

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1069 w/CS Water Resources

**SPONSOR(S):** Russell

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 662, SB 2316, and SB 2758

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands and Water Resources</u>	<u>10 Y, 0 N</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>16 Y, 0N w/CS</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

HB 1069 addresses several issues related to enhancing the linkage between growth management and the available water supplies. The bill also addresses the need for increased water conservation, the need for the development of additional alternative water supplies, and the need for increased use of reclaimed water.

Specifically, the bill provides the following:

Planning and Water Supplies - The bill requires local governments to strengthen their comprehensive plans to plan for the future availability of water supplies and provides additional guidance and process for the development of water management district (WMD) regional water supply plans. The bill provides for the WMDs to adopt rules for identifying preferred water supply sources from which an applicant for a consumptive use permit (CUP) can choose, and prohibits the sale of water rights except under certain conditions. The bill provides for priority funding by WMDs for the development of alternative water supplies and provides additional WMD budget reporting criteria to explain how water resource development projects will produce additional water. The bill also provides for phosphate mine reclamation variances when the reclamation will provide for water supply development

Reclaimed Water - The bill provides that WMDs cannot require a provider of reclaimed water to redirect that water from one user to another and provides that a reuse feasibility study completed to satisfy the Department of Environmental Protection (DEP) for the construction and operation of a wastewater treatment plant will be given significant consideration by a WMD to satisfy the requirements for a CUP. The bill provides that funding assistance by WMDs for water reuse projects be conditioned upon a demonstration of water use efficiency. It encourages utilities which implement water reuse projects to develop reuse metering and charge for the use of reclaimed water, and mandates state agencies to use reclaimed water to the greatest extent practicable.

Water Conservation - The bill requires DEP working with the WMDs and others to develop a water conservation guidance manual containing a menu of water conservation measures from which public water supply utilities can select in order to develop a water conservation program. The bill provides additional authority to the Public Service Commission (PSC) to promote water conservation and allow the development of alternative water supplies. It encourages land use ordinances that provide more efficient landscape irrigation to promote water conservation, and requires individual water meters for new commercial and residential construction to promote water conservation.

Other - The bill also provides for a comprehensive study of the cumulative impacts of water use in the Peace River watershed. It encourages Tampa Bay Water to develop alternative water sources and gives members the ability to approve any groundwater proposed to be developed and contributed from their jurisdiction. The bill also allows DEP to make deposits to financial institutions that earn less than the prevailing rate for U.S. Treasury securities to enable those institutions to make below market loans for water pollution control projects and Removes the cap on the Florida Water Pollution Control Financing Corporation for issuing bonds to finance water pollution control projects.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1069b.nr.doc

**DATE:** April 11, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Issue – Linkage between growth management and water supplies**

Under current law, local governments are required to include in their comprehensive plans an element addressing sanitary sewer, solid waste, drainage, **potable water**, and natural groundwater aquifer recharge (see paragraph 163.3177(6)(c), F.S.). By January 1, 2005, the statutorily mandated periodic evaluations and appraisals by local governments of their comprehensive plans are required to “consider the appropriate water management district’s regional water supply plan approved pursuant to s. 373.0361.” The potable water element of the plan must be revised to include a work plan for building any water supply facilities necessary to serve existing and new development for a 10 year planning period. (See also ss. 163.3191(2)(l), F.S.)

##### **Issue – Water conservation**

The WMDs are currently required to prepare regional water supply plans where it has been determined that sources of water are not adequate for the planning period to supply water for all the existing and projected uses, and to sustain the natural systems. Each water supply plan is to be based on a 20-year planning period (see s. 373.0361, F.S.). The WMDs are required to develop their regional water supply plans in an open public process. They share the data and modeling tools with all effected parties during this process and consider input and comments.

WMDs currently consider water conservation as a way to meet future water demands to varying degrees. In their CUP programs, the WMDs may require, on a case-by-case basis, the use of conservation rate structures, drought rate structures, or informative billing. However, these measures are not required of every utility applicant.

There are currently no statewide standards for design of irrigation systems, but some counties have adopted ordinances regulating landscaping and irrigation system design.

Individual metering of water use is not currently required for new construction in Florida.

##### **Issue – Alternative water supply development**

The Legislature has determined that there is a need for the development of alternative water supplies (such as desalination and reclaimed water) to supplement the existing supplies of drinking water (see ss. 373.1961(2), F.S.). The WMDs are required to submit their budgets annually to the Governor for review.

WMDs which have water resource caution areas within their boundaries are required to include in their annual budgets an amount designated for the development of alternative water supplies. The WMDs are required to provide these amounts as grants or loans for alternative water supply development.

The PSC can only allow full recovery on reuse facilities, and not on other alternative water supply projects. Utilities with a gross annual revenue of less than \$150,000 can request PSC staff assistance on rate changes.

### **Issue – Reclaimed water**

For many years the state has encouraged the use of treated effluent from domestic wastewater treatment facilities primarily for irrigation purposes. This treated effluent is known as “reclaimed water.”

The WMDs do not currently require a separate CUP to use reclaimed water. When reviewing an application for use of ground or surface water, a WMD will review whether or not all or part of the need can be met with reclaimed water. If use of reclaimed water is feasible, the WMDs require such use, and will not approve a permit for ground or surface water withdrawal.

Over the last several years there has been a significant increase in the use of reclaimed water. In some areas of the state there are times when there is insufficient reclaimed water to meet the demand for it. Some of the water management districts are considering incentives for conserving reclaimed water in order to meet the growing demand. There are concerns by some water and wastewater utilities that water management districts may require permits for the use of reclaimed water as an incentive for conservation.

The Governor has directed his agencies to conserve water whenever possible, and to report their water use on a periodic basis.

### **Issue – Water rights**

There is currently limited case law that provides that water in Florida is a public resource, and there are no rights associated with the control of water other than those rights associated with a consumptive use permit issued by a WMD.

### **Issue – Variances**

The Secretary of DEP is currently authorized to issue variances from certain statutory and rule provisions under certain circumstances for phosphate mine reclamation activities (see s. 378.212, F.S.).

### **Other**

Currently, DEP may provide financial assistance to eligible entities for the construction of water pollution control facilities (see s. 403.1835, F.S.). However, it is prevented from making deposits with financial institutions that earn less than the prevailing rate for U.S. Treasury securities.

The Florida Water Pollution Control Financing Corporation was created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of water pollution control projects. Currently, the Corporation may not issue bonds in excess of specific amounts (i.e. \$50 million in FY 2000-2001, \$75 million in FY 2001-2002, and \$100 million in FY 2002-2003) to finance such projects.

## **Effect of Proposed Changes**

### **Issue – Linkage between growth management and water supplies**

The bill requires that local government comprehensive plans address the availability of water supplies to meet projected water use demands for the planning period. This is to be “compatible” with a WMD regional water supply plan.

The bill also requires that prior to the completion of any regional water supply plan the WMD conduct at least one public workshop to discuss the technical data and modeling used to support the plan.

The bill provides that in the preparation of the regional water supply plan the WMDs are to use the best data for population projections that are available. In determining the best available data, the WMDs are to consider the University of Florida’s Bureau of Economic and Business Research (BEBR) medium population projections.

Within the boundaries of a regional water supply authority, the water supply development component of the regional water supply plan must be developed jointly by the WMD and the regional water supply authority.

The bill requires each WMD, in its annual report to the Governor, to assess the overall progress being made to develop a water supply that is consistent with the regional water supply plan to meet existing and future needs during a 1-in-10 year drought.

The bill provides that a regional water supply plan may not be used in the review of CUP applications unless the plan has been adopted by rule.

The bill also provides that WMDs are authorized to adopt rules identifying “preferred water supply sources” from which applicants for a CUP can choose. If an applicant chooses a preferred water source his permit shall be for a period of at least 20 years.

The bill requires that in its annual budget reporting to the Governor and the legislature, each WMD in the 5-year water resource development work program must identify which projects in the work program will provide water, how each project will produce additional water, and estimate the quantity of water to be produced.

### **Issue – Water conservation**

The bill directs DEP to develop a *water conservation guidance manual* of water conservation options from which local governments may choose to meet WMD CUP permitting criteria. The manual is required to be adopted by rule by DEP. The WMDs may apply the manual in the review of water conservation requirements for obtaining a CUP. After the manual is adopted by rule, each public water supply utility may develop a water conservation program from the options contained in the manual. The utility’s water conservation program would then be used to satisfy the water conservation requirements imposed in its CUP.

In order to foster water conservation, the bill encourages local governments to develop and adopt urban, commercial, and residential landscape irrigation standards for new construction that incorporates a landscape irrigation system, and requires individual metering of water use for all new commercial and residential construction.

The bill sets forth the intent of the Legislature that each utility that receives grant funding pursuant to s. 403.1835 (water pollution control financial assistance) shall: (1) develop rate structures for all water, wastewater, and reclaimed water which provides meaningful implementation of alternative water supply systems; (2) promote conservation of fresh water withdrawn from natural systems; (3) provide an appropriate distribution of costs among all water users; and (4) prohibit rate discrimination within classes of users. The bill also requires that loans for reuse systems include conditions related to metering of reclaimed water use, volume-based rate structures, and education programs.

## **Issue – Alternative water supply development**

The bill provides that funding priority is to be given to projects for the development of alternative water supply systems in water resource caution areas, which are consistent with the regional water supply plan, and which feature efficient and effective use of reclaimed water.

The bill authorizes the PSC to allow full recovery of the costs of alternative water supplies, and provides that utilities with gross annual revenues below \$250,000 will be able to request PSC staff assistance on rate changes.

## **Issue – Reclaimed water**

The bill prohibits the WMDs from requiring a provider of reclaimed water to redirect the reclaimed water from one user to another.

The bill requires that the funding assistance provided by WMDs include certain conditions, such as metering of reclaimed water, the implementation of reclaimed water rate structures, and water conservation education programs.

The bill provides that a reuse feasibility study completed to satisfy DEP for the construction and operation of a wastewater treatment plant will be given significant consideration by a WMD to satisfy the requirements for a CUP.

The bill encourages metering and volume-based rates for use of reclaimed water, and provides that, beginning January 1, 2004, a domestic wastewater utility that provides reclaimed water shall include in its annual report to the DEP, a summary of its metering and rate structure.

The bill also mandates that state agencies use reclaimed water whenever possible and report annually on such use to DEP.

## **Issue – Water Rights**

The bill prohibits the sale of water rights granted under a CUP except within the Southern Water Use Caution Area as provided by the rules of the Southwest Florida Water Management District (SWFWMD), and except when ownership of a CUP is transferred as a result of the sale of real property. The bill provides that certain transfers of water are not included in this prohibition, including:

1. the sale or transfer of water used as an ingredient in packaged food products;
2. the transfer of a CUP by a WMD from one entity to another for the same use, in the same amounts, in the same location, and subject to the same conditions;
3. the sale of water by a local government.

## **Issue – Variances**

The bill allows the consideration by the Secretary of DEP of variances from statutory and rule provisions that address phosphate mine reclamation in order to accommodate water resource or supply development which is consistent with a regional water supply plan if regional water resources would not be adversely affected.

## **Other**

The bill encourages Tampa Bay Water to develop alternative water sources and gives members of Tampa Bay Water the ability to approve any groundwater proposed to be developed and contributed from their jurisdiction.

The bill requires the SWFWMD to conduct a comprehensive study of the cumulative impacts of the existing and projected demands on the water resources of the Peace River watershed and submit a report of the study to the Governor and the Legislature by June 1, 2004.

The bill provides that under its water pollution control financial assistance programs the DEP may make deposits with financial institutions that earn less than the prevailing rate for U.S. Treasury securities in order to allow those institutions to make low interest loans to qualifying individuals.

The bill also removes the cap on Florida Water Pollution Control Financing Corporation for issuing bonds to finance water pollution control projects.

#### C. SECTION DIRECTORY:

Section 1. Adds subsection (13) to s. 163.3167, F.S., to require comprehensive plans to address the availability of water supplies.

Section 2. Amends s. 367.081, F.S., to authorize the PSC to allow the recovery of costs of alternative water supply facilities.

Section 3. Amends s. 367.0814, F.S., to change the eligibility of utilities to request and obtain staff assistance for rate changes.

Section 4. Creates s. 373.227, F.S., to provide for the development of a water conservation guidance manual.

Section 5. Amends s. 373.0361, F.S., to provide additional requirements for regional water supply plans.

Section 6. Amends s. 373.0421, F.S., to allow the Southwest Florida Water Management District to adopt rules with regard to the transfer of water within the Southern Water Use Caution Area.

Section 7. Amends s. 373.1961, F.S., to require WMDs to give funding priority to projects that develop alternative water supply systems, and condition funding assistance for water reuse system projects.

Section 8. Amends s. 373.1963, F.S., to allow local government members of the West Coast Regional Water Supply Authority (Tampa Bay Water) to approve groundwater development projects within their jurisdictions.

Section 9. Amends s. 373.223, F.S., to prohibit the sale of water rights granted under a CUP except under limited circumstances.

Section 10. Creates s. 373.2231, F.S., to provide for a study of the cumulative impacts on the water resources of the Peace River watershed.

Section 11. Creates s. 373.2234, F.S., to provide for the identification of preferred water supply sources.

Section 12. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 13. Amends s. 373.536, F.S., to require WMDs to explain in their annual budgets how each water resource development project will produce additional water for consumptive uses and estimate how much.

Section 14. Encourages local governments to develop and adopt landscape irrigation design standards for new construction.

Section 15. Requires individual water meters for specified new commercial and residential construction.

Section 16. Amends s. 378.212, F.S., to authorize DEP to issue variances.

Section 17. Amends s. 378.404, F.S., to authorize DEP to issue variances.

Section 18. Amends S. 403.064, F.S., to provide that a reuse feasibility study shall be given significant consideration by a WMD in CUP permitting, and to encourage metering and volume-based rates for use of reclaimed water.

Section 19. Creates s. 403.0645, F.S., to promote the use of reclaimed water at state facilities.

Section 20. Amends s. 403.1835, F.S., to allow DEP to make deposits at certain financial institutions, and to provide legislative intent with regard to the development of alternative water supplies and water conservation.

Section 21. Amends s. 403.1837, F.S., relating to the issuance of bonds by the Florida Water Pollution Control Financing Corporation

Section 22. Providing that the act will take effect upon being a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures:

There will be indeterminate costs to DEP associated with the development of the water conservation guidance manual. There will also be indeterminate costs to WMDs associated with the development of rules identifying preferred water supply sources, and to SWFWMD in conducting the Peace River watershed study.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Local government utilities will be allowed full cost recovery of the costs associated with the development of alternative water supplies.

2. Expenditures:

Local governments will incur additional indeterminate costs associated with the required revisions to their comprehensive plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners and developers of new commercial and residential developments will incur additional indeterminate costs associated with the required water metering of these developments.

D. FISCAL COMMENTS: None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires local governments to amend their comprehensive plans to address the water supply projects and sources needed to meet existing and future demands; however an exemption applies since the additional costs associated with this required action of local governments will have an insignificant impact.

2. Other: None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt a water conservation guidance manual by rule, and authorizes the WMDs to adopt rules identifying preferred water supply sources.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 9, 2003, the House Natural Resources Committee favorably adopted a lengthy strike all amendment to HB 1069 and five amendments to the strike all amendment that made significant changes to HB 1069. The analysis has been updated to incorporate an analysis of those changes.