

**STORAGE NAME:** h1299s1.ric.doc  
**DATE:** February 25, 2002

**HOUSE OF REPRESENTATIVES**  
**COUNCIL FOR READY INFRASTRUCTURE**  
**ANALYSIS**

**BILL #:** CS/HB 1299  
**RELATING TO:** Water Supplies  
**SPONSOR(S):** Council for Ready Infrastructure and 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 YEAS 17 NAYS 0
  - (4)
  - (5)
- 

I. SUMMARY:

The bill primarily addresses water resource development and water supply issues. Other provisions include water education and wetlands rule development. Provisions of the bill:

- Encourage the Department of Environmental Protection (DEP) or the water management districts to consider issuing longer-term permits for applicants, undertaking conservation measures that result in savings beyond average use;
- Extend the deadline from January 31, 2002, to July 31, 2002, for the DEP to develop a uniform mitigation rule;
- Permit the DEP to grant variances for phosphate reclamation plans to accommodate water supply water resource development if consistent with regional water supply plans;
- Allow for the voluntary implementation of best management practices for water bodies or segments that have not had total maximum daily loads established;
- 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; and
- Repeal s. 373.498, F.S., which details how disbursements should be made from the water resources development account. The account is defunct.

The bill 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:

**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.

**Uniform Wetland Mitigation Assessment Rule**

Chapter 2000-133, Laws of Florida, amended s. 373.414, F.S., to require the Department of Environmental Protection (DEP) and the water management districts to develop by October 1, 2001, a uniform wetlands mitigation assessment methodology. This methodology must determine the value of functions provided by wetlands and other surface waters, considering the current conditions of those areas, the utilization by fish and wildlife, their location, uniqueness, and hydrologic connection, in addition to other factors, such as time lag and the degree of risk that it will be successful.

The methodology must be adopted by rule no later than January 31, 2002. Once in place, it will replace all other mitigation methodologies; however, the agencies may develop minimum thresholds or categories of permits, where minor wetlands impacts need not be subject to this functional assessment.

As of January 31, 2002, the DEP had not completed the rule.

**Phosphate Land Reclamation**

Part III, chapter 378, F.S., is the "Phosphate Land Reclamation Act" (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 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 it's 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:

- Provide authority for the DEP or water management districts to issue consumptive use permits for longer durations if applicants utilize water conservation measures or efficiency practices that conserve more water than the average for similar industries or use type.
- Amend s. 378.212, F.S., to allow the DEP to grant variances for phosphate reclamation proposals that promote water resource development efforts identified in water management district regional water supply plans.
- 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 must 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 to investigate the feasibility of discharging reclaimed wastewater into canals as an environmentally acceptable means of augmenting groundwater supplies, enhancing natural systems, and conveying reuse water within enclosed conduits 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 the findings and recommendations in the report are consistent with the Comprehensive Everglades Restoration Plan; and
  - Consulting with representatives of the South Florida Water Management District, southeast Florida utilities, affected local governments (specifically those charged with operation and maintenance of water control systems), environmental and engineering communities, public health professionals, and individuals with expertise in water quality.
- Amend s. 373.0831, F.S., to create a provision that directs the water management districts to grant at least one of the following to alternative water supply projects that are identified within an adopted regional water supply plan: a minimum 10-year consumptive use permit; or consideration for priority funding pursuant to an alternative water supply grant program defined in 373.1961(2), F.S.

### **Additional Provisions**

Amend s. 373.414, F.S., relating to the development of a uniform wetlands mitigation assessment rule. Changes made by the legislation include:

- Extending the deadline for rule adoption from January 31, 2002 to July 31, 2002.
- Modifying the statute's original usage of the term "uniform wetland mitigation assessment method" by removing the term "wetland." This is done to better reflect the scope of the rule. Conforming changes are also made to reflect the new terminology.
- The scope of the rule is clarified to give authority that is more specific. The new language directs the rule shall provide an exclusive and consistent process for determining the amount of mitigation required to offset impacts. In addition, the statute now establishes that this rule shall supersede all other ordinances concerning mitigation assessments.

Amend s. 403.067, F.S., to allow for the voluntarily implementation of interim measures or best management practices for any water body or segment for which a total maximum daily load or allocation has not been established. The DEP is directed to consider these measures during the development of or allocation of total maximum daily loads.

Repeal s. 373.498, F.S., which governed disbursements from the Water Resource Development Account. This account, created in 1949, has been defunct for many years.

#### **D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends s. 373.0831, F.S., to change priority requirements and create a section allowing for certain incentives for eligible alternative water supply projects.

**Section 2:** Amends s. 373.236, F.S., to create a provision that directs water management districts to consider issuing longer term permits for projects that perform better than industry or user averages.

**Section 3:** Amends s. 373.4135, F.S., to make conforming changes.

**Section 4:** Amends s. 373.414, F.S., to extend a deadline for development of a uniform wetland mitigation assessment rule. Other changes include changing the rule title by deleting the term "wetland," providing additional rule making criteria, and making conforming changes.

**Section 5:** Amends s. 378.212, F.S., to create additional variance authority to accommodate potential changes to phosphate reclamation plans.

**Section 6:** Amends s. 403.067, F.S., to allow for the use of voluntary best management practices for water bodies or segments that do not have a total maximum daily load established.

**Section 7:** Amends s. 403.1835, F.S., to provide additional authority for making certain loans under the water pollution control financial assistance program.

**Section 8:** Creates chapter law that directs the water management districts to develop a public information program and provides for the distribution of this information to media outlets and elected officials. Criteria are provided for what information is to be developed, and deadlines are specified.

**Section 9:** Creates chapter law that directs the DEP to undertake a study to investigate the feasibility of discharging reclaimed wastewater into canals within an area identified in the Lower East Coast Regional Water Supply Plan. Additional provisions: provide legislative findings, direct the DEP to consult with certain parties, provide parameters for the study, and create deadlines.

**Section 10:** Repeals s. 373.498, F.S., which provided for disbursements from the Water Resource Development Account.

**Section 11:** Provides an effective date.

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:

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 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:

Existing rulemaking authority granted to the DEP for development of a uniform mitigation assessment process is clarified. The new language directs the rule provide an exclusive and consistent process for determining the amount of mitigation required and that once effective it shall supersede all other existing rules, ordinances, and variance procedures. In addition, the deadline for rule completion is extended from January 31, 2002 to July 31, 2002.

C. OTHER COMMENTS:

The provision of the original legislation that modified the definition of "water resource development project" was removed upon agreement the DEP would undertake interim efforts to bring concerned parties together. The DEP will report to the Legislature by December 1, 2002.

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 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, prohibits 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 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 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 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.

On February 26, 2002, the Council for Ready Infrastructure adopted three amendments and passed the bill as a council substitute. The amendments:

- Removed a provision from the bill that amended the definition of “water resource development project.”
- Amended s. 403.067, F.S., to allow for the implementation of voluntary best management practices in water bodies or segments for which total maximum daily loads have not been established.
- Amended s. 373.414(18), F.S., to extend the deadline for the DEP to develop a uniform mitigation assessment rule and provide for additional clarification and technical changes.

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Wayne Kiger

Wayne Kiger

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Lynn Dixon

Lynn Dixon

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

C. Scott Jenkins

Thomas J. Randle