

# 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/SB 1104

SPONSOR: Natural Resources Committee and Senator Dockery

SUBJECT: Water Resources

DATE: March 16, 2004      REVISED: \_\_\_\_\_

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

**I. Summary:**

This committee substitute requires local governments to address the water supply projects 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 amended to accommodate the update of those regional water supply plans. The water management districts (districts) are authorized to electronically post consumptive use applications on their website, and at the option of a local government, can provide electronic notice of consumptive use permit applications. The committee substitute also authorizes the districts to electronically provide constructive notice of intended agency action.

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 deemed to be consistent with the public interest.<sup>1</sup> This committee substitute provides that permits issued for the use of water from preferred water supply source are not exempt from complying with provisions of law requiring the use of local water sources first. Consumptive use permits issued for the use of a preferred water supply source are valid for at least a 20-year period.

This committee substitute provides that the districts may require the use of reclaimed water when it is environmentally, economically, and technically feasible to do so, and establishes the Legislature's intent to improve landscape irrigation water use efficiency. The districts are

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

required to adopt 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 with various entities to develop scientifically-based model guidelines for urban, commercial, and residential landscape irrigation.

This committee substitute substantially amends ss. 163.3167, 163.3177, 373.116 and 373.250, Florida Statutes, and creates s. 373.2234, 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 elements. 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 DEP guidelines. If a completed study indicates that reuse of reclaimed water is feasible, a permit applicant must implement reuse. A feasibility study completed under this requirement must be given significant consideration by a water management district under the consumptive use permitting process.

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

**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, 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 & 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.

**Electronic noticing**

In 2003, the Legislature enacted ch. 2003-124, Laws of Florida, to authorize the districts to electronically provide notice of consumptive use permit applications to interested persons, and to require that notices of applications for consumptive use permits must be mailed by regular mail to the county and appropriate city government from which boundaries the water withdrawal is proposed to be made.

**III. Effect of Proposed Changes:**

**Section 1.** Creates subsection (3) in s. 163.3167, F.S., to require that in a local government comprehensive plan, each local government shall address the water supply projects necessary to meet and achieve the existing and projected water use demand for the established planning period. Provides that in addressing the necessary water supply project component of the local comprehensive plan, the local government may consider an applicable regional water supply plan developed under s. 373.036, F.S.

**Section 2.** Amends s. 163.3177, F.S., to amend the date by which a local comprehensive plan 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 post consumptive use permit applications on their official websites. Provides that such electronic notices must clearly state the date the notice was first posted. Authorizes electronic notices of consumptive use permit applications to an appropriate county or city government at the option of that county or city government. Authorizes the districts to electronically provide constructive notice of intended agency action.

**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, 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 deemed a factor consistent with the public interest.
- Consumptive use permits issued for the use of preferred water supply sources 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.

**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 reclaimed 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.

**Section 6.** Creates new law 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. Establishes 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 each water management district to develop and adopt by rule landscape irrigation and xeriscape design standards for new construction. The design standard should promote the effective and efficient use of irrigation water.

Provides that each water management district will work with the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Florida Nursery and Grower's Association, and others to develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, which must be used by local governments when developing landscape irrigation ordinances or guidelines. Provides that every 3 years, the agencies and entities developing the guidelines will review the model guidelines 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 and shall apply to all contracts pending on that date.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

#### **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 Government**

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 South Florida Water Management District (SFWMD) estimates that the landscape and xeriscape design standard provisions of the bill will have a significant fiscal impact. These provisions establish new regulatory responsibilities for the district, including the anticipated employment of landscape architects, inspectors, and code enforcement personnel. Administrative costs, although limited to new construction sites, are expected to be high as 16 counties fall within the district's boundaries. The SFWMD expects minimal fiscal impact from the remaining provisions included in the bill.

The St. Johns River Water Management District (SJRWMD) estimated the cost of reviewing the Florida Building Code, developing standards, and entering the rule making process and coordinating rule development with the other 4 districts at more than \$250,000. With regard to the scientifically-based guidelines for landscape irrigation, the SJRWMD estimated the cost of reviewing available information and developing guidelines at \$150,000. Also, the district will require .5 FTE at a cost of \$36,000 to coordinate with local government on the guidelines, to review the guidelines annually, and to update the guidelines every 3 years. The SJRWMD expects a minimal fiscal impact from the remaining provisions of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.