

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 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>Lotspeich</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	_____	_____	_____
3) <u>Agriculture and Environment Apps. (Sub)</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill repeals existing statutory language that allows the Department of Environmental Protection (DEP) and the water management districts (WMDs) to provide water reservations by reserving from use water that would otherwise be available to consumptive use permit applicants. Under current law such water can be reserved for the protection of fish and wildlife or public health and safety.

The bill revises the current process for the Legislative approval of amendments to the Water Resource Implementation Rule (Rule 62-40, Florida Administrative Code) to require affirmative action by the Legislature. The bill also prohibits a WMD from requiring a permit for the consumption or use of domestic wastewater effluent.

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

STORAGE NAME: h1005.doc
DATE: March 12, 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 – Florida Water Plan and Rule 62-40

Section 373.036, F.S. directs the DEP to develop the “Florida Water Plan” (Plan). The Plan is required to include, inter alia, goals, objectives and guidance for the development and review of programs, rules, and plans relating to water resources. The “water resource implementation” rule serves as this part of the Plan. Rule 62-40 is the water resource implementation rule. Any additions to this part of the Plan are to be adopted by DEP as part of Rule 62-40. Any amendments to Rule 62-40 are required to be adopted by the Secretary of DEP and submitted to the President of the Senate and Speaker of the House within seven days after said adoption. Currently, these amendments will not become effective until the conclusion of the next regular session of the Legislature following their adoption.

DEP has recently proposed significant changes to Rule 62-40. Four separate administrative challenges have been filed objecting to the proposed changes. These cases will be consolidated and heard sometime in the near future. The changes will not become effective until the entry of a final order by the administrative law judge approving the rule changes and the conclusion of the next regular legislative session following the entry of the final order.

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 – Consumptive Use Permit for 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. 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.

Effect of Proposed Change

Issue – Florida Water Plan and Rule 62-40

The bill provides that any amendments to Rule 62-40 become effective only by an *affirmative act* of the Legislature in the next regular session following the secretarial adoption of the amendments.

Issue – Water Reservations

The bill repeals the existing language in ss. 373.223(4), F.S. that allows DEP and the WMDs to use water reservations. The bill amends s. 373.1502, F.S. to expressly allow the use of water reservations in conjunction with the Comprehensive Everglades Restoration Plan, provided that they are adopted by rule.

Issue – Consumptive Use Permit for Reclaimed Water

The bill prohibits a WMD from requiring a permit for the use of reclaimed water.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.036 regarding the requirements for legislative approval of amendments to the state water resource implementation rule.

Section 2. Amends s. 373.1502, the Comprehensive Everglades Restoration Plan Regulation Act, to allow for the use of water reservations.

Section 3. Amends s. 373.219 to prohibit the requirement for a permit for the use of reclaimed water.

Section 4. Repeals ss. 373.223(4) relating to water reservations.

Section 5. 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

2. Other: None

B. RULE-MAKING AUTHORITY: Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES