

**STORAGE NAME:** h1299.nrep.doc  
**DATE:** February 11, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
NATURAL RESOURCES & ENVIRONMENTAL PROTECTION  
ANALYSIS**

**BILL #:** HB 1299  
**RELATING TO:** Water Supplies  
**SPONSOR(S):** Representative(s) Machek

**TIED BILL(S):**

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
  - (2) GENERAL GOVERNMENT APPROPRIATIONS
  - (3) COUNCIL FOR READY INFRASTRUCTURE
  - (4)
  - (5)
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I. SUMMARY:

HB 1299 addresses water resource development and water supply issues . Provisions of the bill will:

- Revise the definition of “water resource development project” as it relates to land acquisition programs, to allow for certain capital expenditures associated with the reuse of stormwater and reclaimed water.
- Encourage the Department of Environmental Protection (DEP) or the water management districts to consider issuing longer-term permits for applicants undertaking conservation measures which result in savings beyond average use.
- Permit phosphate reclamation plans, in water resource caution areas, to be used to promote water resource development projects.
- Allow DEP to deposit funds in certain financial institutions for the purposes of making below market loans under the water pollution control financial assistance program.
- Create a public education program to share information about the status of surface and groundwater sources.
- Provide for a study to determine the feasibility of and incentives for discharging reuse water into canals for transport and subsequent reuse within the Lower East Coast Regional Water Supply planning area.
- Provide requirements for funding of or expedited longer-term permits for certain water supply projects.

HB 1299 takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

**Land acquisition / water resource development**

As a part of the Florida Forever program, an increased emphasis was placed on land acquisition and capital improvement expenditures for the purposes of investing in water resource development. Specifically, funds allocated to the water management districts were to have this as a primary emphasis of their Florida Forever efforts. To help guide the districts a definition for “water resource development” was created. The definition, found in s. 259.03, F.S., states in part:

“...a project...that increases the amount of water available to meet the needs of natural systems and the citizens...by enhancing or restoring aquifer recharge, facilitating the capture and storage of excess flows in surface waters, or promoting reuse...eligible projects...includes land acquisition, land and water body restoration, aquifer storage and recovery facilities, surface water reservoirs, and other capital improvements. The term does not include construction of treatment, transmission, or distribution facilities.”

With the evolution of the program, the water management districts, the DEP and local governments have indicated that this definition needs to be refined. A concern has arisen over the prohibition against construction of treatment, transmission, or distribution facilities and its relationship to reuse projects. Groups that were instrumental in creating the program differ on how to interpret this definition. One group would argue that the prohibition was meant to prevent funds from being used to violate “local sources first” laws, or have Florida Forever be used to develop freshwater delivery systems. Other groups would argue that the prohibition was meant to prevent program funds from being used to build capital structures that are not directly linked to land acquisition or water resource development.

**Consumptive use permitting**

Part II, chapter 373, F.S., contains provisions used to issue consumptive use permits. Included in these provisions are laws governing the duration of permits. Current law, s. 373.236, F.S., directs that permits shall be issued for a period of 20 years with authorization granted to the water management districts to allow for the issuance of 50 year permits.

An additional provision of law, s. 373.621, F.S., directs the water management districts to give special consideration in permitting decisions for those entities that implement water conservation practices or

other conservation measures. The practical application of this provision is the intent to reward those who efficiently manage water.

### **Phosphate land reclamation**

Part III, chapter 378, F.S., is the "Phosphate Land Reclamation Act." Provisions of the act address criteria for reclamation of mined land and detail financial responsibility requirements. Specifically, s. 378.207, F.S., provides the DEP with rulemaking authority for development of reclamation criteria. Direction was given to the department that such rules should consider the following: diverse geographic areas in which mining occurs; recognize technological limitations and economic considerations; and require that reclamation projects return the natural functions of wetlands or habitats and conditions that existed prior to mining.

Since its inception in 1986, this Act has largely remained unchanged. However, with recent droughts many interested parties have come forward with plans to utilize phosphate mines as a part of proposed solutions to water supply concerns. These parties would argue that current laws prevent the necessary flexibility for water managers and the industry to actively engage in developing new methods for reclamation that would assist in water supply solutions.

### **Water pollution control financial assistance**

Section 403.1835, F.S., creates a loan program for the purposes of assisting in the abatement of pollution. The program is meant to assist activities including planning, design, construction, and implementation of wastewater management systems, nonpoint source pollution management systems, stormwater management systems, and estuary conservation and management.

#### **C. EFFECT OF PROPOSED CHANGES:**

HB 1299 contains provisions to ease statutory restraints for use of funds or issuance of permits concerning water resource development and water supply issues. Specifically, the bill will:

- Amend the definition of "water resource development project" (see s. 259.03(6), F.S.) as it applies to expenditures under the Preservation 2000 and Florida Forever programs to cover capital improvement expenditures for facilities that treat, store, transport, or distribute reclaimed water or stormwater for reuse purposes.
- Provide authority for the DEP or water management districts to issue consumptive use permits that have a duration in excess of 20 years if applicants utilize water conservation measures or efficiency practices that conserve more water than the average for similar industries or use type.
- Allow the DEP to consider certain reclamation proposals that promote water resource development efforts identified in water management district regional water supply plans. This provision, which amends s. 378.207, F.S., will apply to phosphate operations located within water resource caution areas, including Hillsborough, Polk, Hardee, and Desoto counties.
- Amend s. 403.1835, F.S., detailing requirements for participation in the DEP's water pollution control financial assistance program. The new provision will allow the DEP to deposit funds, for the purpose of making loans, in certain financial institutions not currently eligible. Specifically, the provision waives a requirement that these institutions earn a minimum interest rate on certain types of loans. This change will assist rural financial institutions to extend loans to disadvantaged communities and operations.

- Direct the water management districts to create a public information program that is designed to better educate policy makers and the public as to the status and health of major surface and groundwater sources. The program is required to be developed by January 1, 2003, and information will be distributed at least twice per year.
- Create a study to be undertaken by the DEP and the South Florida Water Management District to identify technical, regulatory, and financial incentives to encourage the discharge of reclaimed wastewater to canals for conveyance and reuse in the Lower East Coast water supply planning area. Conditions governing the study include:
  - Release draft findings and recommendations for public comment by November 1, 2002.
  - Submit a final report to the Governor and the Legislature by January 31, 2003.
  - Ensure that the findings and recommendations in the report are consistent with the Comprehensive Everglades Restoration Plan.
  - Utilize a technical advisory group for developing the report. This group shall consist of individuals representing the following: potable water utilities; domestic wastewater treatment industry; engineering profession; business organizations; environmental organizations; and local government.
  - Provisions creating this report can not be used to supersede current law concerning reuse feasibility studies and the implementation of the findings of those studies.
- Create a chapter law provision that directs the water management districts to grant at least one of the following to water supply projects that are consistent with adopted regional water supply plans: a minimum 10 year consumptive use permit; expedited permitting for all reviews; or financial assistance with implementation of the project.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

Provisions changing the definition of "water resource development project" will allow the water management districts more flexibility in using Florida Forever funds. The provision will not change the funding allocations or the current 50% cap on capital improvement expenditures.

Proposed changes to phosphate reclamation plans can potentially decrease reclamation costs to both industry and water managers. Utilizing borrow pits for potential water supply will allow for industry savings in restoration costs and can benefit water managers by saving land acquisition and capital costs.

Provisions related to the water pollution financial control program will make it easier for rural and impoverished communities to access loans.

The DEP and water management districts will incur some cost for undertaking the study created by the bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill amends s. 378.207, F.S., to permit the DEP to amend current rules regarding phosphate reclamation to provide for alternative reclamation proposals for mining operations located in water resource caution areas.

C. OTHER COMMENTS:

The Department of Environmental Protection has expressed concerns with various provisions of the bill. Their two major issues are:

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Changes to rulemaking authority regarding phosphate reclamation. They interpret the changes as potentially eliminating requirements for mining operations to restore wetlands damaged or lost as result of their activities.

The study provision which directs the department and water management districts to identify and implement methods for allowing reuse water to be discharged into the canal system. The department points out that the underlying idea of releasing reuse water into the canal system is still a very debatable issue and the language of the study does not discuss this.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

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Wayne Kiger

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