

STORAGE NAME: h1971.nrep.doc
DATE: April 18, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 1971 (PCB NREP 01-5)
RELATING TO: Water Supply Policy
SPONSOR(S): Committee on Natural Resources and Environmental Protection and Rep(s) Harrington
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0
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I. SUMMARY:

HB 1971 addresses a wide range of water policy issues. Major provisions of the bill:

- o Link land use planning and decisions to the availability of water supply by requiring local government comprehensive plans to provide for water supply to meet projected water use demands and by providing concurrency requirements for water supply availability.
- o Require the Department of Environmental Protection (Department) or the governing board of a water management district (WMD) to consider incompatibility with an approved regional water supply plan when determining if a proposed water use is consistent with the public interest.
- o Create an agricultural water conservation program, require that participation in the program be considered when reviewing water use applications and determining the duration of a water use permit, and provide a limited exemption for best management practices or interim measures implemented as part of the program.
- o Require applicants for wastewater treatment facility permits to implement reuse to the extent that it is found to be feasible in a reuse feasibility study.
- o Require each WMD that has an approved regional water supply plan to finance at least one public-private alternative water supply project in FY 2001-02 and FY 2002-03.
- o Create a Water Supply Task Force to review water resource and water supply development projects included in the WMDs' regional water supply plans, determine what additional funding is needed to implement such projects, determine if additional incentives or statutory changes are needed to assure the future availability of water, and report its finding and recommendations to the Governor and the Legislature.

HB 1971 would have indeterminate fiscal impacts on local governments and the WMDs.

The bill provides that the act shall take effect upon becoming law.

On April 11, 2001, the Committee on Natural Resources and Environmental Protection adopted a "strike everything" amendment to PCB 05, and then passed PCB 05 as amended. The amendment is described in Section VI, "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES."

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. HB 1971 would result in increased regulations relating to land use planning and decisions. Local Governments would be required to amend their comprehensive plans and implement water supply provisions in land use planning and concurrency.

B. PRESENT SITUATION:

Florida has a system of laws that govern growth management that include:

- the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3244, F.S.;
- Chapter 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs;
- Chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and
- Chapter 187, F.S., the State Comprehensive Plan.

Local Comprehensive Plan

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, Florida Statutes, (F.S.), establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements. The plans must contain data, analyses, policies, goals, and objectives relating to eight mandatory elements on the following issues: Capital improvements; Future land use; Traffic Circulation; General sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; Conservation; Recreation and open space; Housing; and Intergovernmental coordination. The capital improvements element must consider the need for, and the location of, public facilities. Further, general law requires that comprehensive plans of coastal local governments contain a coastal element.

Section 163.3177, F.S., requires local comprehensive plans to include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use. This element provides for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. In addition, it may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge. The element must also describe the problems and needs and the general

facilities that will be required for solution of the identified problems and needs. The element must also include a topographic map depicting any areas adopted by a regional water management district as prime groundwater recharge areas.

In addition, the local comprehensive plans are required to include a conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources. Local governments shall assess their current, as well as projected, water needs and sources for a 10-year period. This information shall be submitted to the appropriate agencies.

The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the department was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. This minimum criteria must require: that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by the department on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.). In 1999, the department reviewed 12,000 local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Concurrency

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, Chapter 163, Florida Statutes) is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available for, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. See section 163.3180, Florida Statutes. Generally, these LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. The intent is to keep new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Implementation of concurrency requirements for potable water considers the ability of a potable water system to meet the projected demand of a specific development project or change in the land use designation. However, it may not consider the total maximum water use of such a system allowed under a consumptive use permit or the source of the water or impacts of the proposed

demand upon natural systems, existing water sources, or the minimum flows and levels. To satisfy this requirement, sanitary water, solid waste, drainage and potable water facilities must be in place and available to serve the new development prior to the issuance of a certificate of completion.

State Comprehensive Plan

The state comprehensive plan, Ch. 187, F.S., was enacted in 1985, to provide long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include: for example, land use; urban and downtown revitalization; public facilities; transportation; water resources; and natural systems and recreational lands. Section 186.009, F.S., provides the growth management portion of the state comprehensive plan. This section requires the integration of state policy for future growth as it relates to land development, air quality, transportation, and water resources. This section does not require long-term availability of water supplies for approved land development.

Florida Water Resources Act

The 1972 Florida Water Resources Act (Chapter 373, F.S.) created the current administrative system for managing and regulating the state's water resources. At the state level, the Department of Environmental Protection (Department) is responsible for the administration of state water policy. However, s.373.016(5), F.S., directs the Department to delegate to the WMDs, to the maximum extent practicable, the exercise of its authority under Chapter 373. Chapter 373 is divided into five parts, dealing with water planning, water use permitting, water well regulation, management and storage of surface waters, and WMD finance and taxation.

One of the most significant provisions of the Act is the so-called "three prong test" used in evaluating applications for consumptive use permits. Applicants must establish that the proposed use of water:

- Is a reasonable-beneficial use (s. 373.019, 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);
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.

The 1997 Legislature enacted Ch. 97-160, Laws of Florida, addressing water resources and water supply development to ensure the availability of water supply for all existing and future reasonable-beneficial uses. The WMDs were assigned primary responsibility for water resource development, which refers to regional water resource management strategies and implementation programs; the construction, operation, and maintenance of major public facilities projects; and related technical assistance to local governments and water utilities. Local governments, water utilities, and regional water supply authorities are responsible for water supply development, which refers more specifically to facilities for water collection, production, treatment, transmission, or distribution for sale, resale, or end use. This 1997 legislation also addressed regional water supply planning, requiring the WMDs to identify those regions within their respective boundaries where water shortages were likely to occur within the next 20 years. For those regions identified, the WMDs are required to develop regional water supply plans that include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy for restoring and maintaining established minimum flows and levels;
- Applicable technical data and information from the district water management plan; and

- o Established minimum flows and levels within the region.

Wastewater Treatment and Reuse

Reuse is integral to water resource management and wastewater management in Florida. In 1999, about 450 domestic wastewater treatment facilities provided 520 million gallons of reclaimed water per day for beneficial purposes. Reuse capacity represents about 47% of the total permitted domestic wastewater treatment capacity in Florida. Among the benefits of reuse are the reduction in demands on surface and ground waters, eliminating discharges to sensitive surface waters, ground water recharge, reducing the need for costly investment in new water sources and supplies, and saving the consumer money in irrigation costs.

Section 403.064, F.S., states, "The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest." Under current law, applicants for permits to construct or operate a wastewater treatment facility located within a water resource caution area must prepare a reuse feasibility study as part of their permit application. Such studies must be prepared in accordance with Department guidelines that are adopted by rule. If a permit applicant determines upon completion of the study that reuse is feasible, the applicant must implement reuse to the extent it is determined to be feasible. Determination by the applicant is final. Staff of the Department provided the following cost comparison for surface water disposal and public access reuse:

Surface Water Disposal Cost Estimate – 10 Million Gallons/Day

Treatment (1)

Activated sludge, nitrification, lime treatment, filters, chlorination and dechlorination

Capital	\$36.10 million
Operation and Maintenance	\$ 1.89 million/year

Total Present Worth \$53.50 million

Public Access Reuse Cost Estimate – 10 Million Gallons/Day

Treatment (1)

Activated sludge, filtration, wet weather storage, and chlorination for high level disinfection

Capital	\$25.40 million
Operation and Maintenance	\$ 1.19 million/year

Transmission (2)(5)	\$ 1.42 million/year
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Total Present Worth \$49.44 million

Notes:

(1) Treatment Cost Estimate Source: Culp/Wesner/Culp, 1979, costs updated to current \$\$

(2) Transmission Cost Estimate Source: Proc Urban Water Reuse, 1992, costs updated to current \$\$

(3) All costs exclude residuals/biosolids treatment and disposal

(4) Present worth value for 20 years @ 8.875%

(5) Reuse transmission/distribution system based on average cost for 9 systems in Broward County

Department staff indicated that costs can vary significantly on a case-by-case basis. Transmission costs are an obvious example, with costs rising as the distance from the wastewater facility to the reuse location(s) increases. Highly developed, urban areas face substantial costs in retrofitting and creating new distribution systems as well.

Conservation Rate Structures

Conservation rate structures result in higher rates for users of large amounts of water. Such rates can be tailored to encourage reductions by large water users without impacting those who use small amounts. The Southwest Florida Water Management District issued an emergency order on March 20, 2001, to protect the environment and public water supply from the adverse effects of extreme drought conditions. Among the provisions of the order is a requirement that Tampa Bay Water member governments and their wholesale customers reduce use by 5 percent, either through conservation rate structures or other measurable methods. The WMDs, generally, have encouraged the implementation of conservation rate structures and in evaluating the efficiency of a proposed water use consider whether conservation rate structures, if applicable to the proposed use, have been implemented.

C. EFFECT OF PROPOSED CHANGES:

HB 1971 addresses a wide range of water policy issues. Major provisions of the bill:

- Link land use planning and decisions to the availability of water supply by requiring local government comprehensive plans to provide for water supply to meet projected water use demands and by providing concurrency requirements for water supply availability.
- Require the Department of Environmental Protection (Department) or the governing board of a water management district (WMD) to consider incompatibility with an approved regional water supply plan when determining if a proposed water use is consistent with the public interest.
- Create an agricultural water conservation program, require that participation in the program be considered when reviewing water use applications and determining the duration of a water use permit, and provide a limited exemption for best management practices or interim measures implemented as part of the program.
- Require applicants for wastewater treatment facility permits to implement reuse to the extent that it is found to be feasible in a reuse feasibility study.
- Require each WMD that has an approved regional water supply plan to finance at least one public-private alternative water supply project in FY 2001-02 and FY 2002-03.
- Create a Water Supply Task Force to review water resource and water supply development projects included in the WMDs' regional water supply plans, determine what additional funding is needed to implement such projects, determine if additional incentives or statutory changes are needed to assure the future availability of water, and report its finding and recommendations to the governor and the legislature.

HB 1971 would have indeterminate fiscal impacts on local governments and the WMDs.

The bill provides that the act shall take effect upon becoming law.

Note: The provisions of HB 1971 are described in detail in the "Section-By-Section Analysis" that follows.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 153.11, F.S., authorizing county commissions to adopt rate structures and to establish rates or rate structures that encourage and promote water conservation and the use of reclaimed water for non-potable purposes; explicitly precluding WMD regulation or supervision of rates, rate structures, fees, and charges set by county commissions.

Section 2. Amends s. 163.3167, F.S., requiring local government comprehensive plans to provide for the long-term availability of water supplies for approved land development.

Section 3: Amends s. 163.3177, F.S., requiring local government comprehensive plans to be coordinated with the appropriate water management district's regional water supply plans pursuant to s. 373.0361, F.S.; requiring local government comprehensive plans to provide for the availability of ground and surface water resources for current and future water supplies and potential alternative water supplies in their future land use plan element.

Section 4: Amends s. 163.3180, F.S., making water supply availability subject to concurrency requirements.

Local governments are required to rely upon a WMD determination that sufficient water supplies are available as the best available data for water supply concurrency decisions; alternatively, if such a determination is not made, local governments must rely upon the regional water supply plan subsequently developed by the WMD. In either case, a local government is not required to rely upon the WMD data if more current and accurate data are available. Water supply concurrency requirements are met if:

- There is currently adequate ground or surface water supply to meet the projected water supply needs of new development, in addition to meeting the needs of existing legal users and natural systems;
- There is currently adequate ground or surface water supply in combination with an actual or proposed alternative water supply to meet the projected water supply needs of new development. In order to be eligible for consideration as an alternative water supply, the facility must be permitted and under construction within 5 years of the issuance of a certificate of occupancy. or
- There is currently adequate alternative water supply to meet the projected water supply needs of new development.

Section 5. Amends s. 373.0361, F.S., requiring the Department or the governing board of a WMD to consider, in the water use permitting process, incompatibility with an approved regional water supply plan when determining if a proposed water use is consistent with the public interest.

Section 6. Amends s. 373.236, F.S., requiring the Department or the governing board of a WMD to give additional consideration to granting permits for the maximum duration of 20 years when the applicant can demonstrate that best management practices have been implemented as developed through the agricultural water conservation program to be established by the Department of Agricultural and Consumer Services.

Section 7. Amends s. 373.406, F.S., providing a exemption from regulation under Part IV of Chapter 373 (Management and Storage of Surface Waters), F.S., for interim measures or management practices developed through the agricultural water conservation program to be established by the Department of Agricultural and Consumer Services and designated by rule as having minimal individual or cumulative adverse impacts to water resources.

Section 8. Creates s. 373.621, F.S., recognizing the significant value of agricultural water conservation in the protection and efficient use of water resources; providing that additional consideration be given to water use permit applicants who implement agricultural water conservation practices when granting water use permits or evaluating competing water use applications.

Section 9. Amends s. 403.064, F.S., requiring reuse feasibility studies in areas other than water resource caution areas; removing final determination by the applicant of reuse feasibility; and requiring implementation of reuse to the extent it is found to be feasible.

Section 10. Creates s. 570.080, F.S., directing the Department of Agricultural and Consumer Services, in conjunction with the United States Department of Agriculture, the Department, the WMDs, and agricultural interests, to establish an agricultural water conservation program.

The program is to include a coordinated cost share program for irrigation system retrofit and mobile irrigation laboratory evaluations for water conservation; development and implementation of voluntary best management practices that increase efficiency in the use and management of water for agricultural production; and technical assistance to the WMDs in developing and implementing a methodology for efficiently allocating water for agricultural irrigation.

Section 11. Providing for WMD financing of public-private alternative water supply development.

During FY 2001-2002 and FY 2002-2003, each WMD that has developed a regional water supply plan will finance a public-private project that converts an existing water storage facility into an alternative water supply facility that is part of a regional supply system or that creates an operational alternative water supply facility within 24 months of the effective date of the act. Requests for proposals are to be issued to all interested parties and preference given to projects with proposed capacity of at least two billion gallons, and that either use existing facilities that are not currently part of a regional system or can be operational with 24 months.

Section 12. Creates the "Water Supply Task Force."

The Governor is to appoint a task force made up of the following members:

- The Commissioner of Agriculture and Consumer Services or designee;
- The Secretary of the Department of Environmental Protection or designee;
- A member of the Public Service Commission;
- Two members representing governmentally owned water supply utilities, one serving 200,000 or more customers and one serving less than 200,000 customers.
- A member from an environmental advocacy organization;
- A member from a regional water supply utility;
- A member from a privately owned water supply utility;
- A member from an industrial or commercial entity self-supplier;
- A member from an agricultural entity self-supplier;
- A professional engineer or hydrogeologist with expertise in water supply and water resource development;
- An individual with experience in public financing of water supply facilities; and
- A member from the real estate development industry.

The broad charge of the task force is to review the water supply and water resource development projects included in the WMDs' regional water supply plans. Issues to be addressed include:

- Estimated amount of water to become available;

- Timetables and estimated costs of construction, operation, and maintenance;
- Sources and amounts of funding budgeted or requested;
- Projects implemented, the amount of money expended, the amount of new water available, and whether that amount is sufficient to meet projected demand;
- Determine if additional funding is needed and, if so, recommend specific sources for such funding and the amount of funding needed; and
- Determine if additional incentives or statutory changes are needed to ensure the sufficient availability of water for existing and future uses.

The task force is required to provide a written report by February 1, 2002, and a final written report by January 15, 2003.

The task force may appoint technical advisory committees. Neither the task force members or committee member may receive remuneration, but members other than public officers or employees will be entitled to reimbursement for travel or per diem expenses. Such reimbursement is to be provided by the Public Service Commission.

The Governor will also appoint an executive director that will serve at the pleasure of the Governor and report to the task force. The Public Service Commission, the Department, and the Department of Community Affairs shall provide other staff and consultants. Funding for the executive director, staff, and consultants shall be provided through the Public Service Commission.

Section 13. Appropriates \$250,000 from the Public Service Regulatory Trust Fund to the Florida Public Service Commission to implement the task force created in the act.

Section 14. Providing an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

A total of \$250,000 is appropriated from the Public Service Regulatory Trust Fund to the Florida Public Service Commission to implement the task force created in the act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

This bill may impact local governments fiscally as local governments are required to amend (1) their future land use elements to address water supply availability and (2) their concurrency requirements to make it applicable to water supply availability. In addition, local governments are required to implement and apply the new concurrency provision.

Some local governments may also be required to implement reuse.

Water Management Districts may also be fiscally impacted as they are required to provide water supply information to local governments.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill has a direct impact on the private sector. Under the bill's provisions, developers will have their request for a comprehensive plan amendment or rezoning delayed if there is not current adequate supply available. This bill also may increase the potential of legislation or the number of litigated issues. By adding water planning to the requirements that comprehensive plan amendments are analyzed against, the ground on which a third party may challenge a comprehensive plan amendment is expanded.

In addition, privately owned wastewater utility may be required to implement reuse.

This bill positively impacts citizens as it requires local governments to provide for long term water supplies. In addition, citizens are benefited as this prevents local governments from approving land use changes that negatively affect the adequacy of water supplies.

D. **FISCAL COMMENTS:**

N/A

IV. **CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise the revenue in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. **COMMENTS:**

A. **CONSTITUTIONAL ISSUES:**

N/A

B. **RULE-MAKING AUTHORITY:**

N/A

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C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2001, the Committee on Natural Resources and Environmental Protection adopted a "strike everything" amendment to PCB 05. The amendment made technical and clarifying changes, added a requirement that the WMDs develop water resource models to assist local governments in developing alternative land use models for evaluating water supply concurrency, added a requirement that DCA and the regional planning councils assist local governments and WMDs in developing regional land use scenarios for testing water supply availability, and added the chair of the Public Service Commission or a designee to the water supply task force. The Committee then passed PCB 05 as amended.

VII. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

W. Ray Scott

Wayne Kiger