

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 279 Water Resources
SPONSOR(S): Cretul
TIED BILLS: **IDEN./SIM. BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands and Water Resources (Sub)</u>	<u>8 Y, 0 N</u>	<u>McKinnon</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u></u>	<u></u>	<u></u>
3) <u>Local Government & Veterans' Affairs</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 279 amends section 373.219, F.S., to require that no consumptive use permit (CUPs) can be issued without local governments first have been given due notice and the opportunity to object to the issuance of the proposed CUP. The bill also requires that the proposed use of the water be consistent with the affected local government's comprehensive plan and that the permit applicant obtain necessary land use and zoning permits. The bill could potentially have a significant negative economic impact to the development community in pursuing permits in timely manner.

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

Consumptive Use Permits

A consumptive use permit (CUP), also called a water use permit, allows a user to withdraw a specified amount of water, either from the groundwater or from a lake or river. The water can be used to irrigate crops, nursery plants or golf courses, in the manufacturing process of various products such as citrus processing, to operate industrial plants and to provide drinking water for domestic consumption.

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 and permitting of CUPs. 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. CUPs were created as the key mechanism by which the water management districts and the state can regulate the consumption of water for the most beneficial uses and in the best interest of the public.

One of the most significant provisions of the Act is the so-called “three prong test” used in evaluating applications for CUP’s. 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.

Almost all CUPs are issued by the water management districts. State law allows the Department of Environmental Protection, which oversees the water management districts’ activities, also to issue CUPs. (One circumstance where the Department would issue a CUP is an “inter-district transfer” of water, from a source within one water management district to a user in another water management district.)

People or entities wishing to utilize a water supply, whether an aquifer, a river or lake, or an “alternative supply” such as stormwater or salty ocean water – must obtain a CUP if they exceed certain thresholds.

For example, persons who propose withdrawing water through a well whose diameter exceeds 6 inches, or persons who prepare to withdraw more than 100,000 gallons a day, or who are proposing to supplying more their domestic needs, must obtain a CUP. Each water management district's list of thresholds is slightly different, as are the penalties for failure to obtain a CUP prior to withdrawing water.

Effect of Proposed Changes

Currently, section 373.116, F.S., provides notice to local governments and affected citizens as long as prior written request has been received by the local municipality. HB 279 amends section 373.219, F.S., to require that no CUPs shall be issued without local governments first having been given due notice and the opportunity to object to the issuance of the proposed CUP. The bill requires, as part of a CUP application, that an applicant must obtain all necessary land use and zoning permits and approvals. The bill also requires that the application be consistent with the local comprehensive plan.

C. SECTION DIRECTORY:

Section 1. Amends s. 373.219, F.S., to provide that the governing board of a water management district may not issue a permit unless the affected local government has been timely notified of the proposed permit and is given an opportunity to file objections.

Section 2. Amends s. 373.223(1), F.S., to provide that a consumptive use permit can be issued only if the applicant first obtains all necessary land use and zoning permits and the water use is consistent with the local government's comprehensive plan.

Section 3. Providing for an effective date.

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:

Non-recurring Effects: Water management districts would need to change their consumptive use permitting rules and practices to comply with the bill. Some expense would be incurred in this rulemaking process.

Recurring Effects: Indeterminate but significant if the water management district's are required to determine whether a proposed water use is consistent with the local government's comprehensive plan.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Imposing additional requirements on consumptive use permitting and development, and the potential procedural bottleneck created by the bill, could have significant, albeit indefinite, fiscal impacts on the private sector and its timely ability to meet water supply needs.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Water management districts would have to amend current CUP rules to comply with the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether the affected local government or the water management district would be responsible for determining whether the proposed water use is consistent with the local government's comprehensive plan.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES