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HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS

BILL #: CS/HB 569
RELATING TO: Water supply policy
SPONSOR(S): Representative(s) Russell; Byrd; Harrington and others
TIED BILL(S):

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

- (1) NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill addresses a series of issues related to water policy. Provisions of the bill:

Link land use planning and decisions to the available water supply by requiring local government comprehensive plans to provide that water supply meet projected water use demands.

Require local comprehensive plans to be coordinated with appropriate water management district's regional water supply plans.

Require applicants for wastewater treatment facility permits to implement reuse to the extent that it is found to be feasible.

Provide that all comprehensive plans be amended with the pertinent water supply data and analysis during their next scheduled evaluation and appraisal process or by July 1, 2007.

Direct the water management districts to undertake an effort to develop an illustrative public service program that will provide information on the water levels of aquifers and water bodies.

The bill would take effect upon becoming law.

On December 18, 2001, the Committee on Natural Resources and Environmental Protection adopted a strike amendment that is traveling with the bill. Please see "Amendments or Committee Substitute Changes" section.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

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.

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
- 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.

C. EFFECT OF PROPOSED CHANGES:

The bill deals with three issues related to water supply, in brief, these are: linking water supply plans to growth management plans; promoting greater use of reuse; and creating a public education program regarding aquifer and groundwater health.

Water Supply Planning

The bill creates three new requirements for local government comprehensive plans.

1. They shall now address the long-term availability of water supplies for approved land development.
2. They be coordinated with the appropriate water management district's regional water supply plans pursuant to s. 373.0361, F.S. and that they 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.

3. The water supply provisions required by this bill be accomplished with the next evaluation and appraisal process or by July 1, 2007, whichever occurs first.

Reuse

The bill's provisions provide for a legislative finding that reuse of reclaimed water is a critical component of meeting the state's current and future water supply needs. In conjunction with this finding provisions of the bill direct that all domestic wastewater treatment facilities which are located within, serve a population, or discharge within, a water resource caution area, as a condition of permitting, shall prepare a plan of study addressing reuse feasibility. Applicant's shall be required to implement reuse to the degree that it is feasible, based upon their study.

Public Education

The bill directs the water management districts to implement a public service program that will be designed to provide information that shows water levels of aquifers and water bodies that are critical to water supplies within their district. To accomplish this, the districts are directed to develop partnerships with local media. These programs are to be implemented by December 31, 2002. The information developed by these efforts shall also be submitted to the appropriate legislative committees.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides legislative intent that the bill's provisions be included in the next cycle of comprehensive plan updates.

Section 2: Amends s. 163.3167, F.S., to provide for inclusion of water supply availability data in comprehensive plans.

Section 3: Amends s. 163.3177, F.S., to provide for the inclusion of water supply availability data as a required element in a comprehensive plan.

Section 4: Amends s. 403.064, F.S., to amend requirements for the implementation of reuse as determined by reuse feasibility studies.

Section 5: Creates a public information program to inform people as to the status of aquifers and surface and ground water sources.

Section 6: Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

The bill may impact local governments fiscally as they shall now be required to include certain water supply data in comprehensive plans. Some local governments may also be required to implement reuse as a result of the bill.

The water management districts will incur some additional cost as they provide more information to local governments and develop the public education campaign.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some privately owned wastewater utilities may now be required to implement reuse.

The bill positively impacts citizens as it requires local governments to provide for long term water supplies.

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

The bill does not reduce the percentage of state tax shared with counties and municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On December 18, 2001, the Committee on Natural Resources and Environmental Protection adopted a strike-everything amendment that is traveling with the bill. Detailed below are the changes and/or differences.

Removes Section 1 which was intent language that directed all local comprehensive plans to meet the new requirements of the legislation by July 1, 2007, or when they undertook their next evaluation or appraisal process. The amendment adds this provision to existing law.

Section 2 of the bill is removed.

Language that directed local governments to determine the availability of ground and surface water was removed. Concern was raised that this would create a duplicative effort between local governments and the water management districts.

Provisions that detailed which specific elements of a comprehensive plan shall now incorporate regional water supply plans were expanded to include the conservation and intergovernmental coordination elements.

A provision was added to expand the definition of "water resource development project," as it related to Florida Forever, to include reuse and stormwater facilities.

A provision was added to allow facilities, currently exempt from Public Service Commission regulation, to supply reuse water for fire fighting purposes.

A provision was added to permit the Department of Environmental Protection to extend water pollution control financial assistance to financial institutions for the purposes of making below-market interest loans. The language is designed to allow for a higher participation rate by financially disadvantaged groups.

Bill section 4, related to reuse, and section 5, creation of a public education program, are unchanged.

VI. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Wayne Kiger

Staff Director:

Wayne Kiger

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AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

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