

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 2602

INTRODUCER: Senator Bennett

SUBJECT: Alternative water resource projects

DATE: April 17, 2008

REVISED: 04/17/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	Fav/1 amendment
2.			AG	
3.			CA	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends s. 163.3177, F.S., relating to the elements of a comprehensive plan to authorize transfer of rural land use credits for certain alternative water resource projects if a local government has established a rural land stewardship area; providing economic and other incentives for certain alternative water supply projects that are incorporated into the rural land stewardship area; amending s. 373.196, F.S.; authorizing a water management district to enter into an agreement with a private entity, a regional water supply authority, or a water utility to provide long-term consumptive use rights in exchange for contributions to alternative water resource development projects; providing an effective date.

This act shall take effect upon becoming a law.

II. Present Situation:

Rural Land Stewardship Area (RLSA):

A RLSA may be established in the local government comprehensive plan as an alternative, incentive-based planning process for furthering rural sustainability. This allows for appropriate

development, while conserving agricultural and environmentally sensitive lands. Implementation requires the voluntary participation of private land owners. The plan identifies sending areas, lands identified as having resources worthy of protection, which are then assigned stewardship credits. These stewardship credits can be transferred to receiving areas, lands identified as more suitable for development. Once land had been designated as a sending area, the resources on that land are protected from development by way of permanent stewardship easements.

Current statutory language directs the local government to establish the stewardship methodology, and allows local governments to assign credits per acre based on various factors.

Local governments may provide several incentives, in addition to the primary incentive of assigning stewardship credits, in order to promote landowner participation.

Water Protection and Sustainability Program:

The Water Protection and Sustainability Program Trust Fund is partly used to fund the Alternative Water Supply Program. According to current statute, water management districts and the state shall share these revenues for the development of alternative water supplies.¹ As evidenced by the February 2008 Sunset Review of the Water Management District, the implementation of this program greatly enhanced the efforts of the districts to create new sources of water by expanding upon existing efforts to provide a dedicated funding source for the development of alternative water supplies.

Consumptive Uses Permits—Competing Applications:

While statute addresses the permitting of consumptive uses of water and establishes the conditions for a permit, the recognition that there may be competing applications for the same water supply, statute also establishes criteria for approving or modifying the applications based on which best serves the public interest. Consideration is also made as to whether the application is a renewal or an initial application.

Preferred Water Supply Source:

Water management districts are authorized to adopt rules that identify and describe preferred water supply sources for consumptive use. These sources shall provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region, while sustaining water resources and natural systems.

Alternative water supply development; long term consumptive use rights; water quality; environmental enhancement and restoration:

Section 373.196, F.S., provides legislative findings regarding Florida alternative water supply policy:

Subsection (1) defines the purposes of this section, and includes findings that:

¹ S. 403.890, F.S.

- Demand for natural supplies of fresh water will continue to increase.
- There is a need for development of alternative supplies to sustain the state's economic growth and lessen the impact on the environment through the use of traditional groundwater sources.
- Cooperation among all interest groups is needed to meet the needs of rapidly urbanizing areas that will supply adequate supplies of water without resulting in adverse effects upon the areas where it is withdrawn.
- Priority funding must be given to the development of alternative supplies.
- Cooperation among all interest groups is needed to develop county-wide and multi-county projects to achieve economies of scale.
- Alternative water supply development must receive priority funding attention to increase available supplies of water to meet existing and future needs.
- All groups should work together in the development of alternative supplies to avoid the adverse impacts of competition for limited supplies.

Subsection (2) provides additional directives relating to alternative water supply development. Included is a finding that funding for water supply development, including alternative supplies, will be a shared responsibility of the state, water management districts, and local entities.

Subsections (3) and (4) both define the roles of the water management districts, local governments, utilities and others regarding alternative water supply development. The roles of the water management districts are: formulation and implementation of strategies and programs; collection and evaluation of data; construction, operation and maintenance of facilities for flood control, storage, and recharge; planning for development in conjunction with local governments and others; and providing technical and financial assistance. The roles of local governments, regional water supply authorities, special districts, and water utilities are: planning, design, construction, operation, and maintenance of alternative water supply development projects; formulation and development of alternative water supply development strategies and programs; planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water; and coordination of activities with appropriate water management districts.

Subsection (5) provides language to ensure that nothing in this act will interfere with the existing rights of entities to continue operating existing water production and transmission facilities or to enter into contracts to meet their respective future needs.

Subsection (6) requires the water management districts to include in their annual budget submissions specific funding allocations that will provide, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. The Suwannee River and the Northwest Florida Water Management Districts are not required to meet this requirement but are encouraged to try to the greatest extent practicable. State funds from the Water Protection and Sustainability Program are available for project construction costs for alternative water supply development projects selected by a water management district for inclusion in the program.

Chapter 163, F.S., requires:

- Comprehensive plans to address water supply sources necessary to meet the existing and projected water use demand for the established planning period.
- That the future land use map be based upon the availability of water supplies.

III. Effect of Proposed Changes:

Section 1

This section of the bill would amend s.163.3177(11)(d), F.S., to establish that the Department of Community Affairs (DCA), in cooperation with the Department of Agriculture and Consumer Services, the Department of Environmental Protection (DEP), water management districts, and regional planning councils, shall provide assistance to local governments in the implementation of paragraph (d)1. of the bill and rule 9J-5.006(5) (1), Florida Administrative Code. This shall include a process by which the DCA may authorize local governments to designate all of portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area within which incentives are applied to encourage the implementation of innovative and flexible planning strategies and creative land use planning techniques.

Paragraph (d)2. would establish that DCA shall encourage participation by local governments of different sizes and rural characteristics in establishing and implementing rural land stewardship areas. This paragraph would also provide for the intent of the legislature regarding the use of rural land stewardship areas.

Paragraph (d)3. would establish that a local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify the DAC in writing of its intent to designate a rural land stewardship area, which shall describe the basis for the designation.

Paragraph (d)4. would provide for specific requirements for a land to be designated a rural land stewardship area, and provides specifications for the plan amendment designated by a rural land stewardship area.

Paragraph (d)5. would provide for the standards for designating a receiving area. Prior to the designation of a receiving area, the local government shall provide the DCA a period of 30 days in which to review a predisposed receiving area for consistency with the rural land stewardship area plan amendment and to provide comments to the local government. This paragraph also provided that at the time of designation of a stewardship receiving area, a listed species survey will be performed. If listed species occur on the receiving site, the developer shall coordinate with each appropriate local, state, or federal agency to determine if adequate provisions have been made to protect those species in accordance with applicable regulation.

Paragraph (d)6. would establish that upon the adoption of a plan amendment creating a rural land stewardship area, the local government shall, by ordinance, establish the methodology for creation, conveyance, and use of transferable rural land use credits, otherwise referred to as stewardship credits, the application of which shall not constitute a right to develop land, nor

increase density of land, except as provided by this section. The total amount of these credits must enable the realization of the long-term vision of goals for the 25-year or greater projected population of the rural land stewardship area, which may take into consideration the anticipated effect of the proposed receiving areas. This paragraph would also establish limitations for the transferable land use credits.

Paragraph (d)7. would provide for incentives for owners of land within rural land stewardship areas to enter into rural land stewardship agreements.

Paragraph (d)8. would establish that the DCA shall report to the Legislature on an annual basis on the results of implementation of rural land stewardship areas authorized by the department, including success and failures in achieving the intent of the Legislature as expressed in this paragraph.

Section 2

This section of the bill would add subsection (7) to section 373.196, F.S., that the state, water management districts, regional water supply authorities, and local governments have inadequate resources to fully address water supply, water storage, water quality improvement, and environmental enhancement and restoration needs of the state. It would provide that it is essential that private entities and land owners be encouraged to participate and contribute to these needs. Therefore, the bill would create the ability for water management districts to enter into agreements with private entities, regional water supply authorities, and water utilities which provide long-term consumptive use rights to provide entities consistent with s. 373.223(1), F.S., based upon innovative and extraordinary contributions to alternative water resource development projects or water quality and environmental enhancement and restoration projects.

Section 3

This section would provide that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill expands incentives available to owners within rural land stewardship areas by offering priority for funding under the Water Protection and Sustainability Program for the development of an alternative water supply project within such area. Direct benefits may include employment opportunities for the construction of alternative water supply projects which would aid in the further development of water supplies for Florida to sustain its economic growth, economic viability, and natural resources.

C. Government Sector Impact:**VI. Technical Deficiencies:**

The following are comments provided by the DEP:

Changes to s. 373.196, F.S.: Florida Water Law is based on allocation of water as a public resource through time limited permits. Upon expiration, a permittee must reapply for the permit as if it is a new application, and meet all new rules. If there is inadequate water for two or more applications, then the water management district governing board has the authority to allocate water to the use that is most in the public interest.

New subsection (d) in s. 163.3177, F.S.: This provision offers incentives for the incorporation of alternative water supply projects in to rural land stewardship agreements, including a funding preference for Water Protection and Sustainability Program funds (WPSP), a preference in the case of completing applications (ss. 373.233, 373.2234, F.S.) and designation as a preferred source. These preferences are problematic for several reasons. Because the alternative water supply is part of a rural land stewardship agreement does not mean that the water provided is in the right location or of the right type to address the most pressing water supply needs – it would not seem appropriate to automatically make these the top priority for WPSP funds. In addition, the provision conflicts with the existing funding priorities for these funds given in s. 373.0831, F.S. and s. 373.1961, F.S. It would also be inappropriate to give these projects a preference in the completing applications test, as this use may not be of the highest public interest. Finally, there are several criteria that need to be met to be designated a preferred source under s. 373.2234, F.S., and it is not apparent that just because a project is incorporated in to a rural land stewardship agreement that it would meet these criteria.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 522034 by Environmental Preservation on April 17, 2008:

This strike-all amendment replaces the term “Xeriscape” with the more commonly accepted term “Florida-friendly landscape” in several sections of statute, and defines the principles of Florida-friendly landscaping to include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling of yard waste, reduction of stormwater runoff, and waterfront protection. It directs the water management districts to use the University of Florida’s Yards and Neighborhoods Program as the primary source for delivering educational programs to individual homeowners and homeowners’ associations. It prohibits homeowners’ associations from enforcing any deed restriction or covenant that prohibits property owners from implementing Florida-friendly landscaping.

The strike-all also grants the water management districts the authority to grant consumptive use permits for periods of up to 50 years to permittees who have entered into agreements with private landowners for the purpose of more efficiently pursuing alternative public water supply development. Such permits shall require a compliance report by the permittee every 5 years during the term of the permit. The report shall contain sufficient data to maintain reasonable assurance that the conditions for permit issuance are met.