

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 w/CS Water Resources

SPONSOR(S): Troutman

TIED BILLS: **IDEN./SIM. BILLS:** SB 2200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands and Water Resources (Sub)</u>	<u>10 Y, 0 N</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>18Y, 0N w/CS</u>	<u>Lotspeich</u>	<u>Lotspeich</u>
3) <u>Agriculture & Environment Apps. (Sub)</u>	<u>11 Y, 0 N</u>	<u>Dixon</u>	<u>Dixon</u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill amends existing statutory language that allows the Department of Environmental Protection (DEP) and the water management districts (WMDs) to provide water reservations for the protection of fish and wildlife or public health and safety by reserving from use water that would otherwise be available to consumptive use permit applicants. The bill requires DEP or the WMDs to adopt the reservations by rule and requires that the reservations be reviewed every five years in conjunction with the review of the WMDs' review of regional water supply plans. The information used to develop the reservations is subject to independent scientific peer review.

The bill also provides that a WMD may not require the redirection of reclaimed water from one user to another, and that a reuse feasibility study completed for DEP shall be given significant consideration by a WMD in CUP permitting.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1005d.ap.doc

DATE: April 15, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Present Situation

Issue – Water Reservations

Since the 1950’s, Florida has been attempting to address water resource issues. By the end of the 1960’s, steps had been taken to establish a water management structure for the state. Nevertheless water resource problems continued to increase. Problems included increasing areas with saltwater intrusion, water shortages, and destruction of wetlands. A drought in 1970-71 compounded the problems.

A conference, convened in 1971 to address these problems, identified the need for long-range planning based on an enforceable land and water use plan. In response to this recommendation, the Water Resources Act of 1972 (WRA) was passed. This law provided many tools for use by the WMDs and DEP to protect water resources, including authorization to establish water reservations.

The Model Water Code, developed by Dean Frank Maloney of the University of Florida Law School and upon which much of the WRA is based, recognized the need to reserve “unused water to protect the environment as well as reserving water for future development projects.”

Currently, under ss. 373.223(4), F.S., the DEP or a WMD may reserve from use by applicants for consumptive use permit water in quantities and at locations and during seasons “as in its judgment may be required for the protection of fish and wildlife or the public health and safety.” Any such reservation must be accomplished by “regulation.” The statute provides that reservations shall not affect existing legal uses of water “so long as such use is not contrary to the public interest.” Water reservations are required to be periodically reviewed and revised in light of changed conditions.

Once water is reserved, a WMD may not allocate it to consumptive use permittees.

The federal Water Resources Development Act of 2000 requires Florida to adopt water reservations in order to quantify and protect future water to be made available for the natural systems of the South Florida ecosystem, including the Everglades. The South Florida Water Management District is currently in the process of promulgating rules that would provide for these reservations.

The only other time that water reservations have been used was for Payne’s Prairie in 1994. This was done by rule of the St. Johns River Water Management District to reserve a relatively small amount of water from two tributaries to Payne’s Prairie in order to provide protection for fish and wildlife in the Payne’s Prairie State Preserve.

Issue – Reclaimed Water

For many years the state has encouraged the use of treated effluent from domestic wastewater treatment facilities primarily for irrigation purposes. This treated effluent is known as “reclaimed water.” Over the last several years there has been a significant increase in the use of reclaimed water. In some areas of the state there are times when there is insufficient reclaimed water to meet the demand for it.

The WMDs do not currently require a separate CUP to use reclaimed water. When reviewing an application for use of ground or surface water, a WMD will review whether or not all or part of the need can be met with reclaimed water. If use of reclaimed water is feasible, the WMDs require such use, and will not approve a permit for ground or surface water withdrawal. Some of the water management districts are considering incentives for conserving reclaimed water in order to meet the growing demand. There are concerns by some water and wastewater utilities that water management districts may require permits for the use of reclaimed water as an incentive for conservation.

The construction and operation of wastewater treatment plants are regulated by the Department of Environmental Protection (DEP) under Ch. 403, F.S. Section 403.064, F.S, contains provisions for when a wastewater treatment plant will be required to provide reclaimed water, including criteria for the applicant to conduct a reuse feasibility study. If the study finds reuse to be feasible, the applicant shall “strongly consider” implementing it. For a utility that conducts both public water supply and wastewater treatment, the study also serves to satisfy any requirements for a feasibility analysis by utilities under Ch. 373, F.S.

Effect of Proposed Change

Issue – Water Reservations

The bill amends the existing language in ss. 373.223(4), F.S. that allows DEP and the WMDs to use water reservations. The bill requires DEP or the WMDs to adopt water reservations by rule. The bill also requires that the reservations be reviewed every five years in conjunction with the review of the WMDs’ review of regional water supply plans.

By July 1, 2004, or the next required update of a regional water supply plan, any WMD that intends to establish a water reservation must set forth in the regional water supply plan a priority list and schedule for the establishment of proposed reservations, and include an explanation of the reasons and conditions supporting the need for the reservations. Upon written request to DEP or the WMD prior to the establishment of the reservation or prior to the filing of a petition for administrative hearing challenging the reservation, all scientific and technical data, methodologies and models used to develop the reservation shall be subject to independent scientific peer review. The bill sets forth a detailed process for conducting the peer review.

If, after the adoption of the reservation, DEP or the WMD determines that the water needed for the reservation has already been allocated to existing users, or that there is otherwise inadequate water to meet the reservation and the demands of the existing legal users and projected users under the regional water supply plan, DEP or the WMD must expeditiously implement a water recovery or prevention plan to develop additional water supplies to meet the requirements for the reservation or the needs of the existing legal users and projected uses. The recovery or prevention plan must include a timetable for implementing the reservation to allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses.

The bill expressly allows the use of water reservations in conjunction with the Comprehensive Everglades Restoration Plan, provided that they are adopted by rule.

Issue – Reclaimed Water

The bill allows WMDs to require the use of uncommitted reclaimed water in lieu of surface water or groundwater when such use is environmentally, economically, and technically feasible, but prohibits the WMDs from requiring a provider of reclaimed water to redirect the reclaimed water from one user to another.

The bill also provides that a reuse feasibility study completed to satisfy DEP for the construction and operation of a wastewater treatment plant will be given significant consideration by a WMD to satisfy the requirements for a CUP.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.223(4), F.S., relating to water reservations.

Section 2. Amends s. 373.250, F.S., to provide that a WMD may not require the redirection of reclaimed water.

Section 3. Amends s. 403.064, F.S., to provide that a reuse feasibility study shall be given significant consideration by a WMD in CUP permitting.

Section 4. Provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not require counties or cities to spend funds or take an action requiring the expenditure of funds.

2. Other: None

B. RULE-MAKING AUTHORITY:

The bill requires that DEP or WMDs adopt water reservations by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 9, 2003, the House Natural Resources Committee favorably adopted a strike all amendment to HB 1005 and an amendment to the strike-all amendment. The strike all amendment provides the following changes to HB 1005:

- * it deletes the repeal of DEP and WMD authority to adopt water reservations, and includes provisions that require reservations to be adopted by rule, be addressed in regional water supply plans, and be subject to independent scientific peer review;

- * it deletes the prohibition against a WMD requiring a CUP for reclaimed water, and includes a provision prohibiting a WMD from requiring the redirection of reclaimed water;

- * it includes a provision relating to the consideration of a reuse study by a WMD in reviewing a CUP.

The amendment to the strike-all amendment restores existing law regarding the requirements for legislative approval of amendments to the state water resource implementation rule (Rule 62-40) to provide that any amendments to the rule become effective at the conclusion of the next regular session of the Legislature following secretarial adoption of the amendments, without the need for affirmative action by the Legislature.

On April 15, 2003, the House Subcommittee on Agriculture and Environment Appropriations favorably adopted HB 10005 with an amendment. This amends section 373.036(1)(d), Florida Statutes, requiring that all amendments adopted by the department to the Florida Water Plan be approved by an act of the Legislature during the next regular legislative session prior to the implementation of the changes.