

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: CS/SB 1052

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hays

SUBJECT: Environmental Control

DATE: January 21, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Rogers	EP	<b>Fav/CS</b>
2.			AGG	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1052:

- Provides incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs), and directs the WMDs to adopt rules providing water conservation incentives, including limited permit extensions;
- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter;
- Revises certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorizes the Lake County legislative delegation to waive membership qualifications based on good cause;
- Requires the WMDs to promote expanded cost-share criteria for additional conservation practices;
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation and financial assurance requirements where its beneficial use has been extended until the beneficial use of the area is completed;
- Requires the DEP adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;

- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading;
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency;
- Deletes the July 1, 2016 expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund;
- Revises prerequisites for the institution of flow control ordinances by local governments;
- Provides that local governments may not implement flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility; and
- Provides for an appropriation for fiscal year 2016-2017 of \$2,339,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities.

## II. Present Situation:

### Water Conservation and Consumptive Use Permitting

A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use”;<sup>1</sup>
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.<sup>2</sup>

Applicants may receive a CUP with duration of 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. Otherwise, the WMD or DEP may issue a CUP for a shorter duration which reflects the period for which such reasonable assurances can be provided.<sup>3</sup>

When a CUP is issued for a 20 year duration, a WMD or DEP may require the permittee to provide a compliance report every ten years during the term of the permit to maintain reasonable assurance that the conditions of the CUP are being met.<sup>4</sup> Following review of a compliance report, the WMD or the DEP may modify the CUP to ensure that the use meets the conditions for issuance. Permit modifications resulting from review of the compliance report are not subject to

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<sup>1</sup> Section 373.019(16), F.S., defines reasonable-beneficial use as, “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.

<sup>2</sup> Section 373.223, F.S.

<sup>3</sup> Section 373.236, F.S.

<sup>4</sup> Section 373.236(4), F.S.

competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the WMD.<sup>5</sup>

In several WMDs, when economic conditions or population growth rates result in the actual water use being less than permitted water use, a modification to reduce the permitted allocation may be made by the WMD only when there is no reasonable likelihood that the allocation will be needed during the permit term.<sup>6</sup> However, in order to incentivize conservation of water, if actual water use is less than permitted water use due to documented implementation of water conservation measures, the WMD may not modify the permitted allocation due to these circumstances during the term of the permit.<sup>7</sup>

In addition, s. 373.227, F.S., requires the DEP, in cooperation with the WMDs, to develop a statewide water conservation program for public water supply that:

- Encourages utilities to implement water conservation programs that are economically efficient, effective, affordable, and appropriate;
- Allows no reduction in, and increase where possible, utility-specific water conservation effectiveness over current programs;
- Is goal-based, accountable, measurable, and implemented collaboratively with water suppliers, water users, and water management agencies;
- Includes cost and benefit data on individual water conservation practices to assist in tailoring practices to be effective for the unique characteristics of particular utility service areas, focusing upon cost-effective measures;
- Uses standardized public water supply conservation definitions and standardized quantitative and qualitative performance measures for an overall system of assessing and benchmarking the effectiveness of water conservation programs and practices;
- Creates a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities;
- Develops a standardized water conservation planning process for utilities; and
- Develops and maintains a Florida-specific water conservation guidance document containing a menu of affordable and effective water conservation practices.<sup>8</sup>

As part of an application for a CUP, a public water supply utility may propose a goal-based water conservation plan that is tailored to its individual circumstances. If the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the appropriate WMD, the WMD must approve the plan. The approved plan will satisfy water conservation requirements imposed as a condition of obtaining a CUP.<sup>9</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Fla. Admin. Code R. 62-40.410.

<sup>7</sup> Fla. Admin. Code R. 62-40.412.

<sup>8</sup> Section 373.227(2), F.S.

<sup>9</sup> Section 373.227(4), F.S.

## Water Quality Standards (WQSs)

Under s. 303 of the Federal Clean Water Act (CWA), states are incentivized to adopt WQSs for their navigable waters and must review and update those standards at least once every three years.<sup>10</sup> These standards include:

- Designation of a waterbody's beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that a waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.<sup>11</sup>

The CWA requires that the surface waters of each state be classified according to their designated uses.<sup>12</sup> Florida has six classes that are arranged in order of the degree of protection required:

- Class I - Potable water supply;
- Class II - Shellfish propagation or harvesting;
- Class III - Fish consumption, recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife;
- Class III Limited - Fish consumption, recreation or limited recreation, and/or propagation and maintenance of a limited population of fish and wildlife;
- Class IV - Agricultural water supplies; and
- Class V - Navigation, utility, and industrial use.<sup>13</sup>

Each class has specific water quality criteria that must be met to maintain that classification.<sup>14</sup> Criteria applicable to a classification are designed to maintain the minimum conditions necessary to assure the suitability of water for the designated use of the classification. Activities allowed under a lower classification are allowable when withdrawing water from higher class waters. So, for example, a Class II surface water may also be used for any other use except for Class I purposes.<sup>15</sup>

## Reclassification

Reclassification of a waterbody's designated beneficial use can be initiated by the DEP or by petition from another entity. A designation may be upgraded, but there must be credible information showing the existence or attainability of the beneficial use. For example, a waterbody designated as Class III may be upgraded to Class II if there is credible information showing that shellfish harvesting and consumption are routinely conducted in the waterbody and that the water quality criteria for Class II is attainable.<sup>16</sup>

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<sup>10</sup> 33 U.S.C. s. 1313(b)(1) and (c)(4). If states do not submit water quality standards within a certain time, or if the standards are not consistent with certain requirements, the EPA may step in and establish water quality standards.

<sup>11</sup> 33 U.S.C. s. 1313(c)(2)(A); 40 C.F.R. ss. 131.6 and 131.10-131.12.

<sup>12</sup> 33 U.S.C. s. 1313(c).

<sup>13</sup> Fla. Admin. Code R. 62-302.400.

<sup>14</sup> See Fla. Admin. Code R. 62-302.500 and 62-302.530.

<sup>15</sup> Fla. Admin. Code R. 62-302.400(6).

<sup>16</sup> DEP, *Process for Reclassifying the Designated Uses of Florida Surface Waters 7*, (June, 2010), available at [http://www.dep.state.fl.us/water/wqssp/docs/reclass/process\\_document\\_080510.pdf](http://www.dep.state.fl.us/water/wqssp/docs/reclass/process_document_080510.pdf) (last visited Jan. 15, 2016).

For a waterbody to be considered for reclassification as a drinking water source, a petitioner must demonstrate that the water quality meets Class I water quality criteria or can meet those criteria after conventional treatment. Potential influences of reclassification on other users of the waterbody must be evaluated and permitting requirements must also be considered.<sup>17</sup>

Petitions to add a waterbody's designated use as drinking water source should determine if it is an existing use (now or since 1975) or an attainable use. Factors to consider when determining whether the use is an existing use can include the presence of drinking water withdrawals and permits authorizing withdrawal for consumptive use. Factors to consider when determining whether the designation is an attainable use can include proximity to wastewater sources and effects on water quality.<sup>18</sup>

### **Water Well Contractor Licenses**

Section 373.336, F.S., provides that it is unlawful for any person to construct, repair, or abandon a water well, or operate drilling equipment for those purposes unless that person is employed by or under the supervision of a licensed water well contractor, subject to certain exemptions detailed in s. 373.326, F.S. Each person who engages in the business of a water well contractor must obtain a license from a WMD.<sup>19</sup> Persons must submit an application to the WMD in which they reside or in which his or her principal place of business is located.<sup>20</sup> In order to take the licensure exam, an applicant must be 18 years old; have at least two years of experience in constructing, repairing, or abandoning water wells; complete the an application form; and pay a nonrefundable fee.<sup>21</sup>

To provide evidence that an applicant has at least two years of experience in constructing, repairing, or abandoning water wells, an applicant must submit a letter from a water well contractor and a letter from a water well inspector employed by a governmental agency. An applicant must also submit a list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years.<sup>22</sup>

### **The Harris Chain of Lakes Restoration Council**

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area and is in Lake and Orange counties.<sup>23</sup> It contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.<sup>24</sup> The Harris Chain of Lakes Council was created to:

- Review audits and all data related to lake restoration techniques and sport fish population recovery strategies;
- Evaluate whether additional studies are needed;

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<sup>17</sup> *Id.* at 7-8.

<sup>18</sup> *Id.* at 6-7.

<sup>19</sup> Section 373.323(1), F.S.

<sup>20</sup> Section 373.323(2), F.S.

<sup>21</sup> Section 373.323(3), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and What Does the Restoration Council Do?*, <http://harrischainoflakescouncil.com/> (last visited Jan. 15, 2016).

<sup>24</sup> *Id.*

- Explore all possible sources of funding to conduct the restoration activities; and
- Report to the President of the Senate and the Speaker of the House of Representatives yearly before November 25 on the progress of the Harris Chain of Lakes restoration program and provide any recommendations for the next fiscal year.<sup>25</sup>

The council consists of nine voting members who are:

- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- An environmental engineer;
- A person with training in biology or another scientific discipline;
- A person with training as an attorney;
- A physician;
- A person with training as an engineer; and
- Two residents of Lake County appointed by the Lake County legislative delegation who do not meet any of the other qualifications for membership on the council.<sup>26</sup>

The council works with an advisory group composed of regional, state, and federal entities.<sup>27</sup>

### **Clay Settling Areas**

In Florida, phosphate mining occurs primarily in central Florida. There are 27 phosphate mines in the state covering more than 491,900 acres.<sup>28</sup> The Florida Legislature requires the reclamation of lands mined for phosphate after July 1, 1975. Reclamation standards for phosphate lands include contouring to safe slopes, providing for acceptable water quality and quantity, vegetation, and the return of wetlands to pre-mining type, nature, function, and acreage.<sup>29</sup> A byproduct of phosphate mining is clay, which is deposited in impoundment areas to allow additional settling of the clays.<sup>30</sup> Mining areas must be reclaimed after the completion of mining operations.<sup>31</sup> Reclamation of mining areas must be completed according to a schedule detailed in s. 379.209, F.S. If a mining operator cannot comply with the schedule, the operator must post one or more of several forms of security.<sup>32</sup>

The DEP has encouraged prolonged use of clay settling areas in order to minimize the total acreage used for settling, reduce reclamation delays in areas of the mine that are not used for clay settling, and reduce the number of dams that need to be built. Changes in mining practices to utilize clay-settling areas for longer periods of time have resulted in delays in reclamation of those areas, which has triggered the requirement for operators to post the required financial assurance.<sup>33</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Section 373.467, F.S.

<sup>27</sup> *Id.*

<sup>28</sup> DEP, *Phosphate Mines*, <http://www.dep.state.fl.us/water/mines/manpho.htm> (last visited Jan. 15, 2016).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Section 378.209(1), F.S.

<sup>32</sup> Section 378.208(2)(a)-(f), F.S.

<sup>33</sup> DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

## Water Quality Credit Trading

Water quality credit trading provides a potentially less costly option for meeting the pollution limits for an impaired waterbody. It is a voluntary, market-based approach for reducing pollution to Florida's impaired rivers, lakes, streams, and estuaries.<sup>34</sup>

The underlying theory is that achieving pollution abatement at the lowest incremental cost at each additional increment reduced is the most cost effective means to achieve pollution abatement. Trading is based on the premise that different dischargers of a pollutant in a watershed can face substantially different costs to control that pollutant. Trading allows pollutant reduction activities to be valued in the form of credits that can then be traded on a local market to promote cost-effective water quality improvements.<sup>35</sup> Water quality credits are generated when a discharger reduces its loading of a given pollutant below the load allowable for the discharger.<sup>36</sup> Financial savings accrue to parties that buy credits (pollutant reductions) from others for less than the cost of implementing the reductions themselves. Those that sell credits will do so only if the value of the trade is equal to or higher than their investment in the facilities or activities necessary to achieve the pollutant reductions.<sup>37</sup>

Water quality credit trading can accelerate cleanup because potentially unaffordable costs for individual dischargers can be reduced and cooperative relationships built through trading agreements that foster shared responsibility and commitment. Trading can also accommodate new growth, including new pollutant loadings from urban stormwater, and domestic and industrial wastewater discharges. It offers the possibility for the owners of potential new or increased discharges to purchase credits from existing dischargers so that overall pollutant loads to a watershed are not increased and water quality is preserved.<sup>38</sup>

Pursuant to Florida Administrative Code Rule 60-306.400(1), activities that are potentially eligible to generate credits include, but are not limited to:

- Installation or modification of water pollution control equipment or activities that are not required to meet pollution control obligations that reduce nutrient loads below those required;
- Operational changes or the modification of a process or process equipment that reduce the quantity of water discharged through reuse, recycling, water conservation, or other measures and thereby reduce the load of nutrient discharged;
- Implementation of structural nonpoint source management controls;

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<sup>34</sup> DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 1 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 15, 2016).

<sup>35</sup> *Id.* at 1-2.

<sup>36</sup> Lower St. Johns River TMDL Executive Committee, *Basin Management Action Plan: For the Implementation of Total Maximum Daily Loads for Nutrients Adopted by the Florida Department of Environmental Protection for the Lower St. Johns River Basin Main Stem*, 53 (October 2008), available at <http://www.dep.state.fl.us/water/watersheds/docs/bmap/adopted-lsjr-bmap.pdf> (last visited Jan. 14, 2016).

<sup>37</sup> DEP, *The Pilot Water Quality Credit Trading Program for the Lower St. Johns River: A Report to the Governor and Legislature*, 2 (Oct. 2010), available at <http://www.dep.state.fl.us/water/wqssp/docs/WaterQualityCreditReport-101410.pdf> (last visited Jan. 14, 2016). See also Fla. Admin. Code R. 62-306, for rules pertaining to water quality credit trading in Florida.

<sup>38</sup> *Id.*

- Installation, operation and maintenance of new drainage projects designed to treat stormwater;
- Implementation by agricultural operations of soil or water treatment technologies or water-quality enhancing production practices or systems that are confirmed in writing by the Department of Agriculture and Consumer Services;
- Other pollution controls, technologies or management practices with a demonstrated ability to reduce nutrient loads below those required;
- A documented change in land use that goes beyond normal crop rotations or other standard agronomic practices that results in a reduction of nutrient loads below those required.

### **Variations**

The Florida Air and Water Pollution Control Act was enacted in 1967.<sup>39</sup> The legislative declaration states in part that, “[t]he pollution of the air and waters of this state constitute a menace to the public health and welfare; create public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of the air and water.”<sup>40</sup>

Section 403.201, F.S., allows the DEP to grant a variance from provisions of the act or adopted rules and regulations. A variance may be granted for one of the following reasons:

- There is no practicable means known or available for the adequate control of the pollution;
- Compliance with the requirements of the variance will require extensive cost and time, therefore, a variance may be issued with a timetable for the actions required; or
- To relieve or prevent hardship. The variances granted under this provision are limited to 24 months. A variance granted for electrical power plant and transmission line siting, as described in Part II of ch. 403, F.S., may be granted for the life of the permit.<sup>41</sup>

The State of Florida is granted authority from the federal government to administer programs such as the CWA, governing water pollution, and the Resource Conservation and Recovery Act (RCRA), governing hazardous waste management. “The most important feature of authorization is the State’s agreement to issue permits that conform to the regulatory requirements of the law, to inspect and monitor activities subject to regulation, to take appropriate enforcement action against violators and to do so in a manner no less stringent than the Federal program.”<sup>42</sup>

Therefore, Florida Statutes prohibit any variance for the discharge of waste into state waters or for hazardous waste management that would result in the requirement being less stringent than an applicable federal requirement. However, research, development, and demonstration permits under s. 403.70715, F.S., are exempt from this provision.<sup>43</sup>

Relief mechanisms may be included in a permit when the natural conditions for the impacted area results in limits that exceed what is authorized in the permit. The relief mechanisms include:

- A site specific alternative criteria for each water quality criteria;

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<sup>39</sup> Chapter 67-436, Laws of Fla.

<sup>40</sup> Section 403.021(1), F.S.

<sup>41</sup> Section 403.201(1)(a)-(c), F.S.

<sup>42</sup> DEP, *Hazardous Waste Regulation Section*, available at <http://www.dep.state.fl.us/waste/categories/hwRegulation/> (last visited on January 18, 2016).

<sup>43</sup> Section 403.201(2), F.S.



- A variance or exemption for each water quality criteria;
- A variance or exemption for a public water system from the maximum contaminant level or treatments techniques;
- A variance from other permitting standards or conditions; or
- A major or minor exemption for an aquifer.<sup>44</sup>

### **Flow Control Ordinances**

Flow control ordinances are ordinances implemented by a local government to require haulers to dispose of solid waste at government-approved waste facilities or within a specific geographic jurisdiction.<sup>45</sup> Flow control ordinances are used to assure that the designated facility or facilities are assured of receiving a guaranteed amount of waste so that they are assured a source of revenue to meet their capital costs.<sup>46</sup>

Use of flow controls took hold in the late 1970s. State and local governments began using flow controls to support the development of new waste management facilities, particularly those requiring relatively large capital investments such as waste to-energy (WTE) facilities and high-technology materials recovery facilities (MRFs). Flow controls were one mechanism State and local governments could use to help finance these costly facilities. To construct these facilities, local governments often issued revenue bonds, which were to be repaid out of the revenues (tipping fees) the facilities generated. Flow controls ensured receipt of enough waste or recyclable materials to generate sufficient revenue to pay facility debt service and other fixed costs.

Section 403.713, F.S., authorizes local governments to control the collection and disposal of solid waste and institute a flow control ordinances for the purpose of ensuring that a resource recovery<sup>47</sup> facility receives and adequate quantity of solid waste.

### **Landfill Gas-to-Energy Systems**

Landfill gas (LFG) is created when organic waste in a solid waste landfill decomposes.<sup>48</sup> This gas consists of about 50% methane (the primary component of natural gas), about 50% carbon dioxide (CO<sub>2</sub>), and a small amount of non-methane organic compounds (NMOCs).<sup>49</sup> Instead of being allowed to escape into the air, LFG can be captured, converted, and used as an energy source.<sup>50</sup> Using LFG helps to reduce odors and other hazards associated with LFG emissions,

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<sup>44</sup> Fla. Admin. Code R. 62-4.050.

<sup>45</sup> Note that flow control ordinances that benefit of publically owned facilities do not violate the U.S. Commerce Clause even though they provide a particular benefit to in-state interests because they treat all private businesses the same way. *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330 (2007).

<sup>46</sup> U.S. Env. Protection Agency, *Report to Congress on Flow Control and Municipal Solid Waste*, I-3 (1992), available at <http://www3.epa.gov/epawaste/nonhaz/municipal/landfill/flowctrl.htm>.

<sup>47</sup> Resource recovery is defined as “the process of recovering materials or energy from solid waste, excluding those materials or solid waste under control of the Nuclear Regulatory Commission.” Fla. Admin. Code R. 62-701.200.

<sup>48</sup> U.S. Env. Protection Agency, LFG Energy Projects, <http://www.epa.gov/outreach/lmop/faq/lfg.html> (last visited Jan 14, 2016).

<sup>49</sup> Id.

<sup>50</sup> Id.

and helps prevent methane from migrating into the atmosphere and contributing to local smog and global climate change.<sup>51</sup>

In 2010, Orange County, Florida and the Orlando Utilities Commission won an award from the U.S. Environmental Protection Agency (EPA) as part of its Landfill Methane Outreach Program. The landfill is one of the largest in the country and in 2010 the EPA found that:

- The carbon sequestered annually was the equivalent of 12,100 acres of pine or fir forests, annual greenhouse gas emissions from 10,900 passenger vehicles, or carbon dioxide emissions from 132,500 barrels of oil consumed.
- The annual energy savings equate to powering 7,300 homes.
- The revenue generated to Orange County each year for landfill gas rights was \$400,000.<sup>52</sup>

In 2015, Sarasota County in partnership with Aria Energy opened a landfill gas to energy facility in Sarasota County. The facility is estimated to produce enough energy to power 2,800 homes and reduce carbon dioxide emissions by 236,000 metric tons.<sup>53</sup>

### **Solid Waste Management Trust Fund**

Section 403.709, F.S., creates the Solid Waste Management Trust Fund (SWMTF) to fund solid waste management activities. Funds deposited in the SWMTF include penalties for littering;<sup>54</sup> waste tire fees;<sup>55</sup> and oil related fees, fines and penalties.<sup>56</sup> DEP must allocate funds deposited in the SWMTF in the following manner:

- Up to 40 percent for funding solid waste activities of DEP and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.
- Up to 4.5 percent for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management.
- Up to 14 percent to use for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control.
- Up to 4.5 percent for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.
- A minimum of 37 percent for funding a solid waste management grant program pursuant to s. 403.7095, F.S., for activities relating to recycling and waste reduction, including waste tires requiring final disposal.<sup>57</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> U.S. Env. Protection Agency, *Project Profile* (2010), <http://www3.epa.gov/lmop/projects-candidates/profiles/orangecountyfloridaandorl.html> (last visited January 18, 2016).

<sup>53</sup> Sarasota County, *Landfill Gas to Energy Facility: Fact Sheet* (May 2015), [https://www.scgov.net/Solid\\_Waste/Documents/Landfill%20Gas-to-Energy%20Fact%20Sheet.pdf](https://www.scgov.net/Solid_Waste/Documents/Landfill%20Gas-to-Energy%20Fact%20Sheet.pdf) (last visited January 18, 2016).

<sup>54</sup> Section 403.413(6)(a), F.S.

<sup>55</sup> Section 403.718(2), F.S.

<sup>56</sup> Section 403.759, F.S.

<sup>57</sup> Section 403.709(1), F.S.

## Landfill Closure

The DEP is responsible for implementing and enforcing the state solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste.<sup>58</sup> Counties are responsible for operating solid waste disposal facilities, which are permitted by the DEP, in order to meet the needs of incorporated and unincorporated areas of the county.<sup>59</sup>

Florida Administrative Code Chapters 62-701 through 62-722 establish standards for the construction, operations, and closure of solid waste management facilities.<sup>60</sup> Landfills or solid waste disposal sites that close require a closure permit issued by the DEP or a closure plan approved by the DEP. The closure plan includes:

- A closure design plan;
- A closure operation plan;
- A long-term care plan; and
- A demonstration that proof of financial assurance for long-term care will be provided.<sup>61</sup>

Every owner or operator of a landfill is liable for the improper operation and closure of a landfill.<sup>62</sup> The owner or operator of a landfill owned or operated by a local or state government or the Federal Government is required to establish a fee, a surcharge on existing fees, or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.<sup>63</sup>

Operators of solid waste disposal units must receive a closure permit to close a landfill.<sup>64</sup> Solid waste disposal units must close within 180 days after they cease receiving waste, or within the time frame set forth in the facility's approved closure plan.<sup>65</sup>

These facilities must also perform long-term care for 30 years.<sup>66</sup> This includes monitoring and maintaining the integrity and effectiveness of the final cover, controlling erosion, filling subsidences, complying with a water quality monitoring plan, maintaining a leachate collection system, measuring the volumes of leachate removed, and maintaining a stormwater system.<sup>67</sup>

Section 403.709(5), F.S., creates a solid waste landfill closure account within the SWMTF to provide funds for the closing and long-term care of solid waste management facilities. The closure account receives funds from insurance certificates provided as proof of financial assurance. DEP may use those funds to contract with a third party for the closing and long-term care of a solid waste management facility if:

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<sup>58</sup> Section 403.705, F.S.

<sup>59</sup> Section 403.706, F.S.

<sup>60</sup> Fla. Admin. Code R. 62-701.100.

<sup>61</sup> Fla. Admin. Code R. 62-701.600(2).

<sup>62</sup> Section 403.7125(1), F.S.

<sup>63</sup> Section 403.7125(2), F.S.

<sup>64</sup> Fla. Admin. Code R. 62-701.600(2).

<sup>65</sup> Fla. Admin. Code R. 62-701.600(3)(f)2..

<sup>66</sup> Fla. Admin. Code R. 62-701.620(1)

<sup>67</sup> *Id.*

- The facility has or had a DEP permit to operate the facility;
- The permittee provided proof of financial assurance for closure in the form of an insurance certificate;
- The facility is deemed to be abandoned or was ordered to close by DEP;
- Closure is accomplished in substantial accordance with a closure plan approved by DEP; and
- DEP has written documentation that the insurance company issuing a closure insurance policy will provide or reimburse the funds required to complete closing and long-term care of the facility.

The closure account was created within the 2015 implementing bill and is set to expire July 1, 2016.<sup>68</sup>

The DEP provides that in cases where there is a viable insurance policy provided for the purposes of financial assurance, the contractor or the DEP can be reimbursed by the insurance company for the allowable closure costs covered by the financial assurance related insurance policy. Currently, there are five solid waste management facilities that are covered by insurance policies and require closure work by contractors to minimize adverse environmental impacts.<sup>69</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 373.227, F.S., to:

- Prohibit modification of a CUP allocation during the permit term if documented conservation measures beyond those required in the CUP, including best management practices, result in decreased water use, and require WMDs to adopt rules providing water conservation incentives, which may include limited permit extensions; and
- Prohibit the reduction of permitted water use authorized by a CUP for agricultural irrigation during the term of the CUP if actual water use is less than permitted use due to weather, crop disease, nursery stock availability, market conditions, or changes in crop type.

**Section 2** amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

**Section 3** amends s. 373.467, F.S., to revise the membership requirements for the Harris Chain of Lakes Restoration Council. One member must be a person with experience in environmental science or regulation, rather than an environmental engineer. It requires an attorney and an engineer, rather than individuals that have training in either discipline. It also clarifies that the two members, who are residents of the county, are not required to meet any of the other requirements of membership to be appointed to the council. As the statute is currently written, it appears those two members are prohibited from meeting any of the other requirements for membership. The bill provides that the Lake County legislative delegation may waive the

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<sup>68</sup> Ch. 2015-222, s. 53, Laws of Fla.

<sup>69</sup> DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

qualifications for membership on a case-by-case basis for good cause. The bill provides that resignation by a council member, or removal of a council member for failure to attend three consecutive meetings without an excuse approved by the chair of the committee results in a vacancy on the council.

**Section 4** amends s. 373.705, F.S., to require the WMDs to promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, and water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

**Section 5** amends s. 378.209, F.S., to provide that if the beneficial use of a clay settling area has been extended, the rate of reclamation requirements and financial assurance requirements for phosphate mines do not become applicable until the beneficial use of the area is completed.

**Section 6** amends s. 403.061, F.S., to require the DEP to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. Waters classified under this section must have the same water quality criteria as that for Class III waters. This new classification will allow utilities to withdraw water for potable use from a waterbody classified as Class II or III, so long as it does not require significant alteration of permitted treatment processes or prevent compliance with applicable state drinking water standards. Regardless, this classification or the inclusion of treated water supply as a designated use of a surface water does not prevent a surface water used for treated potable water supply from being reclassified as water designated for potable water supply (Class I).

**Section 7** amends s. 403.067, F.S., to allow the DEP to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.<sup>70</sup>

**Section 8** amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in the provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

**Section 9** amends s. 403.709, F.S., to delete the July 1, 2016 expiration date for the solid waste landfill closure account within the Solid Waste Management Trust Fund.

**Section 10** amends s. 403.713, F.S., to provide that a local government may only institute a flow control ordinance after it owns, and actively uses, a resource recovery facility and the local government proves the necessity of instituting flow control to ensure sufficient materials for that facility. The bill also provides that a flow control ordinance does not limit the ability of other entities and districts to contract for waste management services.

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<sup>70</sup> See Fla. Admin. Code R. 62-306.400.

The bill also specifies that landfill gas-to-energy systems or facilities are not a resource recovery facility for purposes of exercising flow control authority, meaning that flow control ordinances may not be enacted that require waste to be sent to a landfill gas-to-energy system or facility.

**Section 11** amends s. 403.861, F.S., to require the DEP to establish rules concerning the use of surface waters for treated potable public water supply.

The bill provides that when a construction permit is issued to construct a new public water system drinking water treatment facility to provide potable water using a surface water of the state that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the DEP must add treated potable water supply as a designated use of the surface water segment.

The bill provides that for existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, and the surface water classification does not include potable water as a designated use, the DEP shall add treated potable water supply as a designated use of the surface water segment.

**Section 12** reenacts s. 373.414(17), F.S., due to changes made by the bill.

**Section 13** provides an appropriation for the 2016-2017 fiscal year of \$2,339,764 in nonrecurring funds to the DEP from the Solid Waste Management Trust Fund for the closing and long-term care of solid waste management facilities. The DEP provides that it has requested \$1,000,000 for fiscal year 2016-2017 for similar closure activities.<sup>71</sup>

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>71</sup> DEP, *House Bill 589 Agency Analysis* (Jan. 4, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

**B. Private Sector Impact:**

The bill may have a negative, indeterminate fiscal impact on rate payers if potable water supply systems must use more expensive treatment options in order to treat water from a Class III water body and if those costs are passed on to rate payers. The DEP reports that this is possible but unlikely.<sup>72</sup>

The bill may have a positive, indeterminate fiscal impact on phosphate mine operators by exempting them from the financial assurance requirements concerning the reclamation of a clay settling area when its beneficial use has been extended, until its beneficial use has been completed.

**C. Government Sector Impact:**

The bill could have a negative, indeterminate fiscal impact on local governments if a flow control ordinance may only be adopted after a local government owns, actively uses, and proves the necessity of instituting flow control when securing funding for a resource recovery facility.

The DEP provides that incidental expenditures are estimated to range from \$10,000 to \$20,000, associated with initial rulemaking requirements associated with the treated potable water classification.<sup>73</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 5 of the bill states that reclamation requirements do not apply to a constructed clay settling area “if the beneficial use of such area has been extended.” This wording is somewhat unclear. There is no provision in statute or rule that defines what “beneficial use” is in relation to clay settling areas or who determines whether the beneficial use has been completed.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 373.227, 373.323, 373.467, 373.705, 378.209, 403.061, 403.067, 403.201, 403.709, 403.713, and 403.861.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environmental Preservation and Conservation on January 20, 2016:**

For constructed clay settling areas, the CS provides that if the beneficial use of a clay

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

settling area has been extended, the rate of reclamation and financial assurance requirements do not become applicable until the beneficial use of the area is completed.

Section 403.709, F.S., establishes the solid waste landfill closure account within the Solid Waste Management Trust Fund. The subsection establishing the account expires July 1, 2016. The CS removes the sunset provision.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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