

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1044

SPONSOR: Senators Argenziano and Fasano

SUBJECT: Permitting of Consumptive Uses of Water

DATE: March 9, 2003 REVISED: 03/12/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>NR</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that a water management district may not issue a consumptive use permit unless the affected local government has been timely notified of the proposed permit and given an opportunity to file an objection with the district’s governing board. Also, the bill requires an applicant for a consumptive use permit to obtain all necessary land use and zoning permits and show the use is consistent with the comprehensive plan of the affected local government, in addition to the existing criteria for obtaining a permit.

This bill amends the following sections of the Florida Statutes: 373.219 and 373.223.

II. Present Situation:

The State of Florida uses more fresh water than any other state east of the Mississippi River. Agriculture is the largest single user of water, followed by public supply, self-supplied commercial or industrial uses, thermoelectric power plants, and self-supplied domestic users.¹ In order to protect the water supply of existing residents, and the rivers, lakes, and aquifers from harm, the state has implemented a consumptive use permitting program.

Chapter 373, pt. II, F.S., the Florida Water Resources Act of 1972, codified as amended at ss. 373.203-373.249, F.S., provides the exclusive authority for requiring permits for the consumptive use of water. To the extent that these provisions are in conflict with any other provision, limitation, or restriction under any law or ordinance of this state or any political subdivision or municipality, ch. 373, pt. II, F.S., is controlling and the law or ordinance is deemed superseded for the purpose of regulating the consumptive use of water. The five water

¹ See Louis C. Burney, Tom Swihart, and Janet Llewellyn, *Florida Water Resources Journal*, at 27-28 (Oct. 1998).

management districts administer the program for issuance of permits authorizing the consumptive use of water in areas deemed appropriate by the districts.²

The districts have some discretion on the types of activities requiring permits and areas exempted from permitting requirements. Also, the districts have varying thresholds of use, well size, and withdrawal capacity that may not require a permit. Nevertheless, the following uses are subject to the consumptive use permitting program: public water supplies, agricultural and landscape irrigation, contamination clean-up, commercial and industrial uses, and dewatering or mining activities. A permit is not required for domestic consumption.³ The Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district.

A consumptive use permit authorizes the permittee to use water for a particular purpose and is contingent upon the permittee meeting certain permit conditions.⁴ The governing board of a district may consider an application for a permit that involves less than 100,000 gallons per day, and objections to the issuance of the permit, without a public hearing. If the application proposes a use of 100,000 gallons per day or more and no objection is received, the governing board or the Department of Environmental Protection may, after proper investigation by staff, approve the application without a public hearing.⁵

The districts review applications under the guidelines in Ch. 40E-2 and 40E-20 of the Florida Administrative Code. In addition, s. 373.223, F.S., outlines a three-prong test for review of applications. First, the applicant must show the nature of the proposed use is “reasonable and beneficial.” This requires a demonstration that water conservation requirements will prevent excessive or wasteful use. This may include the ability to manage urban demand, efficient irrigation systems, and that the lowest quality of water will be used for the intended purpose. Second, an applicant must show the use is consistent with the public interest. This prong requires evaluating the impact of the proposed use on the state’s resources including environmental, navigation, and minimum flows and levels of the water source, as well as public recreation. Finally, the applicant must assure the district that the proposed use will not adversely impact existing legal users of the water resource.

The governing board of a district may authorize a permittee to transport and use ground or surface water across county boundaries if the use is consistent with the public interest. The district must rely on the following criteria when making this determination:

- The proximity of the proposed water source to the area of use or application.
- Whether impoundments, streams, groundwater sources, or watercourses located geographically closer to the use or application area than the proposed source and if those water resources are technically and economically feasible for transport and use.
- Evaluation of all economically and technically feasible alternatives to the proposed source, “including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.”

² S. 373.216, Fla. Stat. (2002). *See also* s. 373.116(2), Fla. Stat. (2002), which requires applications for consumptive use permits to be filed with a water management district on forms provided by the district’s governing board.

³ S. 373.219(1), Fla. Stat. (2002).

⁴ S. 373.219(1), Fla. Stat. (2002).

⁵ S. 373.229(4), Fla. Stat. (2002).

- Potential environmental impacts resulting from the transport and use of water from the proposed source as compared to the economically and technically feasible alternatives.
- Whether the existing and reasonably anticipated water sources and conservation efforts in the region where the proposed source is located are sufficient to supply water for existing legal uses and reasonably anticipated future needs of that region.
- Consultations with affected local governments.
- Value of existing capital investment by the applicant for water-related infrastructure.
- Consideration of water supply assessments and regional water supply plans.⁶

Permits are issued for fixed durations ranging, in general, from one to twenty years and the districts may also authorize temporary permits.⁷ With the exception of water shortage periods or emergencies, the permittee enjoys certainty of use with the permit. In return, the permittee must implement an approved water conservation plan and report total monthly water use biannually. Each permit must be renewed upon expiration which allows the district to incorporate new rules or standards for existing permits during the renewal process. Permits that have not expired may also be modified at the request of the permittee.⁸ If the modification involves water use of 100,000 gallons or more per day, then the request must be treated as an initial application for a consumptive use permit. Otherwise, the district may, at its discretion, approve the proposed modification if the permittee can show either a change in conditions has resulted in the quantity of water allowed under the existing permit being inadequate or the proposed modification would result in efficient use of water than allowed by the existing permit.⁹

The primary responsibility for water resource development is assigned to the districts and the responsibility for water supply development is placed on local governments, private utilities, and regional water supply authorities.¹⁰ In 1997, the Legislature substantially revised ch. 373, F.S., to create a new process for water supply planning by requiring the districts to establish water supply planning regions and to conduct district-wide assessments of the adequacy of water supply sources, both existing and reasonably anticipated, based on a 20-year projection of the region's needs.¹¹ Assessments for all five water management districts were completed in June 1998 and the last regional water supply plan was approved in July 2001, with the first update of the plans is scheduled for 2004-2005.¹²

⁶ S. 373.223(3), Fla. Stat. (2002). This subsection does not apply to the transport and use of water supplied by the Central and Southern Flood Control Project, to the transport and use of water exclusively for bottled water, to permit applications pending as of April 1, 1998 in the Northwest Florida Water Management District, or to self-suppliers of water for which the proposed water source and use area are located on contiguous private property.

⁷ S. 373.236, Fla. Stat. (2002), provides that permits will be issued for a 20-year period, if requested for that length of time, and if there is sufficient data to demonstrate the permit's conditions will be met for duration of the permit. As a condition of the permit, the district may require a permittee holding a 20-year permit to provide a compliance report every five years during the term of the permit. Also, a district may issue a 50-year permit for a municipality or other governmental body, or for a public works or public service corporation, where a longer period is necessary for retirement of construction bonds for water works and waste disposal facilities.

⁸ S. 373.239(1), Fla. Stat. (2002).

⁹ S. 373.239(2), Fla. Stat. (2002).

¹⁰ S. 373.0831, Fla. Stat. (2002).

¹¹ Ch. 97-160, L.O.F., codified as amended at s. 373.0361, Fla. Stat.

¹² *Agency Coordination of Comprehensive Planning and Water Supply Planning in Florida: Department of Community Affairs, Department of Environmental Protection, Water Management Districts*, at 3 (Nov. 2002).

As part of its growth management legislation, the 2002 Legislature enacted new requirements for the coordination of a local comprehensive plan with a water management district's regional water supply plan.¹³ Each local government, with responsibility for all, or a portion, of their water supply facilities, is required to amend its comprehensive plan to integrate the plan with the appropriate regional water supply plan. A workplan for building adequate water supply facilities to serve existing and new development for at least a 10-year period must be included within the local government's potable water element of its comprehensive plan. This workplan must be adopted and transmitted to the Department of Community Affairs by January 1, 2005 or required submission of the local government's evaluation and appraisal report (EAR), whichever is earlier.

At the local level, a land use that involves consumptive use of water may require rezoning. In a recent case, a trial court upheld the Hernando Board of County Commissioners' decision to deny a land use change that would have allowed the development of two well fields in Spring Hill, Florida.¹⁴ At issue in this case was whether a local government may consider water issues when making a land use decision. Based on the record, the court found the board had relied on competent and substantial evidence to support its decision to deny the rezoning. In part, the board discussed the possibility that the wells "might cause sinkholes, promote saltwater intrusion, and drain nearby wells."¹⁵

III. Effect of Proposed Changes:

Section 1 of the bill provides that a water management district may not issue a consumptive use permit unless the affected local government has been timely notified of the proposed permit and given an opportunity to file objections to the proposed permit with the district's governing board.

Section 2 of the bill requires an applicant for a consumptive use permit to obtain all necessary land use and zoning permits and show the use is consistent with the comprehensive plan of the affected local government, in addition to demonstrating the proposed use is a reasonable-beneficial use, does not interfere with existing legal uses, and is consistent with the public interest.

Section 3 of the bill provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ S. 163.3191(2)(1), Fla. Stat. (2002).

¹⁴ See Dan DeWitt, *County's Decision on Wells Upheld*, St. Petersburg Times (Oct. 1, 2002) (<http://www.sptimes.com/2002/10/01/news-pf/Hernando/County-s-decision-on-.shtml>).

¹⁵ See *id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill would require an applicant for a consumptive use permit to obtain local government approval of a land use change prior to applying for the consumptive use permit. Also, the applicant must demonstrate to the water management district that the proposed use is consistent with the comprehensive plan of each affected local government in order to obtain a consumptive use permit from the district. It is possible that an applicant may assume the expense of obtaining local government approval and be prepared to demonstrate consistency with a local government's comprehensive plan and later be denied a consumptive use permit by the district. However, the existing process allows an applicant to go through the expense of obtaining a consumptive use permit and a local government may then deny the land use change necessary to act on the permit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning:

Requires water management districts to review and update their regional water supply plans and to consider certain local government comprehensive plan elements when updating those plans.