

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

AGRICULTURE
Senator Siplin, Chair
Senator Bullard, Vice Chair

MEETING DATE: Monday, April 11, 2011

TIME: 1:00 —4:00 p.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Siplin, Chair; Senator Bullard, Vice Chair; Senators Alexander, Garcia, Hays, Montford, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SM 852 Hays (Identical HM 9)	Supporting the Marketing of Florida Seafood; Urges the Congress of the United States to support the marketing of Florida seafood. EP 03/10/2011 Favorable CM 03/29/2011 Favorable AG 04/11/2011	
2	CS/SB 1514 Environmental Preservation and Conservation / Latvala (Similar H 1001, Compare H 651)	Permitting of Consumptive Uses of Water; Requires consumptive use permits to be issued for a period of 20 years. Eliminates requirements for permit compliance reports. Provides an additional weighting factor that the governing board may consider when determining which alternative water supply projects to select for financial assistance. Requires each water management district to provide a report to the Governor and the Legislature, etc. EP 03/30/2011 Fav/CS AG 04/11/2011 BC	
3	Presentation from the Gulf Coast Claims Administrator for the Victim's Compensation Fund (Kenneth Feinberg)		
4	Representative of Farm Workers Association of Florida and farm workers regarding type and high incidences of illness suffered by farm workers who worked in the muck farms around Lake Apopka.		
5	Representative of SJWMD regarding buy out of muck farms around Lake Apopka		

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.)

Prepared By: The Professional Staff of the Agriculture Committee

BILL: SM 852

INTRODUCER: Senator Hays and Senator Gaetz

SUBJECT: Memorial urging Congress to support the marketing of Florida seafood.

DATE: March 30, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Favorable
2.	McCarthy	Cooper	CM	Favorable
3.	Looke	Spalla	AG	Pre-meeting
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the United States Congress to support the marketing of domestic seafood generally and Florida seafood specifically.

Specifically, the memorial urges that Congress allocate import tariffs generated from marine and fishery product imports to promote domestic and Florida seafood. It also urges that Congress dedicate funds from import tariffs to a national seafood marketing fund to promote domestic seafood products.

II. Present Situation:

Seafood Production for Florida and the United States

Fishery products are composed of both “edible” and “nonedible” products. Edible products are those fit for human consumption and are generally labeled “seafood.” Nonedible products are not, though some may be used as feed ingredients for animals. The U.S. imported 5.2 billion pounds of edible products worth \$13.1 billion in 2009. Shrimp accounts for 29 percent of the total, or \$3.8 billion.¹

Florida’s commercial production of seafood in 2009 was valued at more than \$152 million. There are approximately 13,000 licensed commercial fishermen and aquaculturists in the state.

¹ U.S. Dep’t of Commerce, NOAA Fisheries: Office of Science and Technology, *Fisheries of the United States – 2009: Foreign Trade*, available at: http://www.st.nmfs.noaa.gov/st1/fus/fus09/06_trade2009.pdf (last visited 03/24/2011).

The total economic impact from seafood harvesting activities was valued at more than \$600 million in 2009.²

Initial Deepwater Horizon Explosion

At approximately 10:00 p.m. on April 20, 2010, the Transocean drilling rig known as Deepwater Horizon exploded in the Gulf of Mexico with the loss of 11 missing and presumed dead crewmembers.³ With the resulting leakage of crude oil and natural gas from the well site, the Deepwater Horizon disaster is now considered by many to be the largest single environmental disaster in United States history.

At the time of the explosion, the Deepwater Horizon rig was moored approximately 45 miles southeast of the Louisiana coast. Drilling operations were being conducted at a sea depth of 5,000 feet and had progressed more than 18,000 feet below the sea floor where commercial oil deposits were discovered. The site, known as the Mississippi Canyon Block 252, is estimated to hold as much as 110 million barrels of product.^{4,5}

On April 22, 2010, the Deepwater Horizon rig capsized and sank. Two days later, underwater cameras detected crude oil and natural gas leaking from the surface riser pipes attached to the well-head safety device known as the blowout preventer. The blowout preventer malfunctioned and failed to shut off flow out of the well-head.

Initial estimates assessed leakage at 1,000 barrels per day. The estimate was subsequently revised to 5,000 barrels per day.⁶ Estimates about the flow rate from the broken well were a subject of controversy, with various scientists calculating different rates from the official government estimates. The actual daily rate of leakage was somewhere between 52,700 and 62,200 barrels per day. “The emerging consensus is that roughly five million barrels of oil were released by the Macondo well, with roughly 4.2 million barrels pouring into the waters of the Gulf of Mexico.”⁷ On August 4, 2010, BP reported that the “static kill” method effectively stopped the oil leak. Work on the relief well was completed on September 19, 2010, which sealed the well with a cement plug. The final incident report issued by then Governor Crist

² E-mail from Nelson Mongiovi, Director, Department of Agriculture and Consumer Services, Division of Marketing and Development, dated March 3, 2011, (on file with the Senate Committee on Environmental Preservation and Conservation).

³ Wall Street Journal, Deepwater Horizon Rig Disaster – Timeline, available at <http://online.wsj.com/article/SB10001424052748704302304575213883555525958.html> (last visited 03/24/2011).

⁴ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6: Stopping the Spill: The Five-Month Effort to Kill the Macondo Well, available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Containment%20Working%20Paper.pdf> (last visited 3/26/2011).

⁵ A barrel of oil is equivalent to 42 U.S. gallons.

⁶ WSJ.com Deepwater Horizon Rig Disaster – Timeline.

⁷ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 3: The Amount and Fate of the Oil, available at <http://www.oilspillcommission.gov/sites/default/files/documents/Updated%20Amount%20and%20Fate%20of%20the%20Oil%20Working%20Paper.pdf> (last visited 3/25/2011). “By initially underestimating the amount of oil flow and then, at the end of the summer, appearing to underestimate the amount of oil remaining in the Gulf, the federal government created the impression that it was either not fully competent to handle the spill or not fully candid with the American people about the scope of the problem.”

showed that 2,000 tons (500,000 gallons) of oil had been recovered from Florida's shoreline as of August 26, 2010.⁸

Florida Response

Governor Crist declared a state of emergency on April 30, 2010, as a result of the spreading oil spill in the Gulf of Mexico and included Escambia, Santa Rosa, Okaloosa, Walton, Bay, and Gulf counties in the emergency declaration.⁹ The initial executive order was amended on May 3, 2010, to include Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, and Sarasota counties.¹⁰ Subsequently, Charlotte, Lee, Collier, Monroe, Dade, Broward, and Palm Beach counties were added to the declaration.¹¹

Florida's emergency response system began immediate operations, which continued through the capping of the well.¹² The cost to Florida in terms of response costs, damage to Florida's economy and business community, individual workers who have lost jobs, decrease in property values, commercial fisheries and restoration of environmental damage cannot be calculated because of the ongoing nature of the effects.

As reported by the Governor's Gulf Oil Spill Economic Recovery Task Force at their monthly meeting in October 2010, state and local government institutions in Florida have been granted \$130 million in funding from BP to support environmental response and economic recovery efforts.¹³

Award	Amount
1. Response and Recovery Costs	
a. Booming/Consultant Cost	\$40,000,000
b. State Response Cost	\$10,000,000
2. Tourism	\$32,000,000
3. Natural Resource Damage Assessment	\$8,000,000
4. Employment and Training Activities	\$7,000,000
5. Research Impact on Gulf of Mexico	\$10,000,000
6. Mental Health Care	\$3,000,000
7. Fish and Shell Fish Testing and Marketing	\$20,000,000

On December 29, 2010, BP reported that it had invested nearly \$1.3 billion in Florida.¹⁴ The majority of those payments, 85 percent, were to individuals and business to offset economic losses from the oil spill.

⁸ Situation Report #114 (Final), Deepwater Horizon Response, available at http://www.dep.state.fl.us/deepwaterhorizon/files/sit_reports/0810/situation_report114_082610.pdf (last visited 03/25/2011).

⁹ Office of the Governor, Executive Order Number 10-99, dated April 30, 2010.

¹⁰ Office of the Governor, Executive Order Number 10-100, dated May 3, 2010.

¹¹ Office of the Governor, Executive Order Number 10-106, dated May 20, 2010.

¹² The operations transitioned to a monitoring status on August 27, 2010.

¹³ Governor's Gulf Oil Spill Economic Recovery Task Force, created by Executive Order No. 10-101. See the October 28, 2010 Report for detailed information on funding from BP.

¹⁴ BP Investments and Payments - Florida, Dec 29, 2010, available at <http://www.floridagulfresponse.com/go/doc/3059/979815/> (last visited on 3/25/11).

Effect of the Oil Spill on Florida's Fisheries

The spill caused the closure of 88,522 square miles of federal waters to fishing, and affected hundreds of miles of shoreline, bayous, and bays. In addition to closure of federal waters, the Florida Fish and Wildlife Conservation Commission (FWC) in conjunction with other state agencies, declared parts of Escambia County closed to harvesting of saltwater fish, crabs and shrimp.¹⁵ The closure was in effect from June 14, 2010, to July 31, 2010, for saltwater fish and to August 17, 2010, for shrimp.¹⁶ State waters were reopened to all commercially harvested species on September 15, 2010, by FWC Executive Order 10-46.¹⁷

From April until July, several efforts were made to stop the flow of oil from the broken well. Most were unsuccessful. Finally, on July 15, 2010, (87 days after the blowout) the leaking well at the Deepwater Horizon site was capped and oil discharge into the ocean was stopped (the "top kill"). On September 19, 2010, 152 days after the April 20 blowout, Admiral Thad Allen announced that the well was "effectively dead."¹⁸

The Deepwater Horizon oil spill crippled Florida's seafood industry. Consumers across the nation were wary of eating any seafood from the Gulf of Mexico. Seafood sales plummeted immediately after the event. Many restaurants around the state began to put notices out that they were not serving seafood from the Gulf of Mexico. Staff at the Florida Department of Agriculture and Consumer Services (DACS) have documented that consumer confidence still remains unusually low. The public perception is that seafood from the Gulf of Mexico is tainted.¹⁹

Several polls have been conducted on behalf of DACS since the Deepwater Horizon incident. One highlight of the polls shows that 8 months after the first survey in May 2010, 61 percent of respondents said they were cautious and not buying as much seafood. Further, results show that Florida consumers remained "more concerned about":

- The long term-effects on availability (42 percent);
- Price increases due to spill (54 percent);
- Safety of Gulf seafood (48 percent); and
- Potential of unforeseen risks (49 percent).²⁰

¹⁵ Press Release, Florida Fish and Wildlife Conservation Commission, *Oil forces partial fishing closure in Escambia County* (June 13, 2010) available at http://74.174.224.46/search?q=oil+forces&site=default_collection&client=default_frontend&proxystylesheet=default_frontend&output=xml_no_dtd (last visited 03/25/2011).

¹⁶ Press Release, Florida Fish and Wildlife Conservation Commission, *Closed shrimp-harvesting area in Escambia Co. reopens* (June 13, 2010) available at: http://www.myfwc.com/NEWSROOM/10/statewide/News_10_X_OilSpill39.htm (last visited 03/25/2011).

¹⁷ Florida Fish and Wildlife Conservation Commission, Order No. EO 10-46, *Reopening of State Waters of the Gulf of Mexico that were closed in response to the Deepwater Horizon Oil Spill* (Sep. 15, 2010) available at http://myfwc.com/media/310640/EO_10_46_ReopenStateWatersGulfDeepwaterHorizon.pdf (last visited 03/25/2011).

¹⁸ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Staff Working Paper No. 6.

¹⁹ See *supra* note 2.

²⁰ See *supra* note 2.

Florida's commercial fishermen continue to harvest quality seafood from the Gulf of Mexico and Atlantic Ocean, yet their sales are lagging. One of DACS' goals is to restore and improve Florida's seafood sales and the livelihoods of all involved in the state's commercial fishing industry. This can only be accomplished by assuring consumers and commercial buyers that Florida seafood products are safe, fresh, and plentiful.²¹ For example, in a report to the Senate Committee on Agriculture on January 11, 2011, the Department of Agriculture and Consumer Services reported that the "Florida Gulf Safe" program, which stamped Florida seafood products with a recognizable seal that guaranteed the product as safe to eat, resulted in positive responses from 49% of consumers who said that they would be more likely to purchase Florida seafood stamped with the seal.

III. Effect of Proposed Changes:

SM 852 urges the Congress of the United States to support the marketing of Florida seafood. Specifically, the memorial urges Congress to:

- Allocate moneys generated from fishery product import tariffs for marketing Florida seafood;
- Pass legislation to create a national seafood marketing fund using fishery product import tariffs to finance the activities; and
- Urges the Florida Congressional Delegation to work with representatives of other seafood-producing states to promote domestic seafood.

Copies of the memorial are to be distributed to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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.

²¹ See *supra* note 2.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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.)

Prepared By: The Professional Staff of the Agriculture Committee

BILL: CS/SB 1514

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Permitting of Consumptive Uses of Water

DATE: April 5, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	Fav/CS
2.	<u>Akhavein</u>	<u>Spalla</u>	<u>AG</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | ☒ | Statement of Substantial Changes |
| B. AMENDMENTS..... | ☐ | Technical amendments were recommended |
| | ☐ | Amendments were recommended |
| | ☐ | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) requires water management districts (WMD) to issue 20-year consumptive use permits (CUP). It eliminates an applicant's requirement to provide reasonable assurances to a WMD in order to receive 20-year CUP. It also eliminates the requirement that permit holders submit a 10-year compliance report for their CUPs. The CS requires WMD governing boards to modify existing permits, if requested by the permit holder, to comply with the new requirements. The CS specifies how WMDs should evaluate CUP applications in mandatory reuse zones but exempts agricultural uses from this requirement. The CS creates a new type of permit called a "sustainable water use permit" for public water utilities. The CS adds an additional criterion to the list of factors a WMD governing board must consider when funding a water supply development project. Finally, the CS requires the WMDs, in consultation with the Department of Environmental Protection (DEP), to examine options to better coordinate CUPs with water supply planning and report findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives.

This CS substantially amends s. 373.236, 373.250, 373.2234, 373.243 and 373.707 and creates s. 373.255, Florida Statutes. It also creates an unnumbered section of law.

II. Present Situation:

Permitting of Consumptive Uses of Water

The Water Resources Act of 1972 (Act) provides for a two-tiered administrative structure governing water quality and consumption.¹ The Department of Natural Resources (now the DEP) was given general supervisory authority to coordinate statewide efforts for water management.² In addition, the Act created six WMDs along hydrological boundaries.³ Each WMD has broad regulatory authority for managing water resources and has ad valorem taxing authority to raise revenue for water management purposes.⁴ One of the most important aspects of the Act was the establishment of minimum flows and levels for the state's surface waters and groundwaters.⁵ The goal of establishing such levels is to ensure there will be enough water to satisfy consumptive use and public purposes, such as swimming, boating and environmental protection. By establishing minimum flows and levels for non-consumptive use, water managers, theoretically, will be able to establish how much water is available for consumptive use.

The WMDs administer the CUP program pursuant to Part II, ch. 373, F.S. The program includes permitting, compliance and enforcement. Any entity or person who wants to use water for certain types of activities, except those exempted by statute or rule, is required to obtain a CUP. These permits are issued for finite durations and, upon expiration, must be renewed. No entity or type of use is given priority over another. However, when two or more applications are pending for a quantity of water that is not available to satisfy both permits, the DEP or governing board grants the permit to the applicant whose activities best serve the public interest. In this instance, preference is also given to applications for renewal over initial applications.⁶

Currently, the DEP and the WMDs may issue a CUP for a period of 20 years if requested, provided there is sufficient data that provides reasonable assurance that the conditions of the permit will be met during the duration of the permit. A CUP may be issued for period of up to 50 years if the related construction bonds for waterworks and waste disposal facilities require a longer period. In addition, the DEP and a WMD may require compliance reporting every 10 years as a condition of the permit.⁷ CUPs for the development of alternative water supplies must be granted for periods of at least 20 years and require compliance reporting. Both the Southwest Florida and South Florida WMDs allocate enough water in their respective CUPs to satisfy the expected usage at the end of the CUP's duration. For example, an applicant requests a 100,000 gallon per day CUP for 20 years. The applicant expects 15 percent usage increase over the duration of the CUP. The Southwest Florida and South Florida WMDs will allocate 115,000 gallons per day on day one of the CUP to account for the increased demand 20 years later.

¹ The act was based on the first four chapters of *A Model Water Code*. Frank E. Maloney, et al., *A Model Water Code with Commentary* (Univ. of Fla. Press 1972).

² Section 373.026(7), F.S.

³ In 1977, the Florida Legislature dissolved the Ridge and Lower Gulf Coast WMD and divided its territory between the South Florida and Southwest Florida WMDs. See ch.77-104, s. 113, Laws of Fla.

⁴ Fla. CONST. art. VII, s. 9.

⁵ Maloney, *supra* note 1. See also s. 373.042(1), F.S.

⁶ See s. 373.223, F.S.

⁷ Chapter 2010-205, s. 55, Laws of Fla.

Section 373.219, F.S., gives the WMDs the authority to define the requirements for issuance of these permits. Such requirements, however, must follow a set of conditions enumerated in s. 373.223(1), F.S. These conditions state a three-prong test applicants must meet for the water use to be accepted:

- Is the use a reasonable-beneficial use as defined in statute;
- Will the use interfere with any presently existing legal use of water; and
- Is the use consistent with the public interest?

Pursuant to their rulemaking authority, each WMD has adopted rules that detail when and what type of permit, individual or general, an applicant may need.⁸

Generally, WMDs require a CUP when:

- The planned withdraw exceeds 100,000 gallons per day, or
- The outside diameter of the groundwater well is six inches or larger, or
- The outside diameter of the withdrawal pipe from a surface water is four inches or larger, or
- The total withdrawal capacity of the system is one million gallons per day or larger.

Some exceptions to these general guidelines exist and are generally based on the individual hydrologic conditions of certain areas within the district. Traditional exemptions for this permitting program include, single family homes or duplexes, fire fighting water wells, salt water use and reclaimed water use.

Reuse of Reclaimed Water

The promotion of reuse of reclaimed water is established in ss. 403.064 and 373.250, F.S., as a formal state objective. The DEP and WMDs maintain the largest and most comprehensive inventory of permitted reuse systems in the country. The inventory allows the state to monitor progress on reclaimed water efforts and further promote and expand its uses in Florida. In addition, the inventory provides municipalities and utilities interested in developing reuse programs access to other communities and utilities that have already implemented reuse programs.⁹ Reuse of reclaimed water is used to supplement use of potable water sources for public use purposes. Those purposes may include:¹⁰

- Public access areas and landscape irrigation,
- Agricultural irrigation,
- Groundwater recharge and indirect potable reuse,
- Industrial,
- Toilet flushing,
- Fire protection, and
- Wetlands.

⁸ See the following Florida Administrative Code rules for each district's criteria: 40A-2 (Northwest Florida); 40B-2 (Suwannee River); 40C-2 (St. Johns River); 40D-2 (Southwest Florida); and 40E-2 (South Florida).

⁹ Florida Dep't of Environmental Protection, *2009 Water Reuse Inventory*, available at http://dep.state.fl.us/water/reuse/docs/inventory/2009_reuse-report.pdf (last visited Mar. 28, 2011).

¹⁰ *Id.* at 5.

Wastewater facilities having permitted capacities of 0.1 million gallons per day (mgd) or greater provide annual reports to the DEP for inclusion in the reuse inventory.¹¹ In 2009, there were a total of 548 wastewater facilities with a combined permitted capacity of 2,497 mgd and a total actual flow of 1,555 mgd. Not all facilities have reuse programs; however, the total permitted capacity of reuse is 1,559 mgd. In 2009, 673 mgd of reclaimed water was reused.¹² The reclaimed water was used to irrigate 276,471 residences, 533 golf course, 873 parks and 306 schools.¹³ As may be expected, reuse in the St. Johns River, Southwest Florida and South Florida WMDs accounted for nearly 90 percent of all reuse in 2009.¹⁴ These three WMDs are the only ones where mandatory reuse zones have been created by local governments.¹⁵

Mandatory Reuse Zones

Mandatory reuse zones are established by local governments and prohibit the use of other water sources when reclaimed water is available. Regulating reuse is not as simple as traditional sources of water. The WMDs contend that reuse falls under the regulatory authority of Part II, ch. 373, F.S., which governs permitting of consumptive uses of water. On the other hand, utilities contend that reuse is a product they created and therefore have sole discretionary control over it.¹⁶ Because of this, potential conflicts of regulatory authority arise in mandatory reuse zones. To address this situation, the St. Johns River WMD and a local government have developed ordinance language that allows for reuse in these zones unless the WMD authorizes another water source.¹⁷ However, better coordination is needed between the WMDs, local governments and public water utilities.

Alternative Water Supply Development

Passed during the 2005 Legislative Session, SB 444 added major revisions to Part I, ch. 373, F.S. It marked the first time in Florida that alternative water resource development, and the money for such, was implemented. The amendments provided numerous changes to Florida water protection and alternative water supply development programs. The primary goal of SB 444 was to create a \$100 million annual funding program entitled the “Water Protection and Sustainability Program” to assist in the implementation of many existing water protection and development programs.¹⁸ In addition, funding was provided for a new alternative water supply development program. Section 373.707(8)(f), F.S., requires the WMD governing boards to prioritize financial assistance for development of alternative water supplies. The governing boards may establish factors to determine funding but must give significant weight to nine criteria contained in this subsection.

¹¹ See rule 62-610, F.A.C.

¹² See *supra* note 9, at 3.

¹³ See *supra* note 9, at 2.

¹⁴ See *supra* note 9, at 7.

¹⁵ Florida Dep’t of Environmental Protection, *Connecting Reuse and Water Use: A Report of the Reuse Stakeholders Meetings*, available at http://www.dep.state.fl.us/water/reuse/docs/reuse-stake-rpt_0209.pdf (last visited Mar. 28, 2011).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ See ch. 2005-291, s. 3, Laws of Fla. Also, state funding has not been provided for alternative water supply development for the past two fiscal years.

III. Effect of Proposed Changes:

Section 1 amends s. 373.236, F.S., to require the WMDs to issue 20-year CUPs. Reasonable assurance from the applicant that the conditions of the permit will be met over the life of the CUP is no longer required. Applicants may request a shorter duration. It removes the requirement that WMDs inform agriculture of the availability of 20-year CUPs. The changes made to this section of the CS make this requirement obsolete. Additionally, the CS eliminates the requirement that permit holders submit 10-year compliance reports to the DEP or the governing board of a WMD. The CS allows CUP holders to request permit modification to bring them into compliance with these changes.

Section 2 amends s. 373.250, F.S., to add a new section related to mandatory reuse zones. The CS requires the WMDs to recognize mandatory reuse zones established by local governments. When evaluating a CUP application for use in a mandatory reuse zone, a WMD must consider the following:

- If reclaimed water is available and technically and environmentally feasible for the proposed use, a WMD shall presume it is economically feasible as well. The applicant has the burden of proof to show otherwise;
- Applicants in these zones are required to consider the feasibility of reclaimed water for nonpotable uses. This requirement extends to all regulated water uses, except for those that are exempt from permitting; and
- In a mandatory reuse zone, reclaimed water use is given priority over all other water sources for nonpotable use. Using reclaimed water is required if it is technically, environmentally and economically feasible.

The CS does not limit the ability of a reuse utility, local government or special district from prohibiting using potable water for nonpotable uses when reclaimed water can meet the demand. The CS exempts agricultural uses on agricultural lands from the provisions of this section; however, it does not affect the authority of a WMD to consider reuse for agricultural permits.

Section 3 creates s. 373.255, F.S., to create a new type of water use permit called a “sustainable water use permit.” The CS directs the WMDs to implement this permit program for public water utilities. Specifically the program:

- Provides for a single permitting process authorizing water use from multiple sources;
- Emphasizes alternative water sources;
- Encourages storage of excess surface water flows or water from alternative water supplies in reservoirs, aquifer storage and recovery wellfields or other means of storage for recovery;
- Allows recovery of stored water;
- Allows groundwater usage during droughts; and
- Preserves traditional water sources for future generations.

In its application, a public water utility must identify each source it may draw from and demonstrate, for each source, that the withdrawal meets the three-prong test in s. 373.223(1), F.S., and noted previously in this analysis.

The permit must specify all sources a utility may withdraw from and the conditions under which a withdrawal may occur. However, it may be issued without specifying the quantity of water that may be withdrawn from each source. The CS specifies that these permits are issued for 20 years with reasonable assurances for renewal in the absence of quantifiable changed conditions.

Sections 4 and 5 amend ss. 373.2234 and 373.243, respectively, to provide conforming changes for the changes contained in this CS for issuance of 20-year CUPs.

Section 6 amends s. 373.707, F.S., to add an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

Section 7 creates an unnumbered section of law. The CS requires each WMD, in coordination with the DEP, to examine options to better coordinate CUPs with water supply planning by extending and reconciling CUP durations so they expire and can be renewed simultaneously in a given basin. Each WMD must report its findings and recommendations to the Governor, President of the Senate and Speaker of the House of Representatives by January 1, 2012.

Section 8 provides an effective date of July 1, 2011.

Other Potential Implications:

In creating a new type of water use permit outside of the normal permitting process contained in s. 373.229, F.S., the CS puts public water utilities in a unique position. No other category of user may have access to this new permit type. The effect of this provision will create the beginning of a permitting hierarchy by placing a higher priority on public water supply permitting over all other legal existing users. This will have a negative impact on agriculture and other water users because they will likely have a lower priority when it comes to decisions about allocating water. Additionally, a permit may be issued to a public water utility without specifying the quantity of water allocated from each source it is permitted to draw from. The WMDs have expressed concern that this ties up the entire allocation for each water source. For example, if a public water utility has a 50 mgd permit and is permitted to draw from groundwater, surface water and a reservoir, it may draw 50 mgd from any of the three sources alone or a combination of the three. Under this scenario the permitting WMD would have to reserve a 50 mgd allocation for the public water utility from each source, or 150 mgd. This effectively ties up 100 mgd more than the permitted allocation. Clearly, it is not in the public interest to tie up three times the volume of water needed for one entity, thereby making that water unavailable to any other legal existing user.

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.

B. Private Sector Impact:

CUPS

Costs for preparing CUP applications will decrease because applicants will no longer have to provide reasonable assurances they can meet the conditions of CUPs for their duration in order to receive 20-year permits. Additionally, compliance reporting costs will be eliminated as the report is no longer required. For applicants in the Southwest or South Florida WMDs, if there is not enough water to adequately satisfy their application requests, they may be required to provide their own water sources, either through development or purchase, or not conduct the activity they requested for the CUP. Developing or buying water allocations is a significant expense but can only be evaluated on a case-by-case basis. Thus, the fiscal impact cannot be determined at this point.

Reuse

Applicants for CUPs in mandatory reuse zones will bear the burden of proving that using reclaimed water is not economically feasible for their purposes. Agricultural operations will not bear this burden as they are exempt.

Sustainable Use Permit

Allowing public water utilities to access their total allocations from any of the sources they are permitted to draw from may have negative impacts on existing and future allocations for current permit holders and future applicants. The costs associated with any potential impacts cannot be determined.

C. Government Sector Impact:

CUPS

Costs for reviewing CUP applications will decrease as reasonable assurance will no longer be included in the application. Additionally, costs for reviewing compliance reports will be eliminated as the report is no longer required.

Reuse

The WMDs expect they can meet the requirements of this section of the CS with existing staff and resources.

Sustainable Use Permit

Although the WMDs currently administer the CUP program for public water utilities, creating a new permit process will require additional expenses and staff time. The WMDs expect they can meet the requirements of this section of the CS with existing staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 March 30, 2011:

Agricultural uses for water are exempt from the mandatory reuse zone requirements contained in this CS. The WMDs still have the authority to consider the feasibility of using reclaimed water in any permit for agricultural use of water. The CS modifies one criterion of the sustainable use permit to allow capture and recovery from alternative water supply sources. Lastly, the CS adds an additional criterion to the list of significant factors a WMD governing board must consider when determining alternative water supply development funding. The specific criterion is whether the project provides additional storage capacity of surface water flows to ensure sustainability of the public water supply.

B. Amendments:

None.



598404

LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 185 - 229
and insert:

Section 3. Section 189.4156, Florida Statutes, is amended
to read:

189.4156 Water management district technical assistance;
local government comprehensive planning.—

(1) Water management districts shall assist local
governments in the development of local government comprehensive
plan elements related to water resource issues as required by s.
373.711, including the permitting of consumptive uses of water



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for local governments and special districts.

(2) Any local government or special district obtaining a consumptive use permit for water supply or a drinking water permit issue under s. 403.861 may not exceed the permitted capacity authorized by such permits, but may at its discretion, use less than the permitted capacity.

(3) The operation or operating quantities of a facility permitted under a water supply permit or a drinking water permit issue under s. 403.861 below the permitted capacity shall be the sole responsibility of the local government or the special district. A water management district does not have the statutory or contractual authority concerning such operation and operating quantities.

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

And the title is amended as follows:

Delete lines 18 - 24

and insert:

providing applicability; amending s. 189.4156, F.S.;
revising provisions relating to water management
districts assisting local governments in the
development of local government comprehensive plan
elements; amending ss.



426320

LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 279 and 280
insert:

Section 6. Subsections (2) and (3), paragraph (a) of subsection (4), and paragraph (a) of subsection (6) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt



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Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 12 cents per ton beginning January 1, 2007; 18 cents per ton beginning January 1, 2008; 24 cents per ton beginning January 1, 2009; and 45 cents per ton beginning close of business December 31, 2011. To pay for seepage mitigation projects, including hydrological structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this subsection for each ton of limerock and sand sold shall be 15 cents per ton beginning on January 1, 2007, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment



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plant upgrade, as determined in an open, public solicitation process. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.

(3) The mitigation fee and the water treatment plant upgrade fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the water treatment plant upgrade fees must be accompanied by a form prescribed by the Department of Revenue. The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2012, and ending December 31,



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2017, or upon issuance of water quality certification by the department for mining activities within Phase II of the Miami-Dade County Lake Belt Plan, whichever occurs later, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. Beginning January 1, 2018, the proceeds of the water treatment plant upgrade fee, less administrative costs, must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a). ~~As used in this section, the term "proceeds of the fee" means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fees.~~

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation and water treatment plant upgrade fees authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fees may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not



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apply to the fees imposed by this section.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. The proceeds of the water treatment plant upgrade fee that are deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures, as authorized in an environmental resource permit issued by the department for mining activities within the Miami-Dade County Lake Belt Area. The proceeds of the water treatment plant upgrade fee that are transferred to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment



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plant that treats water coming from the Northwest Wellfield in Miami-Dade County. As used in this section, the terms "upgrade a water treatment plant" or "water treatment plant upgrade" means those works necessary to treat or filter a surface water source or supply or both.

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

And the title is amended as follows:

Delete lines 2 - 26

and insert:

An act relating to environmental regulation; amending s. 373.236, F.S.; requiring consumptive use permits to be issued for a period of 20 years; providing exceptions; deleting legislative findings requiring the Department of Environmental Protection to provide certain information to agricultural applicants; eliminating requirements for permit compliance reports; removing the authority of the department and the water management district governing boards to request permit compliance reports and to modify or revoke consumptive use permits; providing for the modification of existing consumptive use permits under certain conditions; amending s. 373.250, F.S.; providing requirements for water management districts in evaluating applications for the consumptive use of water in mandatory reuse zones; providing applicability; creating s. 373.255, F.S.; requiring water management districts to implement a sustainable



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water use permit program for public water utilities;
providing program criteria; providing permit
application and issuance requirements; providing
requirements for permit monitoring, compliance, and
performance metrics; amending ss. 373.2234 and
373.243, F.S.; conforming cross-references; amending
s. 373.41492, F.S.; authorizing the use of proceeds
from the water treatment plant upgrade fee to pay for
specified mitigation projects; requiring proceeds from
the water treatment plant upgrade fee to be
transferred by the Department of Revenue to the South
Florida Water Management District and deposited into
the Lake Belt Mitigation Trust Fund for a specified
period of time; providing, after that period, for the
proceeds of the water treatment plant upgrade fee to
return to being transferred by the Department of
Revenue to a trust fund established by Miami-Dade
County for specified purposes; conforming a term;
amending s. 373.707, F.S.; providing an



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LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 144
and insert:

Section 1. Subsections (4), (6), and (7) of section 373.236, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

373.236 Duration of permits; compliance reports.—

(4) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a



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13 compliance report by the permittee every 10 years during the
14 term of a permit. This review shall be limited to a 3-month
15 period from the 10-year date. During the review, the department
16 or governing board may make only one request for additional
17 information. The Suwannee River Water Management District may
18 require a compliance report by the permittee every 5 years
19 through July 1, 2015, and thereafter every 10 years during the
20 term of the permit. This review shall be limited to a 3-month
21 period from the 10-year date. During the review, the department
22 or governing board may make only one request for additional
23 information. This report shall contain sufficient data to
24 maintain reasonable assurance that the initial conditions for
25 permit issuance are met. Following review of this report, the
26 governing board or the department may modify the permit to
27 ensure that the use meets the conditions for issuance. Permit
28 modifications pursuant to this subsection shall not be subject
29 to competing applications, provided there is no increase in the
30 permitted allocation or permit duration, and no change in
31 source, except for changes in source requested by the district.
32 This subsection shall not be construed to limit the existing
33 authority of the department or the governing board to modify or
34 revoke a consumptive use permit.

35 (6)(a) The Legislature finds that the need for alternative
36 water supply development projects to meet anticipated public
37 water supply demands of the state is so important that it is
38 essential to encourage participation in and contribution to
39 these projects by private-rural-land owners who
40 characteristically have relatively modest near-term water
41 demands but substantially increasing demands after the 20-year



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42 planning period in s. 373.709. Therefore, where such landowners
43 make extraordinary contributions of lands or construction
44 funding to enable the expeditious implementation of such
45 projects, the governing board ~~water management districts~~ and the
46 department may grant permits for such projects for a period of
47 up to 50 years to municipalities, counties, special districts,
48 regional water supply authorities, multijurisdictional water
49 supply entities, and publicly or privately owned utilities, with
50 the exception of any publicly or privately owned utilities
51 created for or by a private landowner after April 1, 2008, which
52 have entered into an agreement with the private landowner for
53 the purpose of more efficiently pursuing alternative public
54 water supply development projects identified in a district's
55 regional water supply plan and meeting water demands of both the
56 applicant and the landowner.

57 (b) A permit under paragraph (a) may be granted only for
58 that period for which there is sufficient data to provide
59 reasonable assurance that the conditions for permit issuance
60 will be met. Such a permit shall require a compliance report by
61 the permittee every 10 ~~5~~ years during the term of the permit.
62 The report shall contain sufficient data to maintain reasonable
63 assurance that the conditions for permit issuance applicable at
64 the time of district review of the compliance report are met.
65 After review of this report, the governing board or the
66 department may modify the permit to ensure that the use meets
67 the conditions for issuance. This subsection does not limit the
68 existing authority of the department or the governing board to
69 modify or revoke a consumptive use permit.

70 (7) A permit approved for a renewable energy generating



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71 facility or the cultivation of agricultural products on lands
72 consisting of 1,000 acres or more for use in the production of
73 renewable energy, as defined in s. 366.91(2)(d), shall be
74 granted for a term of at least 25 years at the applicant's
75 request based on the anticipated life of the facility if there
76 is sufficient data to provide reasonable assurance that the
77 conditions for permit issuance will be met for the duration of
78 the permit; otherwise, a permit may be issued for a shorter
79 duration if requested by the applicant ~~that reflects the longest~~
80 ~~period for which such reasonable assurances are provided. Such a~~
81 ~~permit is subject to compliance reports under subsection (4).~~

82 (8) If requested by an existing consumptive use permit
83

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

85 And the title is amended as follows:

86 Delete lines 4 - 12

87 and insert:

88 the Department of Environmental Protection or
89 governing board to limit its review following issuance
90 of a consumptive use permit and make only one request
91 for additional information; providing for the
92 governing board rather than the district to grant
93 permits for certain projects; extending the term to 10
94 years from 5 years for submitting compliance reports;
95 allowing a permit to be issued for a shorter period if
96 requested by the applicant;



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LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 41 and 42
insert:

Section 1. Subsection (1) of section 373.019, Florida
Statutes, is amended to read:

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

(1) "Alternative water supplies" means salt water; brackish
surface and groundwater; surface water captured predominately
during wet-weather flows; sources made available through the



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addition of new storage capacity for surface or groundwater; ~~it~~
water that has been reclaimed after one or more public supply,
municipal, industrial, commercial, or agricultural uses; the
downstream augmentation of water bodies with reclaimed water;
stormwater; and any other water supply source that is designated
as nontraditional for a water supply planning region in the
applicable regional water supply plan. The term does not include
nonbrackish groundwater supply development.

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

And the title is amended as follows:

Delete line 3

and insert:

water; amending s. 373.019, F.S.; redefining the term
"alternative water supplies" to exclude the
development of nonbrackish groundwater supplies;
amending s. 373.236, F.S.; requiring



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LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment

Delete line 196
and insert:
an alternative water supply as defined in s. 373.019(1) in off-



916276

LEGISLATIVE ACTION

Senate

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House

The Committee on Agriculture (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 317 and 318
insert:

Section 7. Section 403.08853, Florida Statutes, is created
to read:

403.08853 National Pollutant Discharge Elimination System
permits for water management districts and local governments.-

(1) Whenever any National Pollutant Discharge Elimination
System permit issued pursuant to s. 403.0885 or any associated
administrative order issued pursuant to s. 403.088 directly or
indirectly causes a local government or water management



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district to incur costs in excess of \$10 million to comply with one or more water-quality-based effluent limitations, the department, in consultation with the affected local government or water management district, shall conduct a use attainability analysis consistent with 40 C.F.R. s. 131.10(g). The \$10 million threshold for this requirement is met if any National Pollutant Discharge Elimination System permit or associated administrative order, together with other National Pollutant Discharge Elimination System permits or administrative orders for discharges to the same water body, directly or indirectly cause compliance costs to exceed this threshold through application of related effluent limitations for the same water quality parameter.

(2) The department and the water management district or local government shall present the results of the use attainability analysis at one or more public hearings before the Environmental Regulation Commission. Based on the results of the use attainability analysis and information received from the public, the Environmental Regulation Commission shall adopt appropriate relief mechanisms, including, without limitation, a temporary variance or subcategorization of use, if it determines that attainment of the designated use is not feasible based on any of the factors set forth in 40 C.F.R. s. 131.10(g).

(3) Ten days before the adoption of any relief mechanism by the Environmental Regulation Commission, the department shall submit any such relief mechanism and supporting information to the United States Environmental Protection Agency for review pursuant to 33 U.S.C. s. 1313(c).



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

And the title is amended as follows:

Between lines 29 and 30

insert:

creating s. 403.08853, F.S.; requiring that the
Department of Environmental Protection conduct a use
attainability analysis if a permit issued under the
National Pollutant Discharge Elimination System causes
a water management district or local government to
incur costs in excess of a specified amount; requiring
that the results of the analysis be presented at a
public hearing before the Environmental Regulation
Commission; requiring that the commission adopt relief
mechanisms under certain circumstances; requiring that
the department submit certain information to the
United States Environmental Protection Agency before
the adoption of any relief mechanism;