Notice of Proposed Rule 62-41.305, available at [https://www.flrules.org/Gateway/View\\_notice.asp?id=23903533](https://www.flrules.org/Gateway/View_notice.asp?id=23903533) (last visited Mar. 10, 2021).

<sup>40</sup> DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021), available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).

<sup>41</sup> *Id.* at ES-1.

<sup>42</sup> *Id.* at ES-1 – ES-2.

<sup>43</sup> *Id.* at ES-2.

<sup>44</sup> *Id.* at ES-6.

<sup>45</sup> DEP, *Water Policy Rulemaking*, <https://floridadep.gov/water-policy/water-policy/content/office-water-policy-rulemaking> (last visited Mar. 9, 2021); see also DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2, available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).



sources. The transactional cost of the proposed rule by the year 2040 is estimated to be \$190 million annually.<sup>46</sup>

### ***Agricultural Use Type Permittees and Applicants***

Under the proposed rule, agricultural, landscape, and recreation use type permittees and applicants withdrawing water from the Upper Floridan Aquifer for irrigation are not limited to the demonstrated 2025 water demand. Instead, permitted quantities for supplemental irrigation are based on two thresholds of water use: a five-in-ten-year rainfall condition and a two-in-ten-year drought condition.<sup>47</sup>

An allocation using a five-in-ten-year rainfall condition represents the amount of water required to meet average annual water demands.<sup>48</sup> An allocation using a two-in-ten-year drought condition represents the amount of water required to meet water demands generated from a rainfall deficit during a drought with the probability of recurring twice every ten years.<sup>49</sup> Compliance with these annual allocations is based on the quantity withdrawn over a rolling average of the previous 12-month period.

According to the DEP's SERC, the five-in-ten-year rainfall condition is used to better match actual water demands to their corresponding rainfall conditions and the two-in-ten-year drought condition allows for unusual water needs caused by weather conditions.<sup>50</sup>

### ***Concerns and Challenges***

Several local governments and entities submitted lower cost regulatory alternatives (LCRA) and challenged the CFWI rule. The DEP accepted some of the LCRA submissions and issued a revised rule on February 9, 2021, that included modified language. The DEP rejected the remaining LCRA submissions, stating that they do not substantially accomplish the objectives of the law being implemented.<sup>51</sup> The issues raised in the LCRAs that were rejected by the DEP included requests to:

- Remove provisions limiting allocation for permittees and applicants to the demonstrated 2025 demand, and alternatively, continue current CUPs and expedite adoption of minimum flows and minimum water levels in the CFWI Area. The LCRAs suggested that the rule would result in the unnecessary implementation of alternative water supply projects and water rate increases.
- Amend the annual conservation goals for public supply use permittees and applicants to a more feasible goal.
- Exempt permittees and applicants in certain water use caution areas from the rules.

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<sup>46</sup> DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2 – ES-3, available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).

<sup>47</sup> Proposed CFWI Supplemental Applicant's Handbook, 14, available at <https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook> (last visited Mar. 10, 2021).

<sup>48</sup> DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at 4-35, available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 7-2.

In response to the rejected submissions, the DEP stated that:

- Existing and planned minimum flows and minimum water levels do not address all of the anticipated water resource impacts in the area and the proposed rules are designed to address harm to all water resources.<sup>52</sup>
- The need for implementation of alternative water supply projects has been known for over 10 years and all permittees were on notice that their permits could be modified.<sup>53</sup>
- The rule has to address both individual and cumulative harm to water resources in the CFWI Area.<sup>54</sup>
- The rule provides for numerous alternatives and accommodations to address hardships.<sup>55</sup>
- The suggested seven percent reduction in water use does not accomplish the objectives of the law being implemented.<sup>56</sup>
- The conservation goals are feasible and many permittees are already meeting the goals. If a permittee cannot meet the goal, a variance is available.<sup>57</sup>
- Exempting permittees and applicants from the rule is not consistent with legislative intent and the recovery strategies in the specific water use caution areas are not being met.<sup>58</sup>

As a result, on March 1, 2021, the local governments and entities submitted several rule challenges to the Division of Administrative Hearings. The final administrative hearing on the challenges was canceled, and the case has been placed in abeyance due to the parties reaching a tentative settlement agreement.<sup>59</sup> A revised rule is also expected from the DEP.

### **Water Use Caution Areas**

A water use caution area (WUCA) is a geographic area identified by a WMD as having existing water resource problems or where water resource problems are projected to develop during the next 20 years.<sup>60</sup>

A WMD must determine, in its water supply assessment, whether sources of water are adequate to meet projected 20-year demands to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems.<sup>61</sup> If a determination is made that the sources of water supply are not adequate, a regional water supply plan must be developed and the region must be designated as a WUCA.<sup>62</sup>

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<sup>52</sup> *Id.* at 7-4.

<sup>53</sup> *Id.* at 7-4 – 7-5.

<sup>54</sup> *Id.* at 7-5 – 7-6.

<sup>55</sup> *Id.* at 7-6.

<sup>56</sup> *Id.* at 7-11.

<sup>57</sup> *Id.* at 7-12.

<sup>58</sup> *Id.* at 7-15.

<sup>59</sup> Division of Administrative Hearings, Order Canceling Hearing and Placing Case in Abeyance (Mar. 19, 2021), available at <https://www.doah.state.fl.us/DocDoc/2021/000791/21000791OCHA-031921-01483343.pdf> (last visited Mar. 23, 2021).

<sup>60</sup> Fla. Admin. Code. R. 62-40.210(43).

<sup>61</sup> Fla. Admin. Code. R. 62-40.520(2).

<sup>62</sup> *Id.*

The CFWI Planning Area was identified as a WUCA in the 2015 CFWI RWSP and verified as a WUCA in the 2020 CFWI RWSP.<sup>63</sup> The CFWI includes two existing WUCAs: the Southern WUCA and the Dover/Plant City WUCA.

The Southern WUCA encompasses approximately 5,100 square miles and includes all of Manatee, Sarasota, Hardee, and DeSoto Counties and portions of Hillsborough, Charlotte, Polk, and Highlands Counties.<sup>64</sup> It was established by the SWFWMD in 1992, due to environmental concerns related to groundwater withdrawals from growing demands in the area, which caused depressed aquifer levels.<sup>65</sup>

The Dover/Plant City WUCA was established in 2011, following a historic freeze event in eastern Hillsborough County and western Polk County, when agricultural permittees pumped large quantities of groundwater to protect their crops from the freeze, resulting in declines in aquifer levels.<sup>66</sup> The DEP is currently evaluating both WUCAs to determine whether targets have been achieved.<sup>67</sup>

### III. Effect of Proposed Changes:

#### CFWI Rule Ratification

**Section 1** of the bill ratifies Rules 62-41.300, 62-41.301, 62-41.302, 62-41.303, 62-41.304, and 62-41.305, Florida Administrative Code, titled “Central Florida Water Initiative Area,” (CFWI) adopted by the Department of Environmental Protection (DEP), for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S. The rule, proposed by the DEP and published on November 19, 2020, in the Florida Administrative Register, Vol. 46, No. 226, pages 5019-5025; February 9, 2021, in the Florida Administrative Register, Vol. 47, No. 26, pages 733-734; and March 26, 2021, in the Florida Administrative Register, Vol. 47, No. 59, pages 1506-1507, consists of rules:

- 62-41.300, entitled CFWI, Scope of Rule;
- 62-41.301, entitled CFWI, Uniform Conditions for Issuance of Permits;
- 62-41.302, entitled CFWI, Supplemental Applicant’s Handbook;
- 62-41.303, entitled CFWI, Variances to the Uniform Rules;
- 62-41.304, entitled CFWI, Uniform Process for Setting Minimum Flows and Minimum Water Levels and Water Reservations; and
- 62-31.305, entitled CFWI, Applicability of the Dover/Plant City and Southern Water Use Caution Area Recovery Strategies.

The bill also:

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<sup>63</sup> CFWI, *Regional Water Supply Plan 2020 Planning Document*, 1, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Mar. 9, 2021).

<sup>64</sup> DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at 7-13, available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).

<sup>65</sup> *Id.*; see also CFWI, *Regional Water Supply Plan 2020 Planning Document*, 106, available at [https://cfwiwater.com/pdfs/CFWI\\_2020RWSP\\_FINAL\\_PlanDocRpt\\_12-10-2020.pdf](https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf) (last visited Mar. 9, 2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

- Directs that the ratification section of the bill serves no other purpose and shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Provides that the act does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect or preempt any challenge based on a violation of the legal requirements governing rule adoption.

### *Declaration of Important State Interest*

The bill provides a declaratory statement and determination by the Legislature that the act fulfills an important state interest.

### **CFWI Rulemaking**

**Section 2** of the bill revises s. 373.0465, F.S. The bill revises the rulemaking authority to require the DEP, in consultation with the relevant water management districts and the Department of Agriculture and Consumer Services, to adopt uniform rules for application within the CFWI that include:

- A drought application for supplemental irrigation for agricultural uses which is based on a two-in-ten-year rainfall conditions or, if the applicant requests, is based on a five-in-ten-year rainfall condition alone or combined with the two-in-ten-year condition. The applicable water management district may also condition, for information purposes only, consumptive use permits to advise permittees that their annual use of water should be less than the drought condition that is the basis for the allocation or a more severe drought; and
- A process for the applicable water management district to annually examine an agricultural user's five year moving average supplemental irrigation water use against the annual supplemental irrigation needs in the five-in-ten-year rainfall condition beginning no earlier than five years following the effective date of the rules adopted under this section. If this annual examination indicates that the agricultural user's five year moving average use exceeds that needed in such rainfall condition for reasons other than prolonged periods of below average rainfall, the water management district may modify the agricultural user's permit to include an annual supplemental irrigation allocation based on both the amount of supplemental irrigation required during a two-in-ten-year rainfall condition and the amount of supplemental irrigation required during a five-in-ten-year rainfall condition as provided in rules adopted pursuant to this section. In such case, the supplemental irrigation allocation based on a five-in-ten-year rainfall condition shall be valid for only five years unless the agricultural user's five year moving average continues to exceed the amount of supplemental irrigation needed during the five-in-ten-year rainfall condition for reasons other than prolonged periods of drought.

The bill provides that the new rule requirements above may not be construed to limit the ability of the DEP or a water management district to establish different supplemental irrigation requirements as part of an existing or future recovery or prevention strategy adopted pursuant to s. 373.0363, s. 373.042, or s. 373.0421, F.S.

### **CFWI Grant Program**

**Section 3** of the bill establishes a grant program within the DEP, subject to appropriation, for the CFWI. The bill requires the DEP, in cooperation with the relevant water management districts, to provide grants for projects within the CFWI Area that will promote alternative water supplies and protect groundwater resources. The bill requires the DEP, in allocating grant program funds, to give priority to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or that are able to demonstrate that a significant financial hardship exists as a result of complying with the rules applicable to the CFWI Area.

### **Drinking Water State Revolving Loan Fund Priorities**

**Section 4** of the bill revises the priority system for the Drinking Water State Revolving Loan Fund to give special consideration to projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer under the CFWI.

### **Effective Date**

**Section 5** of the bill provides that the act is effective upon becoming a law.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, s. 18(a) of the Florida Constitution may apply to this bill because local governments may be required to expend funds to develop alternative water supply under the new requirements of the rule. The bill includes a legislative finding that the act fulfills an important state interest. The expenditures are required to comply with rules and law that applies to all persons similarly situated. Therefore, an exception from Art. VII, s. 18(a) of the Florida Constitution likely applies.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

According to the Department of Environmental Protection's (DEP) statement of estimated regulatory costs, the estimated transactional cost of the proposed rule over the next five years will be \$18.6 million to permittees and applicants.<sup>68</sup>

**C. Government Sector Impact:**

According to the DEP's statement of estimated regulatory costs, the estimated transactional cost of the proposed rule over the next five years will be \$18.6 million to permittees and applicants.<sup>69</sup> The estimated cost to the St. Johns River, Southwest Florida, and South Florida Water Management Districts of implementing the proposed rule is \$637,000 and the estimated cost of monitoring and enforcing the proposed rule is \$64,000.<sup>70</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 373.0465 and 403.8532.

The bill creates section 373.0466 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Appropriations on April 15, 2021:**

The committee substitute:

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<sup>68</sup> DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2 - ES-4, available at [https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002\\_08\\_2021%20with%20LCRA\\_0.pdf](https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf) (last visited Mar. 9, 2021).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at ES-6.

- Revises the rule publication date to reflect the Notice of Change published on March 26, 2021.
- Deletes the report to the Legislature required in the underlying bill which addresses practical and economic barriers to implementation of the Central Florida Water Initiative rules.
- Revises the supplemental irrigation requirement allocation for agricultural uses and the process for examining an agricultural user's supplemental irrigation water use required to be included in the uniform rules for the Central Florida Water Initiative Area.
- Authorizes the applicable water management district to condition and modify consumptive use permits under specified circumstances.
- Revises the grant program created under the bill to include and prioritize certain projects.

B. Amendments:

None.