

**STORAGE NAME:** h0633a.sa.doc  
**DATE:** February 21, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
STATE ADMINISTRATION  
ANALYSIS**

**BILL #:** HB 633  
**RELATING TO:** Water use permits  
**SPONSOR(S):** Representative Argenziano and others

**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 3 NAYS 0
  - (2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
- 

**I. SUMMARY:**

This bill prohibits the issuance of permits for the use of water from any spring (or area around that spring) until the Florida Department of Environmental Protection (DEP) or the appropriate Water Management District (WMD) has established the minimum flows and levels for that spring and related groundwater supplies.

This bill also provides that "all presently existing legal uses of water from springs shall be protected so long as such use is not contrary to the public interest."

This bill appears to have a negative fiscal impact on both state and local governments. See "Fiscal Impact" sections of this analysis for discussion.

*The Committee on State Administration adopted a "strike everything" amendment that substantially alters the bill and removes concerns expressed by the DEP. The amendment is traveling with the bill. The amendment provides that by January 1, 2003, each WMD's priority list for establishing the minimum flows and levels for springs must include all first magnitude springs within state or federally owned lands purchased for conservation purposes. The amendment further provides that the schedule for establishment of spring minimum flows and levels must be commensurate with existing or potential threat to spring flow for consumptive uses. Certain springs, under certain conditions, need not be included on the priority list.*

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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 checked="" type="checkbox"/> | N/A <input 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:

This bill has the effect of prohibiting use of natural resources which may exist on private property. As such, it does not support the principles of less government, or individual freedom.

B. PRESENT SITUATION:

Currently, the Water management Districts (WMDs) evaluate applications for consumptive use withdrawals from springs and connected groundwater based on the permitting criteria in Part II of Chapter 373, F.S.,<sup>1</sup> and the related consumptive use permitting rules.<sup>2</sup> These criteria provide that the withdrawal cannot harm the water resources. There is currently no requirement that a minimum flow and level (MFL)<sup>3</sup> be established for the water source before a permit can be granted, although once established, a proposed withdrawal must not violate an established MFL.

Historically, over-allocation of ground water in some locations has resulted in adverse impacts to springs and their related resources<sup>4</sup>. In other locations, spring flow has been reduced compared to historical flows, but adverse impacts have not been documented. While withdrawal from springs for bottled water is often controversial, by far a more significant impact to spring flow has resulted from groundwater withdrawals for agricultural and public supply from areas which contribute to spring flow.<sup>5</sup>

MFLs are established according to a priority list and schedule prepared each year by the WMDs and approved by the department. The priority is established based on the significance of the water body and the degree of threat to the water body. Certain springs are currently included in the WMD's priority lists.<sup>6</sup>

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<sup>1</sup> Sections 373.203 - 373.250, F.S.

<sup>2</sup> The Florida Administrative Code (FAC) cites are different for each water management district:

- Northwest Florida Water Management District 40A-2, FAC
- Suwannee River Water Management District 40B-2, FAC
- St. Johns River Water Management District 40C-2, FAC
- Southwest Florida Water Management District 40D-2, FAC
- South Florida Water Management District 40E-2, FAC

<sup>3</sup> The MFL defines the point at which further withdrawals would be significantly harmful to the water resource. (Department of Environmental Protection Draft Bill Analysis, HB 633, January 15, 2002).

<sup>4</sup> Department of Environmental Protection Draft Bill Analysis, HB 633, January 15, 2002.

<sup>5</sup> Id.

<sup>6</sup> Id.

C. EFFECT OF PROPOSED CHANGES:

This bill prohibits the issuance of permits for the use of water from any spring (or area around that spring) until the Florida Department of Environmental Protection (DEP) or the appropriate Water Management District (WMD) has established the minimum flows and levels for that spring and related groundwater supplies.

In effect, the bill provides additional protection for springs and their associated water resources by providing a greater degree of protection against inadvertent over-allocation of the water resource.

See "Other Comments" of this analysis for DEP's concerns regarding the effect of this bill. See "Amendments or Committee Substitute Changes" portion of this analysis for discussion of the "strike everything" amendment that is traveling with the bill.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes" section of this analysis

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Not quantifiable. The bill would have a substantial fiscal impact on the WMDs in order to conduct the research, analysis, rulemaking and litigation associated with establishing MFLs for all springs and their connected groundwater where any consumptive use exists or may be requested.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Substantial impact on local governments if MFLs have not been set by the time public utilities need to renew existing permits, or apply for new withdrawals, in springs areas. While local governments are already investigating alternate supplies for future growth, and in some areas for recovery strategies, the bill would require that existing permits could not be renewed if the MFL has not been established.<sup>7</sup> This may require that alternate sources of water need to be located in a very short time, which, if possible, would be very costly.

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<sup>7</sup> Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have significant, if currently indeterminate, economic impacts on the private sector if MFLs cannot be set in a timely manner such that agricultural, public supply and commercial and industrial uses cannot receive permits or renewals of permits.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The DEP provided a number of comments. They noted that the proposed change would prohibit permits for withdrawals from a spring or connected groundwater that would impact the "normal flows" of the spring from being issued until minimum flows and levels were established for the spring and connected groundwater. Although the term "normal flows" is not defined, this would likely require that no permits for new withdrawals, or renewals of previously permitted withdrawals could be issued until the WMDs conduct the necessary research, analysis, and rulemaking (and possible resulting litigation), to adopt MFLs for the water source in question.<sup>8</sup>

According to DEP, this would create a significant new workload for the water management districts in order to establish these MFLs in a timely manner. It probably also would result in the need to change the existing MFL priority lists to delay the establishment of other, perhaps more important MFLs for other types of water bodies such as rivers, lakes and estuaries.<sup>9</sup>

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<sup>8</sup> Id

<sup>9</sup> Id.

DEP further asserts that if the MFL priority lists were not adjusted, and no new resources are available to the WMDs to set these MFLs, then there would be a lengthy period of time when new withdrawals and renewals could not be issued. This would affect existing and proposed public supply, agricultural, and commercial and industrial uses.<sup>10</sup>

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on State Administration adopted a "strike everything" amendment that substantially alters the bill and removes concerns expressed by the DEP. The amendment is traveling with the bill. The amendment provides that by January 1, 2003, each WMD's priority list for establishing the minimum flows and levels for springs must include all first magnitude springs within state or federally owned lands purchased for conservation purposes. The amendment further provides that the schedule for establishment of spring minimum flows and levels must be commensurate with existing or potential threat to spring flow for consumptive uses. Certain springs, under certain conditions, need not be included on the priority list.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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Gip Arthur

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J. Marleen Ahearn, Ph.D., J.D.

<sup>10</sup> Id.