

STORAGE NAME: h1249.wrm
DATE: March 19, 1997

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

BILL #: HB 1249

RELATING TO: Water Resources

SPONSOR(S): Representative Boyd

STATUTE(S) AFFECTED: Sections 259.032, 259.101, 373.0693, 373.073, 373.139, 373.236, 373.507, 373.536, 373.59, 373.0735, Florida Statutes.

COMPANION BILL(S): HB 715 (s), SB 1562 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT
- (2) GENERAL GOVERNMENT (Fiscal)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1249 addresses three major issues: use of conservation and recreational lands owned by the state and the water management districts (WMDs) for permissible water resource and supply development; duration of water use permits (WUPs); and oversight of the WMDs.

Specifically, HB 1249 allows state lands acquired through the Conservation and Recreational Lands (CARL) program, the Save Our Rivers (SOR) program, and the Preservation 2000 (P2000) program to be used for permissible water resource and supply development.

HB 1249 also requires WMDs to issue 20-year WUPs if the withdrawal does not cause harm to the water resource, and if there is sufficient information to provide reasonable assurance that permit conditions will be met.

Finally, HB 1249 provides for staggered appointments of WMD governing board members, beginning January 1, 1999, and increased budgetary oversight by the Governor and the Legislature.

The fiscal impact of HB 1249 is indeterminate.

Except for the appointments section, HB 1249 takes effect July 1, 1997.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Use of Public Lands

In 1979, the Legislature created the Conservation and Recreation Lands (CARL) acquisition program that expanded earlier, smaller scale programs and provided a dedicated funding source. The CARL Trust Fund's major sources of revenue each year are a portion of the state's documentary stamp tax revenues, \$10 million annually from the state severance tax on phosphate, submerged land lease fees and interest earnings. These revenues generate between \$50 million and \$60 million annually. However, since 1990 the major source of funding for acquisition of CARL projects in Florida has been proceeds from Preservation 2000 bonds, sold in annual increments of \$300 million.

Each year, the Land Acquisition Advisory Committee, comprised of representatives of five state agencies ranks a list of proposed acquisitions; the Governor and Cabinet, sitting as the Board of Trustees of the Internal Trust Fund, reviews and adopts this CARL list. DEP uses the list as a guide for setting land-acquisition priorities among four categories: priority projects, mega/multi-parcel projects, bargain/shared projects, and substantially complete projects. The majority of the acquisition projects on the list are lands which are undisturbed and have retained their natural resource values. At least two of the Everglades projects on the list are the sites of agricultural operations or have otherwise been disturbed by drainage activities.

The purposes for which CARL and P2000 lands can be used are outlined in the statute which authorize the programs.

CARL lands can only be used "for the purposes for which the lands were acquired." (S. 259.032 (8), F.S.) The statute provides that CARL lands may be purchased for the following purposes:

"(a) To conserve and protect environmentally unique and irreplaceable lands that contain native, relatively unaltered flora and fauna representing a natural area unique to, or scarce within, a region of this state or a larger geographic area;

"(b) To conserve and protect lands within designated areas of critical state concern, if the proposed acquisition relates to the natural resource protection purposes of the designation;

"(c) To conserve and protect native species habitat or endangered or threatened species;

"(d) To conserve, protect, manage, or restore important ecosystems, landscapes, and forests, if the protection and conservation of such lands is necessary to enhance or protect significant surface water, groundwater, coastal, recreational, timber, or fish or wildlife resources which cannot otherwise be accomplished through local and state regulatory programs;

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“(e) To provide areas, including recreational trails, for natural resource based recreation and other outdoor recreation on any part of any site compatible with conservation purposes;

“(f) To preserve significant archaeological or historic sites; or

“(g) To conserve urban open spaces suitable for greenways or outdoor recreation which are compatible with conservation purposes.”

Section 259.032 (8), F.S. specifies that CARL lands shall be managed for “public outdoor recreation which is compatible with the conservation and protection of public lands.” The statute also lists specific examples of activities CARL lands may be used: fishing, hunting, camping, bicycling, hiking, nature study, swimming, boating, canoeing, horseback riding, diving, birding, sailing, jogging, and other related outdoor activities.”

P2000 lands are purchased “to protect the integrity of ecological systems and to provide multiple benefits, including preservation of fish and wildlife habitat, recreation space, and water recharge areas.” (S. 259.101 (2), F.S.)

The SOR land purchases are made by the WMD using P2000 funds, WMD ad valorem revenues, and other monies within the Water Management Lands Trust Fund. The Water Management Lands Trust Fund may be used to purchase lands for “water management, water supply, and the conservation and protection of water resources, except that such moneys shall not be used for the acquisition of rights-of-way for canals or pipelines” (s. 373.59 (4)(a), F.S.). Accordingly, SOR lands purchased with money other than P2000 funds could be used for water resource and supply development. However, the SOR land purchases made with P2000 funds would be subject the restrictions in s. 259.101 (2), F.S. discussed above.

Duration of WUPs

Section 373.223, F.S., requires applicants for WUPs to meet three criteria prior to obtaining permits: (1) the proposed use of water must be a reasonable-beneficial use (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”); (2) the proposed use must not interfere with any presently existing legal use of water; and (3) the proposed use must be consistent with the public interest.

In addition to meeting the above requirements, applicants who are competing to use the same water supply must meet other statutory criteria. Section 373.233(1), F.S., currently requires WMD governing boards to approve or modify competing applications for WUPs according to which application best serves the public interest. Section 373.233(2), F.S. allows a governing board to “give preference” to an applicant seeking renewal of a permit over one seeking an initial permit when the two are competing for the same water supply. In effect, the provision allows the applicant who will put the water to the most beneficial use to obtain the permit, but if two or more applicants propose equally beneficial uses of the water, the applicant who is seeking renewal of an existing permit likely will be awarded the permit. It should be noted that no WMD has ever used this section and made water allocation decisions between competing uses.

Once the governing board has determined whether an applicant qualifies for a WUP, it must establish a duration period for the permit, pursuant to section 373.236, F.S. That provision allows permits to be issued for "any period of time not exceeding 20 years." Under section 373.236(1), F.S., the duration decision may be based on a reasonable system of classification according to source of water supply or type of use, or both. Because WMD staff cannot always determine how significant an impact a proposed water use will have on a water source, or may not have enough data to determine how much water is available from a source without causing significant harm to the water resource, WMD governing boards frequently set permit durations for periods of less than 20 years.

WMD Oversight

In the 1972 Florida Water Resources Act, the Legislature recognized that the magnitude and complexity of water resource problems vary by region. As a result, while vesting responsibility in DEP to manage the waters of the state, the Legislature stated its intent that in DEP delegate program responsibilities to the WMDs. The current water management system is regional rather than statewide. The DEP is responsible for administration of Chapter 373, F.S., at the state level, but program responsibilities have largely been delegated to the districts.

The Governor has some supervisory authority over the WMDs by virtue of his power to appoint WMD governing board members. One mechanism for increasing WMD accountability explored in recent years is increasing the Governor's oversight authority. In its 1996 session the Legislature passed a law providing the Governor with the authority to review WMD budgets, and to veto a WMD budget, in whole or in part (Chapter 96-339, Laws of Florida).

B. EFFECT OF PROPOSED CHANGES:

Use of State Lands

HB 1249 would allow lands acquired through the CARL program, the SOR program, and the P2000 program to be used for permittable water resource and supply development projects. This would be an expansion of uses presently allowed under state law for the CARL and P2000 lands.

WUP Duration

HB 1249 requires WUPs be issued for 20 years if they do not cause harm to the water resource, and if there is sufficient information to provide reasonable assurance that conditions for a permit will be met. The bill restates in this section the requirements for a WUP found in s. 373.219, F.S. The requirements are: 1) it is a reasonable-beneficial use; 2) it will not interfere with any presently existing legal uses of water; and 3) it is consistent with the public interest. The intent here is to simply restate the conditions required for issuance of a permit. However, the legal significance of simply restating the permit conditions without referencing s. 373.219, F.S., is unclear.

WMD Oversight:

HB 1249 provides for staggered appointments of WMD governing board members. In the first year of a Governor's four-year term in office the Governor shall appoint three members to the governing board of each WMD. In the second and third years the Governor shall appoint two members to the governing board of each WMD, except for

SWFWMD, where the shall appoint three members the SWFWMD board. In the fourth year the Governor shall appoint two members of the governing board in each WMD, including SWFWMD.

HB 1249 requires WMD Basin Boards to prepare post audits, and it requires each WMD provide: 1) the tentative budget, 2) the adopted budget, 3) the past year's expenditures, and 4) the post audit to the Governor, the Speaker of the House, and the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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:

Section 1: Amends s. 259.032, F.S. to allow lands purchased with CARL funds to be used for permissible water resources and water supply development purposes.

Section 2: Amends s. 259.101, F.S. to allow state or WMD lands purchased with P-2000 funds to be used for permissible water resources and water supply development purposes.

Section 3: Amends s. 373.0693, F.S. to correct a cross reference.

Section 4: Amends s. 373.073, F.S. to provide for staggered appointment of governing board members, commencing January 1, 1999.

Section 5: Amends s. 373.139, F.S. to allow all lands purchased by WMDs to be used for permissible water resources and water supply development purposes.

Section 6: Amends s.373.236 to require WUPs be issued for 20 years if they do not cause harm to the water resource, and if there is sufficient information to provide reasonable assurance that conditions for a permit will be met.

Section 7: Amends s. 373.507, F.S. to require WMD Basin Boards to prepare post audits. Provides that each WMD provide 1) the tentative budget, 2) the adopted budget, 3) the past year's expenditures, and 4) the post audit to the Governor, the Speaker of the House, and the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

Section 8: Amends 373.536, F.S. to provide notice provisions for WMD budget hearings. Requires WMDs to specifically identify administrative and operating expenses in the budget, and allocated among WMD activities and programs in proportion to the time, personnel, and resources devoted to specific activities or programs. Requires the WMDs to submit by August 1 or each year a tentative budget to the Governor, the Speaker of the House, and the President of the Senate, the chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and each county in which it has jurisdiction.

Section 9: Amends s. 373.59, F.S. to allow WMD lands purchased with Water Management Lands Trust Fund monies to be used for permittable water resources and water supply development purposes.

Section 10: Repeals s. 373.0735 effective January 1, 1999.

Section 11: Provides that this act shall take effect July 1, 1997, unless otherwise provided herein.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. The provisions allowing permittable water resource and supply development on state lands could provide an economic benefit to DEP, the WMDs and other state or local agencies which manage lands purchased through the CARL, SOR, or P2000 programs. The land management agencies could enter into use agreements with entities proposing to use the land for water resource and supply development, and these use agreements could include substantial use fees.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate. The longer-duration permits could benefit the private sector by reducing the number of permit renewal applications a water user may be required to file over time. Also, the longer-duration permits will provide business with a longer period in which to recover the capital investments necessary to utilize the water.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Not applicable.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

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

None.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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