

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1104

SPONSOR: Comprehensive Planning Committee, Natural Resources Committee, and Senator Dockery

SUBJECT: Water Resources

DATE: March 29, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute for the committee substitute (CS) requires local governments to address the water supply sources necessary to meet and achieve existing and projected water use demand in local comprehensive plans. The date by which certain elements of a local comprehensive plan are required to consider regional water supply plans is extended to accommodate the update of those regional water supply plans. At the option of a local government, water management districts (districts) are authorized to provide electronic notice of consumptive use permit applications.

Each district governing board is authorized to adopt rules to identify preferred water supply sources which can be used to provide substantial new water supplies to meet existing and reasonably anticipated water needs within a water supply planning region. The rules must identify the source of the water and assess the water the source is projected to produce. The use of a preferred water supply source is subject to the "three-prong" test provisions provided in current law, except that the use of a preferred water supply source will be a factor considered when determining whether the applicant's proposed use is consistent with the public interest.<sup>1</sup> Consumptive use permits issued for the use of a preferred water supply source are valid for at least a 20-year period. This CS provides that permits issued for the use of water from preferred water supply sources are not exempt from complying with provisions of law requiring the use of local water sources first. The provisions of the CS may not be construed as requiring a permit issued for a non preferred water supply source to be issued for a period of less than 20 years. Also, it specifies that the use of a preferred water supply source is not required, nor is the use of a nonpreferred water supply source either restricted or prohibited.

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<sup>1</sup> Section 373.223(1), F.S.

This CS authorizes the districts to require the use of reclaimed water when it is environmentally, economically, and technically feasible to do so, and provides limitations on that authority. The districts are required to work with various entities to develop landscape irrigation and xeriscape design standards for new construction based on the irrigation code defined in the Florida Building Code, and are directed to work those entities to develop scientifically-based model guidelines for urban, commercial, and residential landscape irrigation.

This CS substantially amends ss. 163.3167, 163.3177, 373.116 and 373.250, Florida Statutes, and creates s. 373.2234 and a new section of the Florida Statutes.

## II. Present Situation:

### **Water Supply Planning and Land Use Planning**

Under the provisions of s. 163.3177(6)(c), F.S., and as part of a comprehensive plan, each local government is required to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sewer, solid waste, and aquifer recharge protection requirements. This element must also include a map that depicts any areas identified by a water management district as a prime recharge area for the Floridan and Biscayne Bay aquifers. In 2002, the Legislature enacted ch. 2002-296, Laws of Florida, to provide that by January 1, 2005, or the Evaluation and Appraisal Report (EAR) adoption deadline established for the local government, whichever date occurs first. This element must also consider regional water supply plans approved under the provisions of s. 373.0361, F.S., and must include a work plan, covering at least a 10-year planning period, for building water supply facilities identified as necessary to serve existing and new development.

### **Reuse and Reclaimed Water**

Reuse is integral to water resource management and wastewater management in Florida. In 2002, about 467 domestic wastewater treatment facilities provided approximately 584 million gallons of reclaimed water per day for beneficial purposes. Reuse capacity represents about 52 percent of the total permitted domestic wastewater treatment capacity in Florida. Reclaimed water from these systems was used to irrigate approximately 141,000 residences, 426 golf courses, 436 parks, and 212 schools. Irrigation of these areas accessible to the public represented about 46 percent of the 584 million gallons per day of reclaimed water which was reused.<sup>2</sup>

Section 403.064, F.S., provides that the encouragement and promotion of water conservation and reuse of reclaimed water are state objectives and are in the public interest. Under current law, applicants for permits to construct or operate a wastewater treatment facility located within a water resource caution area must prepare a reuse feasibility study as part of the permit application process. These feasibility studies must be prepared in accordance with Department of Environmental Protection (DEP) guidelines. If a completed study indicates that reuse of reclaimed water is feasible, a permit applicant must implement reuse. A feasibility study

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<sup>2</sup> 2002 Reuse Inventory, July 2003, Florida Department of Environmental Protection, Division of Water Resource Management.

completed under this requirement must be given significant consideration by a water management district under the consumptive use permitting process.

#### **Water Resource Caution Areas**

Water resource caution areas are areas within the boundaries of a water management district where the district has identified critical water supply problems, or where the district projects critical water supply problems within a 20-year planning period. Water resource caution areas are identified and designated under the provisions of ch. 62-40, Florida Administrative Code. Four of the five water management districts have designated water resource caution areas within their boundaries. The most well known of these is the Southern Water Use Caution Area, also known as the SWUCA, located in the southern portion of the Southwest Florida Water Management District.

#### **"Three-prong test" - consumptive use permits**

As a condition of obtaining a consumptive use permit under the provisions of s. 373.223(1), F.S., permit applicants must establish that the proposed use meets three requirements:

- The proposed use must be a reasonable-beneficial use meaning that the water will be used in a quantity as is necessary for economic and efficient use for a purpose and manner that is reasonable and consistent with the public interest;
- The proposed use will not interfere with any presently existing legal use of water; and
- The proposed use is consistent with the public interest.

These three requirements are commonly referred to as the "three-prong test."

#### **Florida Water Conservation Initiative**

The Florida Water Conservation Initiative, started more than three years ago, represents the efforts of the DEP, the five water management districts, the Department of Agriculture and Consumer Services, the Public Service Commission, and individuals representing all facets of water users or producers. Six work groups were created and in April, 2002, the final initiative was issued with recommendations to assist in identifying and prioritizing changes that could result in the statewide conservation of water. With regard to landscaping, the Florida Water Conservation Initiative recommended the design and adoption of state irrigation design and installation standards, including the expansion and coordination of current landscaping education and outreach programs, and the establishment of statewide training and certification programs.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates subsection (13) of s. 163.3167, F.S., to require that in a local government comprehensive plan, each local government shall address the water supply sources necessary to meet and achieve the existing and projected water use demand for the established planning period, considering an applicable regional water supply plan developed under s. 373.0361, F.S.

**Section 2.** Amends s. 163.3177, F.S., to extend the date by which a local comprehensive plan general sanitary sewer, solid waste, drainage, potable water, and natural ground water aquifer recharge element must consider a regional water supply plan to accommodate regional water supply plan updates scheduled for completion in 2006.

**Section 3.** Amends s. 373.116, F.S., to allow the districts to electronically mail notices of consumptive use permit applications to a county or appropriate city government at the option of that county or city government.

**Section 4.** Creates s. 373.2234, F.S., relating to preferred water supply sources, to provide the following:

- The governing boards of the water management districts are authorized to adopt rules to identify preferred water supply sources for which there is sufficient data to establish that the preferred source can be used as a substantial new water supply for existing and reasonably anticipated future water needs.
- Authorizes the use of preferred water supply sources in water supply planning regions identified pursuant to s. 373.0361(1), F.S.
- Preferred water supply sources must sustain the existing water resources and related natural systems in the water supply planning region.
- Rules identifying preferred water supply sources must at least contain a description of the preferred source and assess the water the source is projected to produce.
- The proposed use of a preferred water supply source is subject to the provisions of s. 373.223 (1), F.S.
- The use of a preferred water supply source must be considered when determining whether an applicant's proposed use of water is consistent with the public interest.
- Consumptive use permits issued for the use of preferred water supply source must be issued for at least a 20-year period.
- The use of nonpreferred water supply sources does not require the issuance of a permit for less than 20 years or imply that the nonpreferred water supply sources are inconsistent with the "public interest" requirements of s. 373.223 (1), F.S.
- Consumptive use permits issued for the use of a preferred water supply source are not exempt from provisions of law governing the use of local water sources first.
- Provisions of this act may not be construed to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the water management districts to implement this act must state the same.

**Section 5.** Amends s. 373.250, F.S., to provide that a water management district may require the use of reclaimed water in lieu of surface water or ground water when the use of uncommitted reclaimed water is environmentally, economically, and technically feasible. Provides that a water management district is not authorized to require that a reclaimed water provider redirect reclaimed water from one user to another, or require that uncommitted water be provided to a specific user if the reclaimed water provider expects to use that water, or expects to provide it to a different user within a reasonable amount of time.

**Section 6.** Creates a new section of Florida Statutes to regulate Landscape Irrigation Design. Establishes legislative findings that multiple areas of the state have been identified as water resource caution areas, indicating that water demand will exceed available water supply in the near future, and that water conservation is one of the mechanisms by which future water demand will be met. Provides legislative findings that landscape irrigation comprises a significant portion of water use. Establishes the Legislature's intent to improve landscape irrigation water use efficiency. Directs the water management districts to work with various entities to develop

landscape irrigation and xeriscape design standards for new construction which incorporate a landscape irrigation system and to develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation. These landscape and irrigation design standards must be based on the irrigation code defined in the Florida Building Code.

Local governments are required to use the standards and guidelines when developing landscape irrigation and xeriscape ordinances. Provides that every 5 years, specified agencies and entities will review the model guidelines and standards to determine whether new research findings require a change or modification of the guidelines.

**Section 7.** Provides that the act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Initial costs to the private sector related to more stringent landscaping irrigation and xeriscape design standards for new construction imposed by a local government under the provisions of this bill may be offset by cost savings resulting from increased efficiencies in water use.

C. Government Sector Impact:

##### **Local Governments**

Local governments may see some increased costs related to provisions of the bill which require local governments to address the water supply projects necessary to meet and achieve existing and projected water use over the established planning period in their comprehensive plans.

**Water Management Districts**

The water management districts will incur some costs associated with rules identifying preferred water supply sources. Also, the districts must work with specified entities to develop landscape and xeriscape design standards for new construction and develop scientifically-based guidelines for urban, commercial, and residential landscape irrigation. Under the terms of this CS, the districts, along with other agencies and specified entities, must review these guidelines and standards every 5 years. The fiscal impact of these provisions has not yet been determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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