

STORAGE NAME: h1079.wrm
DATE: March 14, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1079
RELATING TO: Water Resources
SPONSOR(S): Representative Westbrook
STATUTE(S) AFFECTED: None.
COMPANION BILL(S): HB 819 (s) and CS/S 788 - 1st engrossed (s)
ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) WATER & RESOURCE MANAGEMENT
(2) GENERAL GOVERNMENT (FISCAL)
(3)
(4)
(5)

I. SUMMARY:

HB 1079 seeks ratification of an interstate compact involving the states of Florida, Alabama and Georgia, and the federal government, and their roles in establishing a long-term management plan for the Apalachicola-Chattahoochee-Flint (ACF) River Basin. The compact is the result of a comprehensive water resources study which dates back to 1992 and was developed in an attempt to resolve conflicts between the three states and the U.S. Army Corps of Engineers over the allocation of the three rivers' water resources. Ratification of this compact by the three states' legislatures and the U.S. Congress will establish an interstate commission for the ACF Basin to provide for long-term management of the ACF Basin's water resources, including development of a water allocation formula for apportioning the waters of the basin among the three states.

The major provisions of the compact create the ACF Basic Commission (Article VI); provide for development and adoption of allocations apportioning the waters of the basin (Article VII); describe the relationship of the proposed Compact to federal laws (Article X); and provide a mechanism for dispute resolution (Article XIII). The bill also includes an, "Agreement Regarding Water Quality" (Article XV) and enforcement provisions (Article XII).

Although HB 1029 does not include an appropriation, it anticipates that the Legislature will continue to budget approximately \$500,000 a year for the Department of Environmental Protection (DEP) and the Northwest Florida Water Management District (NFWFMD) to pay for scientific studies and technical assistance related to the ACF Basin issues.

HB 1079 takes effect upon becoming a law, but in reality, the compact is effective after its ratification by all three state Legislatures and Congress.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

For at least the past five years the states of Alabama, Florida and Georgia, and the Corps of Engineers have been working to resolve the dispute of how much fresh water each state may utilize from the ACF Basin. The Apalachicola River forms at the Florida-Georgia state line where the Chattahoochee and Flint Rivers meet. The Chattahoochee River currently is a major water source for Atlanta and Columbus, Ga., as well as for other cities along the course of the two rivers. In addition, Apalachicola Bay, into which the Apalachicola River flows, is an important estuarine system which has an enormous impact on Florida's seafood industry.

As the upstream needs for public water supplies, irrigation and industrial uses have escalated in recent years, concern has been raised as to the effect of these withdrawals on Apalachicola Bay. Significant reductions in the amount of fresh water flowing into the bay result in increased salinity levels. This, in turn, can cause harmful effects on the estuarine system, particularly the Apalachicola Bay oyster beds and the estuarine areas that serve as nurseries for a variety of important marine species.

As a result of the concerns over the billions of gallons of water extracted from the ACF Basin, and the impact of the water extraction on potential downstream needs, Alabama, Florida and Georgia have been conducting a comprehensive study to assess the water resources of the ACF Basin. The Comprehensive Study, financed with \$15 million in federal funds, is intended to provide information on the availability of water and the projected water needs through the year 2050 and serve as the basis for managing the basin's water resources. Florida's primary interests have focused on determining the freshwater needs of Apalachicola River and Bay.

The three states have agreed to work towards the enactment of an Interstate River Basin Compact. The Compact is to provide a mechanism through which the three states, along with the U.S. government, can develop a water allocation formula. The Compact will become effective when enacted into law by the legislatures of the three states and by Congress. Once enacted by the states, the Compact will be submitted to Congress for ratification.

The Alabama and Georgia Legislatures already have passed the Compact, and their Governors have signed it. Congress expects to adopt the Compact later this spring -- after Florida lawmakers have approved it.

B. EFFECT OF PROPOSED CHANGES:

Ratification of the Compact by the Florida, Alabama and Georgia Legislatures, as well as the U.S. Congress, will establish an Interstate Basin Commission, comprised of the Governors of the three states as voting members and a non-voting commissioner appointed by the President of the United States. These commissioners may designate alternates to sit in for them. The Commission will be responsible for developing and implementing a water-allocation formula to apportion and manage the waters of the ACF Basin. Managing the ACF System from a basinwide perspective and implementation of an equitable allocation formula is expected to provide for the freshwater needs of the Apalachicola River and Apalachicola Bay.

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The Compact requires that the ACF Commission develop and approve an allocation formula by December 31, 1998. This Compact give the three Governors the sole authority to approve a binding water-allocation formula. If the states fail to agree on the water allocations by the specified deadline the Compact will automatically terminate. And, all actions of the Commission must be unanimously approved by the Governors.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Compact creates a responsibility for the lead executive environmental agency, which to date has been DEP, to participate and support the activities of the Commission as outlined above.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

2. Lower Taxes:

Not applicable.

3. Personal Responsibility:

Not applicable.

4. Individual Freedom:

Not applicable.

5. Family Empowerment:

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Article I: Compact Purposes - Establishes that the States of Alabama, Florida and Georgia and the United States of America have entered into an agreement or Compact for the purpose of "promoting interstate comity, removing causes of present and future controversies, equitably apportioning the surface waters of the ACF, engaging in water planning, and developing and sharing common data- bases."

Article II: Scope of the Compact - Establishes that the Compact applies to all waters arising within the drainage basin of the ACF in the three states.

Article III: Parties - Identifies the States of Alabama, Florida, Georgia and the United States of America as parties to the proposed agreement.

Article IV: Definitions - Provides definitions for terms used in the Compact. Terms defined in this article are: "ACF Basin," or "ACF" is defined as the basin and tributaries of any and all of the three rivers; "Allocation formula," refers to the methodology for determining the equitable apportionment of ACF surface waters among the three states, "Commission" or "ACF Basin Commission" is defined as the tri-state commission established by this compact; "Ground waters," refer to waters within a saturated zone or stratum beneath the surface of land, whether or not flowing through known and definite channels; "Person" is defined as any individual, firm, association, organization, partnership, company, the United States of America, and any state, and all political subdivisions, regions, districts, municipalities, and public agencies thereof; "Surface waters" refer to waters aboveground whether natural, artificial or diffused; "United States" is defined as the executive branch of the federal government and its subagencies; "Water resources facility" is any facility or project constructed for the impoundment, diversion, retention, control, or regulation of waters within the ACF Basin for any purpose; "Water resources" or "waters" refer to all surface and ground waters contained or originating within the ACF for any purpose.

Article V: Conditions Precedent to Legal Viability of the Compact - States that the Compact is not binding on any party until the Compact has been enacted into law by each of the three state's legislatures and by the U.S. Congress.

Article VI: Creation of the ACF Basin Commission and its General Powers: - Creates the ACF Basin Commission and identifies its general powers. The Commission will be comprised of one voting member from each state in the person of the governor, one or more alternates to be appointed by each governor to act in his stead, and a non-voting federal commissioner and alternate appointed by the President. The Compact states that "unless otherwise provided by law of the state for which an alternate State Commissioner is "appointed," each alternate shall serve at the pleasure of the state commissioner (governor). The federal commissioner and alternate shall serve "until they resign or their replacements are appointed."

Each state shall have one vote and exercise all powers only by unanimous vote of the three state commissioners. The commission shall meet at least once a year at a date set at the initial meeting, with the initial meeting taking place within 90 days of the Compact's ratification by the U.S. Congress. Special meetings may be called at the discretion of the Chairman or by the Chairman upon written request of any other

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commissioner. Notification procedures for meetings are provided. The chairmanship will rotate annually in alphabetical order, starting with the State of Alabama. All meetings are open to the public.

The ACF Basin Commission will have the following general powers:

1. to adopt bylaws and procedures governing its conduct;
2. to sue and be sued in any court of proper jurisdiction;
3. to retain and discharge professional, technical, clerical, and other staff necessary to accomplish the purpose of this compact;
4. to receive funds from any lawful source and expend funds for lawful purposes;
5. to enter into agreements or contracts, where appropriate, to accomplish the Compact's purposes;
6. to create committees and delegate responsibilities;
7. to plan, coordinate, monitor, and make recommendations for ACF Basin's water resources;
8. to participate with other governmental and non-governmental entities for the purposes of the Compact;
9. to conduct studies, to generate information regarding the water resource of the ACF Basin, and to share the acquired information among Commission members and with others;
10. to cooperate with appropriate state, federal, and local agencies or any other person in the development, ownership, sponsorship, and operation of water resources facilities in the ACF Basin. However, the commission may not own or operate a federally owned water facility unless so authorized;
11. to acquire, receive, hold and convey such personal or real property that may be necessary for the performance of its duties under the Compact. However, nothing in this compact will be construed as granting the ACF Basin Commission authority to issue bonds or to exercise any right of eminent domain or power of condemnation;
12. to establish and modify an allocation formula for apportioning the surface waters of the ACF Basin among Alabama, Florida, and Georgia; and
13. to perform all functions required of it by this compact and to do all things necessary, proper, or convenient in the performance of its duties under this compact, either independently or in cooperation with any state or the United States.

Article VII: Equitable Apportionment of Surface Waters - Specifies that the Compact is designed to develop an allocation formula for equitably apportioning the surface waters

of the ACF Basin among Alabama, Florida and Georgia. An allocation formula for equitably apportioning the surface waters of the ACF Basin, must be consistent with the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act, the Rivers and Harbors Act, and other applicable federal laws. Once an allocation formula is unanimously approved by each of the three State Commissioners, the allocation formula becomes effective and binding on the parties to the Compact upon receipt by the Commissioner of a letter of concurrence with the formula by the federal commissioner. However, if the federal commissioner fails to submit a letter of concurrence to the Commission within 210 days after the allocation formula is agreed on by the State Commissioners, the Federal Commissioner has 45 days thereafter to submit a letter of nonconcurrence with the allocation formula to the ACF Basin Commission along with the reasons for nonconcurrence. The allocation formula shall also be binding and effective on the parties to this compact if the federal commissioner fails to submit to the ACF Basin Commission a letter of nonconcurrence in accordance with this article.

Once adopted pursuant to this article, the allocation formula may only be modified by unanimous decision of the state commissioners and the concurrence by the federal commissioner in accordance with the procedures set forth in this article. Once an allocation formula is adopted, each and every officer, agency, and instrumentality of the United States will have an obligation to exercise their powers, authority, and discretion in a manner that is consistent with the allocation formula, so long as the powers, authority, and discretion are not in direct conflict with federal law.

Article VIII: Termination of Compact Procedure - Provides that the Compact shall be terminated if any of the following occur:

1. The Alabama, Florida and Georgia legislatures agree by general laws within any three consecutive years to terminate the Compact;
2. The United States enacts a law terminating this compact;
3. Alabama, Florida and Georgia fail to agree on an equitable apportionment of the surface waters of the ACF by December 31, 1998, unless the voting members of the ACF Basin Commission unanimously agree to extend 1998 deadline; and
4. The federal commissioner submits to the commission a letter of nonconcurrence in the initial allocation formula in accordance with Article VII(a), unless the voting commission members unanimously agree to allow a single 45-day period in which the nonvoting federal commissioner and the voting state commissioners may renegotiate an allocation formula and the federal commissioner withdraws the letter of nonconcurrence upon the completion of the renegotiation.

If the Compact is terminated, no party is "deemed to have acquired" a specific right to any quantity of water.

Article IX: Completion of Studies - Establishes that the ACF Basin Commission, in conjunction with one or more interstate, federal, state, or local agencies, is authorized to participate in any study associated in all or in part of the Alabama-Coosa-Tallapoosa/ Apalachicola-Chattahoochee-Flint River Basin Comprehensive Water Resource Study as it furthers the goals of the commission.

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Article X: Relationship to Other Laws - States that it is the intent of the party states and the United States Congress by ratifying this compact that all state and federal officials enforcing, implementing, or administering other state and federal laws affecting the ACF Basin will enforce, implement, or administer those laws in furtherance of the Compact purposes and the allocation formula adopted by the commission, insofar as such actions are not in direct conflict with other applicable federal laws.

This Compact does not restrict Presidential powers in the event of a national emergency.

This Compact shall not impair or affect the constitutional authority of the United States or any of its powers, rights, functions or jurisdiction under other existing or future laws affecting the areas or waters which are subject to this compact. In addition, all officers, agencies and instrumentalities of the United States shall exercise their discretion in satisfying their responsibilities in a manner that promotes the allocation formula developed in this compact. The U.S. Army Corps of Engineers and all other federal agencies shall cooperate with the ACF Basin Commission to accomplish the Compact's goals and obligations. Once the Compact is adopted by the three states and ratified by the U.S. Congress, the Compact will be enforceable and effective under federal law, and shall supersede contradictory state and local laws.

Nothing contained in this compact should be construed as affecting or interfering with the laws of the respective signatory states relating to water quality, and riparian rights as among persons exclusively within each state.

Article XI: Public Participation - Acknowledges the importance of public participation in the activities of the Commission and provides that the Commission will adopt procedures ensuring such participation.

At a minimum, public notice to interested parties and a comment period will be provided. The commission will respond in writing to relevant comments.

Article XII: Funding and Expenses of the Commission - Provides that Commissioners will serve without compensation from the ACF Basin Commission. All general operational funding required by the Commission will obligate each state to pay an equal share of the agreed upon funding. If any state fails to remit payment within 90 days after payment is due, the obligation terminates and any state which has made payment will be refunded its payment. Costs of attendance and participation in meetings of the Commission by the Federal Commissioner will be paid by the United States.

Article XIII: Dispute Resolution - Provides the specific mechanism by which disputes related to compliance with the allocation formula will be resolved. The dispute would be resolved by unanimous vote of the state commissioners or, failing that, an independent mediator would be selected by unanimous vote of the commissioners to arbitrate a non-binding mediation of the dispute. The mediator may not be a resident or domiciliary of any member state, employee or agent of any member of the commission, and must be knowledgeable in water resources management issues. The expenses of the mediator will be paid by the commission.

Failing the appointment of a mediator by the commission within 75 days after the filing of the original claim or within 30 days after the date on which the commission learns that a

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mediator is unwilling or unable to serve, the party submitting the claim will no longer be obligated to bring the claim before the commission and may pursue any appropriate judicial remedies.

Certain rules of evidence and privilege pertain to the proceedings. The proceedings may be terminated at any time by the mediator or any party to the dispute whenever, in the judgement of the mediator, further efforts to resolve the dispute would not lead to a resolution of the dispute, by written notification to the mediator and the commission. If terminated before a resolution is reached, the party submitting the original claim will have no further obligation to bring its claim before the commission.

The mediator is not to breach confidentiality of information disclosed to the mediator by the parties or by witnesses involved in the mediation session. Similarly, all records kept during the course of the mediation are to be confidential. Each party to the mediation is required to maintain confidentiality of the information received during mediation and may not introduce that confidential information in any judicial proceeding as evidence. The mediator may use his or her judgement in deciding to terminate the non-binding mediation session. Any party to the dispute may also terminate the mediation at any time by giving written notification to the mediator and the commission. The mediator does not have the authority to require parties to enter into any type of settlement regarding the Compact. The mediator may only facilitate the involved parties in reaching a mutually acceptable resolution. In addition the mediator is authorized to conduct joint and separate meetings with involved parties to the mediation and to make oral or written recommendations for a settlement of the dispute. In the event of a proceeding seeking enforcement of the allocation formula, this compact creates a cause of action solely for equitable relief. The party or parties alleging a violation of the Compact will have the burden of proof.

The federal government and a signatory state government may resolve any pertinent dispute in the same manner, except that a resolution of a dispute brought about by unanimous vote of the state commissioners would not be permitted.

Paragraph (d) provides for the procedure in the event of a dispute among signatory parties affected by an action of the commission other than a dispute dealing with the allocation formula. The commission would refer the dispute to an independent hearing officer or mediator. If the parties go to mediation and are unable to settle the dispute through the mediation process, the commission will hold a hearing. The hearing officer will make recommendations to the commission for the resolution which the commission may adopt or modify within 60 days. If the commission is unable to reach unanimous agreement on the dispute within 60 days (with the concurrence of the federal commissioner in disputes involving federal issues) the affected party may file an action in any court of competent jurisdiction to enforce the conditions of the Compact. All hearings or mediations conducted under this article will be conducted utilizing Federal Administrative Procedures Act, the Federal Rules of Civil Procedures, and the Federal Rules of Evidence. The commission may also choose to adopt some or all of its own procedural and evidentiary rules for the conduct of hearings or mediations under this compact. Any action brought under this article will be limited to equitable relief only. This Compact will not give rise to a cause of action for money damages.

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Article XIV: Enforcement - Provides for action by the Commission against any person for enforcement of all provisions of the Compact other than those related to the allocation formula.

Article XV: Impact on Other Stream Systems - States that the Compact can not be construed as establishing any general principles or precedents applicable to any other interstate streams.

Article XVI: Impact on Use of Water - Prohibits the provisions of the Compact from interfering with how any of the state regulate the use of water within that state, provided that such action is not inconsistent with the Compact.

Article XVII: Agreement on Water Quality - Establishes an agreement among the three states to control man-made pollution within each state and to cooperate in actively maintaining the quality of the waters of the ACF Basin. The States of Alabama, Florida, and Georgia agree that no state will require another state to provide water for the purpose of water quality control as a substitute for or in lieu of adequate waste treatment.

Article XVIII: Effect of Over-and Under Deliveries under the Compact - Provides that no state acquires any rights to the use of water due to any other state's failure to fully use the water allocated to it.

Article XIX: Severability - Provides a severability clause.

Article XX: Notice and Forms of Signature - Outlines the procedures for forwarding notice of ratification and submittal to the U.S. Congress. Provides that the Compact shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

While HB 1079 does not include an appropriation, it does commit the State of Florida to pay for one third of the "general operational funding" of the ACF Basin Commission. What "general operational funding" is has not been completely defined, and could include hydrologic studies and other research necessary to develop the water allocation formula. The "general operational funding" is set by unanimous vote of the governors of the three states, or their designee, sitting on the ACF Basin Commission. The past appropriations in support of negotiation and development of the ACF Commission have been approximately \$500,000. DEP expects costs in support of the ACF Commission to continue at this level.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. At some point the NFWFMD could be asked by the Legislature to contribute funding or at least staff time to assist the Commission's studies or other activities.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to an analysis of HB 1079 because the bill does not require cities or counties to expend funds, or to take actions which require the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

Due to drafting styles, HB 1079 is slightly different from the version passed by the Alabama and Georgia Legislatures, and the law requires the states to pass identical legislation. The sponsor will be offering in committee a strike-everything-after-the-enacting clause amendment to correct this variance.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

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