

By the Committee on Environmental Preservation and Conservation;  
and Senator Garcia

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1                   A bill to be entitled  
2           An act relating to reclaimed water; amending s.  
3           373.019, F.S.; defining the terms "reclaimed water"  
4           and "reclaimed water distribution system"; amending s.  
5           373.250, F.S.; providing legislative findings relating  
6           to the use of reclaimed water; providing that  
7           reclaimed water is an alternative water supply and  
8           eligible for such funding; authorizing specified  
9           contract provisions for the development of reclaimed  
10          water as an alternative water supply; prohibiting the  
11          exclusion of reclaimed water use from regional water  
12          supply planning; deleting a definition for the term  
13          "uncommitted"; providing for the determination of  
14          uncommitted reclaimed water capacity by certain  
15          utilities; prohibiting water management districts from  
16          requiring permits for the use of reclaimed water;  
17          authorizing permit conditions for certain surface  
18          water and groundwater sources; authorizing water  
19          management districts to require the use of reclaimed  
20          water under certain conditions; prohibiting water  
21          management districts from requiring or restricting  
22          services provided by reuse utilities; providing an  
23          exception; clarifying which permit applicants are  
24          required to submit certain information; requiring the  
25          Department of Environmental Protection and each water  
26          management district to initiate rulemaking to adopt  
27          specified revisions to the water resource  
28          implementation rule; revising applicability; providing  
29          for construction of the act; amending ss. 373.036,

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30 373.421, 403.813, and 556.102, F.S.; conforming cross-  
31 references to changes made by the act; providing an  
32 effective date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Subsections (17) through (26) of section  
37 373.019, Florida Statutes, are renumbered as subsections (19)  
38 through (28), respectively, and new subsections (17) and (18)  
39 are added to that section to read:

40 373.019 Definitions.—When appearing in this chapter or in  
41 any rule, regulation, or order adopted pursuant thereto, the  
42 term:

43 (17) "Reclaimed water" means water that has received at  
44 least secondary treatment and basic disinfection and is reused  
45 after flowing out of a domestic wastewater treatment facility.  
46 Reclaimed water is not subject to regulation pursuant to s.  
47 373.175 or part II of this chapter until it has been discharged  
48 into waters as defined in s. 403.031(13).

49 (18) "Reclaimed water distribution system" means a network  
50 of pipes, pumping facilities, storage facilities, and  
51 appurtenances designed to convey and distribute reclaimed water  
52 from one or more domestic wastewater treatment facilities to one  
53 or more users of reclaimed water.

54 Section 2. Section 373.250, Florida Statutes, is amended to  
55 read:

56 373.250 Reuse of reclaimed water.—

57 (1) (a) The encouragement and promotion of water  
58 conservation and reuse of reclaimed water, as defined by the

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59 department and used in this chapter, are state objectives and  
60 considered to be in the public interest. The Legislature finds  
61 that the use of reclaimed water provided by domestic wastewater  
62 treatment plants permitted and operated under a reuse program  
63 approved by the department is environmentally acceptable and not  
64 a threat to public health and safety.

65 (b) The Legislature recognizes that the interest of the  
66 state to sustain water resources for the future through the use  
67 of reclaimed water must be balanced with the need of reuse  
68 utilities to operate and manage reclaimed water systems in  
69 accordance with a variety and range of circumstances, including  
70 regulatory and financial considerations, which influence the  
71 development and operation of reclaimed water systems across the  
72 state.

73 (2) Reclaimed water is an alternative water supply as  
74 defined in s. 373.019(1) and is eligible for alternative water  
75 supply funding. A contract for state or district funding  
76 assistance for the development of reclaimed water as an  
77 alternative water supply may include provisions listed under s.  
78 373.707(9). The use of reclaimed water may not be excluded from  
79 regional water supply planning under s. 373.709.

80 ~~(3)-(2)~~ (a) ~~For purposes of this section, "uncommitted" means~~  
81 ~~the average amount of reclaimed water produced during the three~~  
82 ~~lowest-flow months minus the amount of reclaimed water that a~~  
83 ~~reclaimed water provider is contractually obligated to provide~~  
84 ~~to a customer or user.~~

85 ~~(b)~~ Reclaimed water may be presumed available to a  
86 consumptive use permit applicant when a utility exists which  
87 provides reclaimed water, which has determined that it has

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88 uncommitted reclaimed water capacity, and which has distribution  
89 facilities, which are initially provided by the utility at its  
90 cost, to the site of the affected applicant's proposed use.

91 (b) A water management district may not require a permit  
92 for the use of reclaimed water. However, when a use includes  
93 surface water or groundwater, the permit for such sources may  
94 include conditions that govern the use of the permitted sources  
95 in relation to the feasibility or use of reclaimed water.

96 (c) A water management district may require the use of  
97 reclaimed water in lieu of all or a portion of a proposed use of  
98 surface water or groundwater by an applicant when the use of  
99 ~~uncommitted~~ reclaimed water is available; is environmentally,  
100 economically, and technically feasible; and is of such quality  
101 and reliability as is necessary to the user. However, a water  
102 management district may neither specify any user to whom the  
103 reuse utility must provide reclaimed water nor restrict the use  
104 of reclaimed water provided by a reuse utility to a customer in  
105 a permit or, unless requested by the reuse utility, in a water  
106 shortage order or water shortage emergency order ~~this paragraph~~  
107 ~~does not authorize a water management district to require a~~  
108 ~~provider of reclaimed water to redirect reclaimed water from one~~  
109 ~~user to another or to provide uncommitted water to a specific~~  
110 ~~user if such water is anticipated to be used by the provider, or~~  
111 ~~a different user selected by the provider, within a reasonable~~  
112 ~~amount of time.~~

113 (d) The South Florida Water Management District shall  
114 require the use of reclaimed water made available by the  
115 elimination of wastewater ocean outfall discharges as provided  
116 for in s. 403.086(9) in lieu of surface water or groundwater

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117 when the use of ~~uncommitted~~ reclaimed water is available; is  
118 environmentally, economically, and technically feasible; and is  
119 of such quality and reliability as is necessary to the user.  
120 Such reclaimed water may also be required in lieu of other  
121 alternative sources. In determining whether ~~or not~~ to require  
122 such reclaimed water in lieu of other alternative sources, the  
123 water management district shall consider existing infrastructure  
124 investments in place or obligated to be constructed by an  
125 executed contract or similar binding agreement as of July 1,  
126 2011, for the development of other alternative sources.

127 (4)~~(3)~~ The water management district shall, in consultation  
128 with the department, adopt rules to implement this section. Such  
129 rules shall include, but not be limited to:

130 (a) Provisions to permit use of water from other sources in  
131 emergency situations or if reclaimed water becomes unavailable,  
132 for the duration of the emergency or the unavailability of  
133 reclaimed water. These provisions shall also specify the method  
134 for establishing the quantity of water to be set aside for use  
135 in emergencies or when reclaimed water becomes unavailable. The  
136 amount set aside is subject to periodic review and revision. The  
137 methodology shall take into account the risk that reclaimed  
138 water may not be available in the future, the risk that other  
139 sources may be fully allocated to other uses in the future, the  
140 nature of the uses served with reclaimed water, the extent to  
141 which the applicant intends to rely upon reclaimed water, and  
142 the extent of economic harm which may result if other sources  
143 are not available to replace the reclaimed water. It is the  
144 intent of this paragraph to ensure that users of reclaimed water  
145 have the same access to ground or surface water and will

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146 otherwise be treated in the same manner as other users of the  
147 same class not relying on reclaimed water.

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

152 (b)(e) Provisions to require permit applicants that are not  
153 reuse utilities to provide, as part of their reclaimed water  
154 feasibility evaluation for a nonpotable use, written  
155 documentation from a reuse utility addressing the availability  
156 of reclaimed water. This requirement shall apply when the  
157 applicant's proposed use is within an area that is or may be  
158 served with reclaimed water by a reuse utility within a 5-year  
159 horizon, as established by the reuse utility and provided to the  
160 district. If the applicable reuse utility fails to respond or  
161 does not provide the information required under paragraph (c)  
162 ~~(d)~~ within 30 days after receipt of the request, the applicant  
163 shall provide to the district a copy of the written request and  
164 a statement that the utility failed to provide the requested  
165 information. The district is not required to adopt, by rule, the  
166 area where written documentation from a reuse utility is  
167 required, but the district shall publish the area, and any  
168 updates thereto, on the district's website. This paragraph may  
169 not be construed to limit the ability of a district to require  
170 the use of reclaimed water or to limit a utility's ability to  
171 plan reclaimed water infrastructure.

172 (c)(d) Provisions specifying the content of the  
173 documentation required in paragraph (b) ~~(e)~~, including  
174 sufficient information regarding the availability and costs

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175 associated with the connection to and the use of reclaimed  
176 water, to facilitate the permit applicant's reclaimed water  
177 feasibility evaluation.

178  
179 A water management district may not adopt any rule that gives  
180 preference to users within any class of use established under s.  
181 373.246 who do not use reclaimed water over users within the  
182 same class who use reclaimed water.

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

187 1. Criteria for the use of a proposed impact offset derived  
188 from the use of reclaimed water when a water management district  
189 evaluates an application for a consumptive use permit. As used  
190 in this subparagraph, the term "impact offset" means the use of  
191 reclaimed water to reduce or eliminate a harmful impact that has  
192 occurred or would otherwise occur as a result of other surface  
193 water or groundwater withdrawals.

194 2. Criteria for the use of substitution credits where a  
195 water management district has adopted rules establishing  
196 withdrawal limits from a specified water resource within a  
197 defined geographic area. As used in this subparagraph, the term  
198 "substitution credit" means the use of reclaimed water to  
199 replace all or a portion of an existing permitted use of  
200 resource-limited surface water or groundwater, allowing a  
201 different user or use to initiate a withdrawal or increase its  
202 withdrawal from the same resource-limited surface water or  
203 groundwater source provided that the withdrawal creates no net

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204 adverse impact on the limited water resource or creates a net  
205 positive impact if required by water management district rule as  
206 part of a strategy to protect or recover a water resource.

207 (b) Within 60 days after the final adoption by the  
208 department of the revisions to the water resource implementation  
209 rule required under paragraph (a), each water management  
210 district shall initiate rulemaking to incorporate those  
211 revisions by reference into the rules of the district.

212 (6)~~(4)~~ Reuse utilities and the applicable water management  
213 district or districts are encouraged to periodically coordinate  
214 and share information concerning the status of reclaimed water  
215 distribution system construction, the availability of reclaimed  
216 water supplies, and existing consumptive use permits in areas  
217 served by the reuse utility.

218 (7)~~(5)~~ ~~Nothing in~~ This section does not impair or limit the  
219 authority of ~~shall impair~~ a water management district ~~district's~~  
220 authority to plan for and regulate consumptive uses of water  
221 under this chapter or regulate the use of surface water or  
222 groundwater to supplement a reclaimed water system.

223 (8)~~(6)~~ This section applies to applications for new  
224 consumptive use permits and renewals and modifications of  
225 existing consumptive use permits.

226 Section 3. This act does not:

227 (1) Impair or limit the authority of the Department of  
228 Environmental Protection to regulate water quality, including  
229 reclaimed water, pursuant to chapter 403, Florida Statutes, or  
230 to require a reuse feasibility study pursuant to s. 403.064,  
231 Florida Statutes.

232 (2) Impair or limit the authority of a water management

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233 district to conduct regional water supply planning pursuant  
234 chapter 373, Florida Statutes.

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

238 (4) Affect or limit any applicable provisions regarding the  
239 setting of rates by public and private water utilities pursuant  
240 to chapter 153 or chapter 180, Florida Statutes, or s. 367.081,  
241 Florida Statutes.

242 (5) Affect or impair the powers of the Governor under the  
243 State Constitution; general law, including, but not limited to,  
244 chapter 14, Florida Statutes; and police powers of the state to  
245 adopt and enforce emergency rules, regulations, and orders.

246 Section 4. Paragraph (d) of subsection (1) of section  
247 373.036, Florida Statutes, is amended to read:

248 373.036 Florida water plan; district water management  
249 plans.—

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

254 (d) Goals, objectives, and guidance for the development and  
255 review of programs, rules, and plans relating to water  
256 resources, based on statutory policies and directives. The state  
257 water policy rule, renamed the water resource implementation  
258 rule pursuant to s. 373.019(25) ~~373.019(23)~~, shall serve as this  
259 part of the plan. Amendments or additions to this part of the  
260 Florida water plan shall be adopted by the department as part of  
261 the water resource implementation rule. In accordance with s.

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262 373.114, the department shall review rules of the water  
263 management districts for consistency with this rule. Amendments  
264 to the water resource implementation rule must be adopted by the  
265 secretary of the department and be submitted to the President of  
266 the Senate and the Speaker of the House of Representatives  
267 within 7 days after publication in the Florida Administrative  
268 Weekly. Amendments shall not become effective until the  
269 conclusion of the next regular session of the Legislature  
270 following their adoption.

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

273 373.421 Delineation methods; formal determinations.—

274 (1) The Environmental Regulation Commission shall adopt a  
275 unified statewide methodology for the delineation of the extent  
276 of wetlands as defined in s. 373.019(27) ~~373.019(25)~~. This  
277 methodology shall consider regional differences in the types of  
278 soils and vegetation that may serve as indicators of the extent  
279 of wetlands. This methodology shall also include provisions for  
280 determining the extent of surface waters other than wetlands for  
281 the purposes of regulation under s. 373.414. This methodology  
282 shall not become effective until ratified by the Legislature.  
283 Subsequent to legislative ratification, the wetland definition  
284 in s. 373.019(27) ~~373.019(25)~~ and the adopted wetland  
285 methodology shall be binding on the department, the water  
286 management districts, local governments, and any other  
287 governmental entities. Upon ratification of such wetland  
288 methodology, the Legislature preempts the authority of any water  
289 management district, state or regional agency, or local  
290 government to define wetlands or develop a delineation

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291 methodology to implement the definition and determines that the  
292 exclusive definition and delineation methodology for wetlands  
293 shall be that established pursuant to s. 373.019(27) ~~373.019(25)~~  
294 and this section. Upon such legislative ratification, any  
295 existing wetlands definition or wetland delineation methodology  
296 shall be superseded by the wetland definition and delineation  
297 methodology established pursuant to this chapter. Subsequent to  
298 legislative ratification, a delineation of the extent of a  
299 surface water or wetland by the department or a water management  
300 district, pursuant to a formal determination under subsection  
301 (2), or pursuant to a permit issued under this part in which the  
302 delineation was field-verified by the permitting agency and  
303 specifically approved in the permit, shall be binding on all  
304 other governmental entities for the duration of the formal  
305 determination or permit. All existing rules and methodologies of  
306 the department, the water management districts, and local  
307 governments, regarding surface water or wetland definition and  
308 delineation shall remain in full force and effect until the  
309 common methodology rule becomes effective. However, this shall  
310 not be construed to limit any power of the department, the water  
311 management districts, and local governments to amend or adopt a  
312 surface water or wetland definition or delineation methodology  
313 until the common methodology rule becomes effective.

314 Section 6. Paragraphs (r) and (u) of subsection (1) of  
315 section 403.813, Florida Statutes, are amended to read:

316 403.813 Permits issued at district centers; exceptions.—

317 (1) A permit is not required under this chapter, chapter  
318 373, chapter 61-691, Laws of Florida, or chapter 25214 or  
319 chapter 25270, 1949, Laws of Florida, for activities associated

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320 with the following types of projects; however, except as  
321 otherwise provided in this subsection, nothing in this  
322 subsection relieves an applicant from any requirement to obtain  
323 permission to use or occupy lands owned by the Board of Trustees  
324 of the Internal Improvement Trust Fund or any water management  
325 district in its governmental or proprietary capacity or from  
326 complying with applicable local pollution control programs  
327 authorized under this chapter or other requirements of county  
328 and municipal governments:

329 (r) The removal of aquatic plants, the removal of tussocks,  
330 the associated replanting of indigenous aquatic plants, and the  
331 associated removal from lakes of organic detrital material when  
332 such planting or removal is performed and authorized by permit  
333 or exemption granted under s. 369.20 or s. 369.25, provided  
334 that:

335 1. Organic detrital material that exists on the surface of  
336 natural mineral substrate shall be allowed to be removed to a  
337 depth of 3 feet or to the natural mineral substrate, whichever  
338 is less;

339 2. All material removed pursuant to this paragraph shall be  
340 deposited in an upland site in a manner that will prevent the  
341 reintroduction of the material into waters in the state except  
342 when spoil material is permitted to be used to create wildlife  
343 islands in freshwater bodies of the state when a governmental  
344 entity is permitted pursuant to s. 369.20 to create such islands  
345 as a part of a restoration or enhancement project;

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

348 4. No activities under this exemption are conducted in

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349 wetland areas, as defined in ~~by~~ s. 373.019(27) ~~373.019(25)~~,  
350 which are supported by a natural soil as shown in applicable  
351 United States Department of Agriculture county soil surveys,  
352 except when a governmental entity is permitted pursuant to s.  
353 369.20 to conduct such activities as a part of a restoration or  
354 enhancement project.

355  
356 The department may not adopt implementing rules for this  
357 paragraph, notwithstanding any other provision of law.

358 (u) Notwithstanding any provision to the contrary in this  
359 subsection, a permit or other authorization under chapter 253,  
360 chapter 369, chapter 373, or this chapter is not required for an  
361 individual residential property owner for the removal of organic  
362 detrital material from freshwater rivers or lakes that have a  
363 natural sand or rocky substrate and that are not Aquatic  
364 Preserves or for the associated removal and replanting of  
365 aquatic vegetation for the purpose of environmental enhancement,  
366 providing that:

367 1. No activities under this exemption are conducted in  
368 wetland areas, as defined in ~~by~~ s. 373.019(27) ~~373.019(25)~~,  
369 which are supported by a natural soil as shown in applicable  
370 United States Department of Agriculture county soil surveys.

371 2. No filling or peat mining is allowed.

372 3. No removal of native wetland trees, including, but not  
373 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

374 4. When removing organic detrital material, no portion of  
375 the underlying natural mineral substrate or rocky substrate is  
376 removed.

377 5. Organic detrital material and plant material removed is

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378 deposited in an upland site in a manner that will not cause  
379 water quality violations.

380 6. All activities are conducted in such a manner, and with  
381 appropriate turbidity controls, so as to prevent any water  
382 quality violations outside the immediate work area.

383 7. Replanting with a variety of aquatic plants native to  
384 the state shall occur in a minimum of 25 percent of the  
385 preexisting vegetated areas where organic detrital material is  
386 removed, except for areas where the material is removed to bare  
387 rocky substrate; however, an area may be maintained clear of  
388 vegetation as an access corridor. The access corridor width may  
389 not exceed 50 percent of the property owner's frontage or 50  
390 feet, whichever is less, and may be a sufficient length  
391 waterward to create a corridor to allow access for a boat or  
392 swimmer to reach open water. Replanting must be at a minimum  
393 density of 2 feet on center and be completed within 90 days  
394 after removal of existing aquatic vegetation, except that under  
395 dewatered conditions replanting must be completed within 90 days  
396 after reflooding. The area to be replanted must extend waterward  
397 from the ordinary high water line to a point where normal water  
398 depth would be 3 feet or the preexisting vegetation line,  
399 whichever is less. Individuals are required to make a reasonable  
400 effort to maintain planting density for a period of 6 months  
401 after replanting is complete, and the plants, including  
402 naturally recruited native aquatic plants, must be allowed to  
403 expand and fill in the revegetation area. Native aquatic plants  
404 to be used for revegetation must be salvaged from the  
405 enhancement project site or obtained from an aquatic plant  
406 nursery regulated by the Department of Agriculture and Consumer

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407 Services. Plants that are not native to the state may not be  
408 used for replanting.

409 8. No activity occurs any farther than 100 feet waterward  
410 of the ordinary high water line, and all activities must be  
411 designed and conducted in a manner that will not unreasonably  
412 restrict or infringe upon the riparian rights of adjacent upland  
413 riparian owners.

414 9. The person seeking this exemption notifies the  
415 applicable department district office in writing at least 30  
416 days before commencing work and allows the department to conduct  
417 a preconstruction site inspection. Notice must include an  
418 organic-detrital-material removal and disposal plan and, if  
419 applicable, a vegetation-removal and revegetation plan.

420 10. The department is provided written certification of  
421 compliance with the terms and conditions of this paragraph  
422 within 30 days after completion of any activity occurring under  
423 this exemption.

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

426 556.102 Definitions.—As used in this act:

427 (6) "Excavate" or "excavation" means any manmade cut,  
428 cavity, trench, or depression in the earth's surface, formed by  
429 removal of earth, intended to change the grade or level of land,  
430 or intended to penetrate or disturb the surface of the earth,  
431 including land beneath the waters of the state, as defined in s.  
432 373.019(22) ~~373.019(20)~~, and the term includes pipe bursting and  
433 directional drilling or boring from one point to another point  
434 beneath the surface of the earth, or other trenchless  
435 technologies.

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