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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2012	.	
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The Committee on Environmental Preservation and Conservation (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (17) through (26) of section 373.019, Florida Statutes, are renumbered as subsections (19) through (28), respectively, and new subsections (17) and (18) are added to that section to read:

373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(17) "Reclaimed water" means water that has received at



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13 least secondary treatment and basic disinfection and is reused
14 after flowing out of a domestic wastewater treatment facility.
15 Reclaimed water is not subject to regulation pursuant to s.
16 373.175 or part II of this chapter until it has been discharged
17 into waters as defined in s. 403.031(13).

18 (18) "Reclaimed water distribution system" means a network
19 of pipes, pumping facilities, storage facilities, and
20 appurtenances designed to convey and distribute reclaimed water
21 from one or more domestic wastewater treatment facilities to one
22 or more users of reclaimed water.

23 Section 2. Section 373.250, Florida Statutes, is amended to
24 read:

25 373.250 Reuse of reclaimed water.—

26 (1) (a) The encouragement and promotion of water
27 conservation and reuse of reclaimed water, as defined by the
28 department and used in this chapter, are state objectives and
29 considered to be in the public interest. The Legislature finds
30 that the use of reclaimed water provided by domestic wastewater
31 treatment plants permitted and operated under a reuse program
32 approved by the department is environmentally acceptable and not
33 a threat to public health and safety.

34 (b) The Legislature recognizes that the interest of the
35 state to sustain water resources for the future through the use
36 of reclaimed water must be balanced with the need of reuse
37 utilities to operate and manage reclaimed water systems in
38 accordance with a variety and range of circumstances, including
39 regulatory and financial considerations, which influence the
40 development and operation of reclaimed water systems across the
41 state.



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42 (2) Reclaimed water is an alternative water supply as
43 defined in s. 373.019(1) and is eligible for alternative water
44 supply funding. A contract for state or district funding
45 assistance for the development of reclaimed water as an
46 alternative water supply may include provisions listed under s.
47 373.707(9). The use of reclaimed water may not be excluded from
48 regional water supply planning under s. 373.709.

49 ~~(3)-(2)(a) For purposes of this section, "uncommitted" means~~
50 ~~the average amount of reclaimed water produced during the three~~
51 ~~lowest flow months minus the amount of reclaimed water that a~~
52 ~~reclaimed water provider is contractually obligated to provide~~
53 ~~to a customer or user.~~

54 ~~(b)~~ Reclaimed water may be presumed available to a
55 consumptive use permit applicant when a utility exists which
56 provides reclaimed water, which has determined that it has
57 uncommitted reclaimed water capacity, and which has distribution
58 facilities, which are initially provided by the utility at its
59 cost, to the site of the affected applicant's proposed use.

60 (b) A water management district may not require a permit
61 for the use of reclaimed water. However, when a use includes
62 surface water or groundwater, the permit for such sources may
63 include conditions that govern the use of the permitted sources
64 in relation to the feasibility or use of reclaimed water.

65 (c) A water management district may require the use of
66 reclaimed water in lieu of all or a portion of a proposed use of
67 surface water or groundwater by an applicant when the use of
68 ~~uncommitted~~ reclaimed water is available; is environmentally,
69 economically, and technically feasible; and is of such quality
70 and reliability as is necessary to the user. However, a water



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71 management district may neither specify any user to whom the
72 reuse utility must provide reclaimed water nor restrict the use
73 of reclaimed water provided by a reuse utility to a customer in
74 a permit or, unless requested by the reuse utility, in a water
75 shortage order or water shortage emergency order ~~this paragraph~~
76 ~~does not authorize a water management district to require a~~
77 ~~provider of reclaimed water to redirect reclaimed water from one~~
78 ~~user to another or to provide uncommitted water to a specific~~
79 ~~user if such water is anticipated to be used by the provider, or~~
80 ~~a different user selected by the provider, within a reasonable~~
81 ~~amount of time.~~

82 (d) The South Florida Water Management District shall
83 require the use of reclaimed water made available by the
84 elimination of wastewater ocean outfall discharges as provided
85 for in s. 403.086(9) in lieu of surface water or groundwater
86 when the use of ~~uncommitted~~ reclaimed water is available; is
87 environmentally, economically, and technically feasible; and is
88 of such quality and reliability as is necessary to the user.
89 Such reclaimed water may also be required in lieu of other
90 alternative sources. In determining whether ~~or not~~ to require
91 such reclaimed water in lieu of other alternative sources, the
92 water management district shall consider existing infrastructure
93 investments in place or obligated to be constructed by an
94 executed contract or similar binding agreement as of July 1,
95 2011, for the development of other alternative sources.

96 (4) ~~(3)~~ The water management district shall, in consultation
97 with the department, adopt rules to implement this section. Such
98 rules shall include, but not be limited to:

99 (a) Provisions to permit use of water from other sources in



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100 emergency situations or if reclaimed water becomes unavailable,
101 for the duration of the emergency or the unavailability of
102 reclaimed water. These provisions shall also specify the method
103 for establishing the quantity of water to be set aside for use
104 in emergencies or when reclaimed water becomes unavailable. The
105 amount set aside is subject to periodic review and revision. The
106 methodology shall take into account the risk that reclaimed
107 water may not be available in the future, the risk that other
108 sources may be fully allocated to other uses in the future, the
109 nature of the uses served with reclaimed water, the extent to
110 which the applicant intends to rely upon reclaimed water, and
111 the extent of economic harm which may result if other sources
112 are not available to replace the reclaimed water. It is the
113 intent of this paragraph to ensure that users of reclaimed water
114 have the same access to ground or surface water and will
115 otherwise be treated in the same manner as other users of the
116 same class not relying on reclaimed water.

117 ~~(b) A water management district shall not adopt any rule~~
118 ~~which gives preference to users within any class of use~~
119 ~~established under s. 373.246 who do not use reclaimed water over~~
120 ~~users within the same class who use reclaimed water.~~

121 (b)(e) Provisions to require permit applicants that are not
122 reuse utilities to provide, as part of their reclaimed water
123 feasibility evaluation for a nonpotable use, written
124 documentation from a reuse utility addressing the availability
125 of reclaimed water. This requirement shall apply when the
126 applicant's proposed use is within an area that is or may be
127 served with reclaimed water by a reuse utility within a 5-year
128 horizon, as established by the reuse utility and provided to the



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129 district. If the applicable reuse utility fails to respond or
130 does not provide the information required under paragraph (c)
131 ~~(d)~~ within 30 days after receipt of the request, the applicant
132 shall provide to the district a copy of the written request and
133 a statement that the utility failed to provide the requested
134 information. The district is not required to adopt, by rule, the
135 area where written documentation from a reuse utility is
136 required, but the district shall publish the area, and any
137 updates thereto, on the district's website. This paragraph may
138 not be construed to limit the ability of a district to require
139 the use of reclaimed water or to limit a utility's ability to
140 plan reclaimed water infrastructure.

141 (c) ~~(d)~~ Provisions specifying the content of the
142 documentation required in paragraph (b) ~~(e)~~, including
143 sufficient information regarding the availability and costs
144 associated with the connection to and the use of reclaimed
145 water, to facilitate the permit applicant's reclaimed water
146 feasibility evaluation.

147 A water management district may not adopt any rule that
148 gives preference to users within any class of use established
149 under s. 373.246 who do not use reclaimed water over users
150 within the same class who use reclaimed water.

151 (5) (a) No later than October 1, 2012, the department shall
152 initiate rulemaking to adopt revisions to the water resource
153 implementation rule, as defined in s. 373.019(23), which shall
154 include:

155 1. Criteria for the use of a proposed impact offset derived
156 from the use of reclaimed water when a water management district
157 evaluates an application for a consumptive use permit. As used



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158 in this subparagraph, the term "impact offset" means the use of
159 reclaimed water to reduce or eliminate a harmful impact that has
160 occurred or would otherwise occur as a result of other surface
161 water or groundwater withdrawals.

162 2. Criteria for the use of substitution credits where a
163 water management district has adopted rules establishing
164 withdrawal limits from a specified water resource within a
165 defined geographic area. As used in this subparagraph, the term
166 "substitution credit" means the use of reclaimed water to
167 replace all or a portion of an existing permitted use of
168 resource-limited surface water or groundwater, allowing a
169 different user or use to initiate a withdrawal or increase its
170 withdrawal from the same resource-limited surface water or
171 groundwater source provided that the withdrawal creates no net
172 adverse impact on the limited water resource or creates a net
173 positive impact if required by water management district rule as
174 part of a strategy to protect or recover a water resource.

175 (b) Within 60 days after the final adoption by the
176 department of the revisions to the water resource implementation
177 rule required under paragraph (a), each water management
178 district shall initiate rulemaking to incorporate those
179 revisions by reference into the rules of the district.

180 (6)(4) Reuse utilities and the applicable water management
181 district or districts are encouraged to periodically coordinate
182 and share information concerning the status of reclaimed water
183 distribution system construction, the availability of reclaimed
184 water supplies, and existing consumptive use permits in areas
185 served by the reuse utility.

186 (7)(5) ~~Nothing in~~ This section does not impair or limit the



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187 authority of shall impair a water management district district's
188 authority to plan for and regulate consumptive uses of water
189 under this chapter or regulate the use of surface water or
190 groundwater to supplement a reclaimed water system.

191 (8) (6) This section applies to applications for new
192 consumptive use permits and renewals and modifications of
193 existing consumptive use permits.

194 Section 3. This act does not:

195 (1) Impair or limit the authority of the Department of
196 Environmental Protection to regulate water quality, including
197 reclaimed water, pursuant to chapter 403, Florida Statutes, or
198 to require a reuse feasibility study pursuant to s. 403.064,
199 Florida Statutes.

200 (2) Impair or limit the authority of a water management
201 district to conduct regional water supply planning pursuant to
202 chapter 373, Florida Statutes.

203 (3) Affect any requirement that may be applicable to
204 funding of alternative water supply development, including
205 reclaimed water, pursuant to s. 373.707, Florida Statutes.

206 (4) Affect or limit any applicable provisions regarding the
207 setting of rates by public and private water utilities pursuant
208 to chapter 153, Florida Statutes, chapter 180, Florida Statutes,
209 or s. 367.081, Florida Statutes.

210 (5) Affect or impair the powers of the Governor under
211 the constitution, statutory laws, including but not limited to
212 chapter 14, Florida Statutes and police powers to promulgate and
213 enforce emergency rules, regulations, and orders.

214 Section 4. Paragraph (d) of subsection (1) of section
215 373.036, Florida Statutes, is amended to read:



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216 373.036 Florida water plan; district water management
217 plans.—

218 (1) FLORIDA WATER PLAN.—In cooperation with the water
219 management districts, regional water supply authorities, and
220 others, the department shall develop the Florida water plan. The
221 Florida water plan shall include, but not be limited to:

222 (d) Goals, objectives, and guidance for the development and
223 review of programs, rules, and plans relating to water
224 resources, based on statutory policies and directives. The state
225 water policy rule, renamed the water resource implementation
226 rule pursuant to s. 373.019(25)~~(23)~~, shall serve as this part of
227 the plan. Amendments or additions to this part of the Florida
228 water plan shall be adopted by the department as part of the
229 water resource implementation rule. In accordance with s.
230 373.114, the department shall review rules of the water
231 management districts for consistency with this rule. Amendments
232 to the water resource implementation rule must be adopted by the
233 secretary of the department and be submitted to the President of
234 the Senate and the Speaker of the House of Representatives
235 within 7 days after publication in the Florida Administrative
236 Weekly. Amendments shall not become effective until the
237 conclusion of the next regular session of the Legislature
238 following their adoption.

239 Section 5. Subsection (1) of section 373.421, Florida
240 Statutes, is amended to read:

241 373.421 Delineation methods; formal determinations.—

242 (1) The Environmental Regulation Commission shall adopt a
243 unified statewide methodology for the delineation of the extent
244 of wetlands as defined in s. 373.019(25). This methodology shall



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245 consider regional differences in the types of soils and
246 vegetation that may serve as indicators of the extent of
247 wetlands. This methodology shall also include provisions for
248 determining the extent of surface waters other than wetlands for
249 the purposes of regulation under s. 373.414. This methodology
250 shall not become effective until ratified by the Legislature.
251 Subsequent to legislative ratification, the wetland definition
252 in s. 373.019 (27) ~~(25)~~ and the adopted wetland methodology shall
253 be binding on the department, the water management districts,
254 local governments, and any other governmental entities. Upon
255 ratification of such wetland methodology, the Legislature
256 preempts the authority of any water management district, state
257 or regional agency, or local government to define wetlands or
258 develop a delineation methodology to implement the definition
259 and determines that the exclusive definition and delineation
260 methodology for wetlands shall be that established pursuant to
261 s. 373.019 (27) ~~(25)~~ and this section. Upon such legislative
262 ratification, any existing wetlands definition or wetland
263 delineation methodology shall be superseded by the wetland
264 definition and delineation methodology established pursuant to
265 this chapter. Subsequent to legislative ratification, a
266 delineation of the extent of a surface water or wetland by the
267 department or a water management district, pursuant to a formal
268 determination under subsection (2), or pursuant to a permit
269 issued under this part in which the delineation was field-
270 verified by the permitting agency and specifically approved in
271 the permit, shall be binding on all other governmental entities
272 for the duration of the formal determination or permit. All
273 existing rules and methodologies of the department, the water



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274 management districts, and local governments, regarding surface
275 water or wetland definition and delineation shall remain in full
276 force and effect until the common methodology rule becomes
277 effective. However, this shall not be construed to limit any
278 power of the department, the water management districts, and
279 local governments to amend or adopt a surface water or wetland
280 definition or delineation methodology until the common
281 methodology rule becomes effective.

282 Section 6. Paragraph (r) of subsection (1) of section
283 403.813, Florida Statutes, is amended to read:

284 403.813 Permits issued at district centers; exceptions.—

285 (1) A permit is not required under this chapter, chapter
286 373, chapter 61-691, Laws of Florida, or chapter 25214 or
287 chapter 25270, 1949, Laws of Florida, for activities associated
288 with the following types of projects; however, except as
289 otherwise provided in this subsection, nothing in this
290 subsection relieves an applicant from any requirement to obtain
291 permission to use or occupy lands owned by the Board of Trustees
292 of the Internal Improvement Trust Fund or any water management
293 district in its governmental or proprietary capacity or from
294 complying with applicable local pollution control programs
295 authorized under this chapter or other requirements of county
296 and municipal governments:

297 (r) The removal of aquatic plants, the removal of tussocks,
298 the associated replanting of indigenous aquatic plants, and the
299 associated removal from lakes of organic detrital material when
300 such planting or removal is performed and authorized by permit
301 or exemption granted under s. 369.20 or s. 369.25, provided
302 that:



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303 1. Organic detrital material that exists on the surface of
304 natural mineral substrate shall be allowed to be removed to a
305 depth of 3 feet or to the natural mineral substrate, whichever
306 is less;

307 2. All material removed pursuant to this paragraph shall be
308 deposited in an upland site in a manner that will prevent the
309 reintroduction of the material into waters in the state except
310 when spoil material is permitted to be used to create wildlife
311 islands in freshwater bodies of the state when a governmental
312 entity is permitted pursuant to s. 369.20 to create such islands
313 as a part of a restoration or enhancement project;

314 3. All activities are performed in a manner consistent with
315 state water quality standards; and

316 4. No activities under this exemption are conducted in
317 wetland areas, as defined by s. 373.019(27)~~(25)~~, which are
318 supported by a natural soil as shown in applicable United States
319 Department of Agriculture county soil surveys, except when a
320 governmental entity is permitted pursuant to s. 369.20 to
321 conduct such activities as a part of a restoration or
322 enhancement project.

323
324 The department may not adopt implementing rules for this
325 paragraph, notwithstanding any other provision of law.

326 Section 7. Subsection (6) of section 556.102, Florida
327 Statutes, is amended to read:

328 556.102 Definitions.—As used in this act:

329 (6) "Excavate" or "excavation" means any manmade cut,
330 cavity, trench, or depression in the earth's surface, formed by
331 removal of earth, intended to change the grade or level of land,



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332 or intended to penetrate or disturb the surface of the earth,
333 including land beneath the waters of the state, as defined in s.
334 373.019(22)(20), and the term includes pipe bursting and
335 directional drilling or boring from one point to another point
336 beneath the surface of the earth, or other trenchless
337 technologies.

338 Section 8. This act shall take effect July 1, 2012.

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340

341 ===== T I T L E A M E N D M E N T =====

342 And the title is amended as follows:

343 Delete everything before the enacting clause
344 and insert:

345 A bill to be entitled

346 An act relating to reclaimed water; amending s. 373.019,
347 F.S.; defining the terms "reclaimed water" and "reclaimed water
348 distribution system"; amending s. 373.250, F.S.; providing
349 legislative findings relating to the use of reclaimed water;
350 providing that reclaimed water is an alternative water supply
351 and eligible for such funding; authorizing specified contract
352 provisions for the development of reclaimed water as an
353 alternative water supply; prohibiting the exclusion of reclaimed
354 water for consideration in regional water supply planning;
355 deleting a definition for the term "uncommitted"; providing for
356 the determination of uncommitted reclaimed water capacity by
357 certain utilities; prohibiting water management districts from
358 requiring permits for the use of reclaimed water; authorizing
359 permit conditions for certain surface water and groundwater
360 sources; authorizing water management districts to require the



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361 use of reclaimed water under certain conditions; prohibiting
362 water management districts from requiring or restricting
363 services provided by reuse utilities; providing an exception;
364 clarifying which permit applicants are required to submit
365 certain information; requiring the Department of Environmental
366 Protection and each water management district to initiate
367 rulemaking to adopt specified revisions to the water resource
368 implementation rule; revising applicability; providing for
369 construction of the act; amending ss. 373.036, 373.421, 403.813,
370 and 556.102, F.S.; conforming cross-references to changes made
371 by the act; providing an effective date.
372