

**STORAGE NAME:** h1299.ric.doc

**DATE:** February 25, 2002

## HOUSE OF REPRESENTATIVES

### COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

**BILL #:** HB 1299

**RELATING TO:** Water Supplies

**SPONSOR(S):** Representative(s) Machek & others

**TIED BILL(S):**

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 8 NAYS 5
  - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 3
  - (3) COUNCIL FOR READY INFRASTRUCTURE
  - (4)
  - (5)
- 

I. SUMMARY:

The bill addresses water resource development and water supply issues. Provisions of the bill:

- 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.

The bill takes effect upon becoming law.

**On February 13, 2002, the Committee on Natural Resources adopted a strike-everything amendment and one amendment to the amendment, both of which are traveling with the bill. On February 19, 2002, the General Government Appropriations Committee adopted one amendment to the amendment. Please see “Amendments or Committee Substitute Changes” section for an explanation of the changes made by the amendments.**

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:**

The bill 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 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 cannot 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:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

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 would 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:

None

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:

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 that 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:

On February 13, 2002, the Natural Resources & Environmental Protection Committee adopted a strike everything amendment as follows:

**Section 1:** Wording was changed to clarify that the term “water resource development project” does not include capital improvements or facilities for the construction, treatment, transmission, or distribution of potable water. Language expanding the definition to include capital improvements related to reclaimed water or stormwater for reuse was retained. The amendment to the amendment, adopted by the Committee, would prohibit the use of funds for treating reclaimed water or stormwater.

**Section 2:** This provision, which is moved from s. 373.621, F.S. to s. 373.236, F.S., encourages the DEP or water management districts to consider issuing longer term consumptive use permits for entities that implement water conservation measures provided such measures exceed the average for the industry or type of water use. Language was added to this provision to direct entities to provide sufficient data to ensure such measures will exceed the averages.

**Section 3:** Removes s. 378.207, F.S., and inserts s. 378.212, F.S. concerning phosphate reclamation plan variances. Permits the DEP to grant variances for reclamation plans that provide water supply development or water resource development benefits provided such requests are consistent with the regional water supply plan and do not adversely affect water resources.

**Section 4:** This provision, also Section 4 in the bill, concerning the water pollution control financial assistance program is unchanged.

**Section 5:** Substantial rewording of the public information campaign provision contained in Section 5 of the bill. The provision in the bill directed the districts to undertake an effort to develop a public service campaign. Concerns were raised that this had the potential to be costly. The new provision retains the requirement for the districts to develop certain data but now only requires that they distribute it to local media and legislative members.

**Section 6:** Substantial rewording of a study, also found in Section 6 of the bill, to be undertaken concerning the discharge of reclaimed water into canals for transport and subsequent reuse. Changes made by the amendment include:

Changing legislative findings to state that the proposed discharge “may” instead of “can” be beneficial to water supplies and natural systems and providing additional language that related water quality and quantity issues need to be better understood.

Providing a finding that possible cost savings realized by co-locating conduits within canal right-of-ways should be investigated.

Expanding the parties that the DEP should consult with in conducting the study. Parties added include: utilities, local governments, environmental and engineering communities, public health professionals, and individuals with expertise in water quality.

Changing the charge of a directive to identify regulatory, technical, and financial incentives to encourage the discharge of reclaimed wastewater to canals, to conducting a study to investigate the feasibility of discharging reclaimed wastewater to canals. The new language also sets out a series of criteria that shall be investigated in the study, such as, water quality, water supply, health, technical, and legal.

The technical advisory group was eliminated because of the expansion of the consultation language.

The due dates and submission requirements are retained.

A provision is added to make it clear that nothing in the study may be used to alter the Comprehensive Everglades Restoration Plan or the implementation of federal acts related to the Everglades restoration.

**Section 7:** Created as chapter law in Section 7 of the bill, the amendment rewords and moves the concept to s. 373.0831, F.S. This section of law establishes priorities for dealing with water resource development and water supply development projects. The changes provided by the amendment include:

Changing a directive that proposed development and supply projects meet "one or more" to "meet at least one" of a list of criteria already established in law.

Creating a new set of incentives for proposed alternative water supply projects that are identified in regional water supply plans. These plans will now be eligible for consumptive use permits with at least a 10 year duration if meeting certain requirements and shall receive priority funding during the implementation of certain phases of the proposed project.

**Section 8:** This repeal of s. 373.498, F.S., is new language. The section being repealed governed disbursements from the Water Resource Development Account. This account, created in 1949, has been defunct for many years, thus, making this provision unnecessary.

On February 19, 2002, the General Government Appropriations Committee adopted one amendment to the strike everything amendment that adds more specification to the makeup of the group that will be conducting a study regarding discharging reclaimed water into canals.

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Wayne Kiger

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Lynn Dixon

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Lynn Dixon

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AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

C. Scott Jenkins

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Thomas J. Randle

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