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CS/HB 639

2012 Legislature

1
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

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29 | for construction of the act; amending ss. 373.036,
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.

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

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
55 | to read:

56 | 373.250 Reuse of reclaimed water.—

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57 (1) (a) The encouragement and promotion of water
58 conservation and reuse of reclaimed water, as defined by the
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"
81 means the average amount of reclaimed water produced during the
82 three lowest-flow months minus the amount of reclaimed water
83 that a reclaimed water provider is contractually obligated to
84 provide to a customer or user.

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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
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.~~

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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
 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
 128 consultation with the department, adopt rules to implement this
 129 section. Such rules shall include, but not be limited to:

130 (a) Provisions to permit use of water from other sources
 131 in emergency situations or if reclaimed water becomes
 132 unavailable, for the duration of the emergency or the
 133 unavailability of reclaimed water. These provisions shall also
 134 specify the method for establishing the quantity of water to be
 135 set aside for use in emergencies or when reclaimed water becomes
 136 unavailable. The amount set aside is subject to periodic review
 137 and revision. The methodology shall take into account the risk
 138 that reclaimed water may not be available in the future, the
 139 risk that other sources may be fully allocated to other uses in
 140 the future, the nature of the uses served with reclaimed water,

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141 the extent to which the applicant intends to rely upon reclaimed
142 water, and the extent of economic harm which may result if other
143 sources are not available to replace the reclaimed water. It is
144 the intent of this paragraph to ensure that users of reclaimed
145 water have the same access to ground or surface water and will
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
153 not 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

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

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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
 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
 219 the authority of ~~shall impair~~ a water management district
 220 ~~district's authority~~ to plan for and regulate consumptive uses
 221 of water under this chapter or regulate the use of surface water
 222 or 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

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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
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
239 the setting of rates by public and private water utilities
240 pursuant to chapter 153 or chapter 180, Florida Statutes, or s.
241 367.081, 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

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253 Florida water plan shall include, but not be limited to:
 254 (d) Goals, objectives, and guidance for the development
 255 and 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.
 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

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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
 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

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

335 1. Organic detrital material that exists on the surface of
336 natural mineral substrate shall be allowed to be removed to a

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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
340 be 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
347 with state water quality standards; and

348 4. No activities under this exemption are conducted in
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

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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
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

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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
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

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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.

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