

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 Committee on Environment and Natural Resources

BILL: CS/SB 628

INTRODUCER: Environment and Natural Resources Committee and Senator Albritton

SUBJECT: Water Resources

DATE: March 28, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	Fav/CS
2.			IS	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 628 requires the Department of Environmental Protection (DEP) to complete a comprehensive and quantitative needs-based review of the state’s water resources and submit the report to the Governor and the Legislature by January 1, 2021, and every 5 years thereafter. The bill requires DEP to coordinate with private and public sector entities, using any sources of information it deems reasonably reliable. The bill requires the report to:

- Determine the level of need by considering infrastructure funding needs, including, but not limited to, residential, commercial, environmental, agricultural, and industrial needs.
- Be based on a short-term, 5-year planning period and a long-term, 20-year planning period.
- Include water supply infrastructure, water quality protection and restoration, wastewater infrastructure, stormwater infrastructure, flood control infrastructure, and environmental infrastructure.
- Identify potential funding options, including public and private funding options, to meet the anticipated demand on water resources in the state, to comply with the legislative intent that sufficient water be available for all existing and future reasonable-beneficial uses and natural systems, and to avoid the adverse effects of competition for water supplies.

II. Present Situation:

Water Infrastructure

The Florida Section of the American Society of Civil Engineers' 2016 Report Card for Florida's Infrastructure gave Florida low marks for water infrastructure.¹ The assessment pointed to a U.S. Environmental Protection Agency report that estimated that Florida will need to spend about \$16.5 billion in drinking water infrastructure improvements over the next 20 years to ensure that drinking water systems in Florida continue to provide safe and reliable drinking water to the public.² Concerns related to both drinking water and wastewater infrastructure focused on the significant needs posed by high population growth, aging infrastructure, and sensitive ecological environments. For wastewater, the report highlighted the number of impaired waterbodies and emphasized the importance of improving wastewater standards in addressing those impairments. The report did not directly address flood control, but for stormwater, the report stated the following:

Florida's capital improvement needs for stormwater management are estimated to be \$1.1 billion through 2019, yet utility fees to upkeep the systems have declined since 2011 while needs will double over the decade. More than half of Florida's stormwater entities revealed an inability to address all capital improvement needs, and only 1 in 4 stormwater utilities stated that today's operation and maintenance capabilities were adequate only to meet the most urgent needs.³

Florida has a wide array of mechanisms for planning for and funding water infrastructure. The following discussion highlights some of the chief plans and programs that assess infrastructure needs and address the cost of meeting those needs.

Water Supply Planning

Water Management District Regional Water Supply Plan

Each of Florida's five Water Management Districts (WMDs) have as their core mission to focus on flood control and water supply issues as well water quality. Where a WMD determines that existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain the water resources and related natural systems for a 20-year planning period, the WMD develops a Regional Water Supply Plan setting forth projects, costs, and projections that are needed to meet these goals.⁴ Every five years, the WMD

¹ American Society of Civil Engineers, *2016 Report Card for Florida's Infrastructure*, available at https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf (last visited Mar. 28, 2019).

² *Id.* (citing U.S. EPA, *Drinking Water Infrastructure Needs Survey and Assessment* (2015), available at https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf (last visited Mar. 28, 2019)).

³ American Society of Civil Engineers, *2016 Reportcard for Florida's Infrastructure*, available at https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/2016_RC_Final_screen.pdf (last visited Mar. 28, 2019).

⁴ Section 373.709(1), F.S.

reevaluates the determination and initiates a plan.⁵ Each plan includes a water supply and water resource development component; a funding strategy for water resource development projects; consideration of how the water supply development project options serve the public interest or save costs; technical data to support the plan; a list of water bodies for which minimum flows and levels have been established or will be established; recovery or prevention strategies for the water bodies not meeting their minimum flows and/or levels; and a list of water reservations.⁶

Department of Environmental Protection Annual Status Report of Regional Water Supply Planning

Department of Environmental Protection (DEP) then uses the Regional Water Supply Plans to create its Regional Water Supply Plan Annual Status Report to provide an update on the WMDs' progress in planning for the state's future water supply.⁷ The Annual Status Report also includes statewide projections for population and water demand, water demand projections by use category, and per capita water use (the amount of public supply water used per person).

Consolidated Water Management District Annual Report

The Consolidated Water Management District Annual Report addresses both water supply and water quality. Each WMD must annually prepare and submit the report to DEP, the Governor, and the Legislature.⁸

The report contains several reports required under the Florida Water Resources Act, including:

- A district water management plan annual report or the annual work plan report.
- The DEP-approved minimum flows and minimum water levels annual priority list and schedule.⁹
- The annual 5-year capital improvements plan.¹⁰
- The alternative water supplies annual report.¹¹
- The final annual 5-year water resource development work program.¹²
- The Florida Forever Water Management District Work Plan annual report.¹³
- The mitigation donation annual report.¹⁴

The report must also contain information on all projects related to water quality or water quantity as part of a 5-year work program, including:

- A list of all specific projects identified to implement a basin management action plan or a recovery or prevention strategy;

⁵ *Id.*

⁶ DEP, *Water Supply*, <https://floridadep.gov/water-policy/water-policy/content/water-supply> (last visited Mar. 28, 2019).

⁷ Section 373.709(6), F.S.

⁸ Section 373.036(7)(a), F.S.

⁹ Section 373.042(3), F.S.

¹⁰ Section 373.536(6)(a)3., F.S.

¹¹ Section 373.707(8)(n), F.S.

¹² Section 373.536(6)(a)4., F.S.

¹³ Section 373.199, F.S.

¹⁴ Section 373.414(1)(b)2., F.S.

- A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;
- The estimated cost for each listed project;
- The estimated completion date for each listed project;
- The source and amount of financial assistance to be made available by DEP, a WMD, or other entity for each listed project; and
- A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.¹⁵

Basin Management Action Plans

A basin management action plan (BMAP) is one of the primary tools DEP uses to reduce pollution in Florida's waterbodies. BMAPs are plans that use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs must include the following information related to infrastructure needs and costs relating to water quality:

- A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project; and
- The source and amount of financial assistance to be made available by DEP, a WMD, or other entity for each listed project;

Office of Economic and Demographic Research (EDR) Annual Assessment of Florida's Water Resources and Conservation Lands

In 2016, the Legislature created section 403.928, F.S., to require EDR to conduct an annual assessment of Florida's water resources and conservation lands.¹⁶ Regarding water resources, the assessment must include:

- Historical and current expenditures and projections of future expenditures by governments and utilities based upon historical trends and ongoing projects or initiatives associated with water supply and demand and water quality protection and restoration;
- An analysis and estimates of future expenditures necessary to comply with federal and state laws and regulations and to achieve the legislature's intent that sufficient water be available for all existing and future reasonable-beneficial uses and the natural systems, and that adverse effects of competition for water supplies be avoided.
- A compilation of projected water supply and demand data developed by each WMD, along with any significant differences between the methods used to calculate data;
- Forecasts of government revenues dedicated in current law for the purposes of water supply demand and water quality protection and restoration, or that have been historically allocated for these purposes, as well as public and private utility revenues; and
- An identification of gaps between projected revenues and projected and estimated expenditures.¹⁷

¹⁵ Section 373.036(7)(b)8.a.-f., F.S.

¹⁶ Ch. 2016-1, Laws of Fla.

¹⁷ Section 403.928(1), F.S.

Various agencies and local governmental entities are directed to aid EDR with their respective areas of expertise and provide EDR access to any information, confidential or otherwise, the EDR considers necessary.¹⁸ The assessment must be submitted to the Legislature by January 1, 2017, and by January 1 each year thereafter.¹⁹

South Florida Environmental Report

South Florida Water Management District is tasked with the most significant water resource restoration projects ever conducted. Between Oct. 1, 2000, and June 30, 2018, Florida has spent \$2.34 billion on the Comprehensive Everglades Restoration Plan (CERP) and the federal government has spent \$1.37 billion.²⁰ Significant ongoing investment must continue to be made to move forward with CERP for many years to come. South Florida Water Management consolidates many of its numerous reports into the South Florida Environmental Report, which includes the following relating to infrastructure:

- Financial reporting for the Everglades Forever Act, CERP, and the Northern Everglades and Estuaries Protection Plan;
- Fiscal and Performance Accountability Report;
- Priority Waterbodies List and Schedule;
- Five-Year Capital Improvements Plan;
- Five-Year Water Resource Development Work Program, which now includes the Alternative Water Supply Annual Report;
- Florida Forever Work Plan Annual Update; and
- Mitigation Donation Annual Report.²¹

Flood Control Planning

In addition to the various projects developed and supported by WMDs which are charged with addressing flood control as one of their primary responsibilities,²² DEP and the Department of Economic Opportunity have engaged with local governments and have developed the Florida Adaptation Planning Guidebook to assist with resiliency planning.²³ Resiliency is the ability to recover quickly from disasters and to adapt to future conditions such as sea level rise. Resiliency is generally addressed at a local government level, and each local government may have unique goals, needs, and available resources. DEP encourages local governments to implement adaptation plans and to continue to modify their plans to keep pace with changing natural and built environments.²⁴ DEP also has a grant program to assist local governments aimed at

¹⁸ Section 403.928(5), (6), F.S.

¹⁹ Section 403.928(7), F.S.

²⁰ SFWMD, *CERP Implementation*, <https://www.sfwmd.gov/our-work/cerp-project-planning/cerp-implementation> (last visited Mar. 28, 2019).

²¹ SFWMD, *South Florida Environmental Report – Volume I*, 1-1, available at

https://apps.sfwmd.gov/sfwmd/SFER/2019_sfer_final/v1/chapters/v1_ch1.pdf (last visited Mar. 28, 2019).

²² DEP, Water Management Districts, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Mar. 28, 2019).

²³ DEP, *Florida Resilient Coastlines Program*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program> (last visited Mar. 28, 2019).

²⁴ *Id.*

preparing coastal Florida communities for current and future effects of rising sea levels, including coastal flooding, erosion, and ecosystem changes.²⁵

U.S. EPA Drinking Water Infrastructure Needs Survey and Assessment

The federal government has also assessed aspects of Florida's water infrastructure needs. The 1996 Safe Drinking Water Act Amendments mandated that EPA conduct an assessment of the nation's public water systems' infrastructure needs every four years and use the findings to allocate Drinking Water State Revolving Fund (DWSRF) capitalization grants to states to help public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.²⁶ For its report, EPA collects data from the states to calculate water systems' 20-year needs.²⁷ The assessment includes an asset inventory-based approach to identify long-term infrastructure replacement and rehabilitation needs in an effort to better capture 20-year investment needs.²⁸

III. Effect of Proposed Changes:

The bill includes a series of whereas clauses that provide legislative findings that water is an essential and beneficial resource and that a needs-based water assessment is vital to successfully plan for Florida's current and future population growth and infrastructure and environmental needs.

The bill provides a statement of legislative intent that:

- Department of Environmental Protection (DEP) interpret the act, to the maximum extent practicable, in a manner that provides the Legislature with a comprehensive overview of Florida's water infrastructure funding needs, including, but not limited to, residential, commercial, environmental, agricultural, and industrial needs; and
- DEP coordinate, to the maximum extent practicable, with private and public sector entities to produce the report required under the act, using any source of information it deems reasonably reliable as long as the source is identified in the report.

The bill requires DEP to conduct a comprehensive and quantitative, needs-based review of the state's water resources. To determine the level of need, the review must include, but is not limited to, the following:

- The funds necessary for the infrastructure's capacity to meet current and future demands.
- The funds necessary to provide for the infrastructure's existing and near-future physical condition and to provide expected levels of service and protection to the public safety.
- The funds necessary for the infrastructure to be operated and maintained in compliance with federal, state, and local government regulations.

²⁵ DEP, *Funding Opportunities*, <https://floridadep.gov/rcp/florida-resilient-coastlines-program/content/funding-opportunities> (last visited Mar. 28, 2019).

²⁶ U.S. EPA, *Drinking Water Infrastructure Needs Survey and Assessment* (2015), available at https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf (last visited Mar. 28, 2019).

²⁷ *Id.* at 35-42.

²⁸ *Id.* at 10.

- The funds necessary for the infrastructure to be able to prevent or protect against significant multi-hazard threats and incidents, and its ability to quickly return to a pre-hazard or pre-threat level of service.
- The replacement costs for infrastructure that is nearing, at, or exceeding its estimated service life.
- The costs of compliance with legislative intent that sufficient water be available for all existing and future reasonable-beneficial uses and for natural systems, and that adverse effects of competition for water supplies be avoided.
- The infrastructure needs and funds necessary to protect, restore, and enhance this state's water.
- The infrastructure, including stormwater systems, needs, and funds necessary to provide for adequate flood protection.

The review must be based on a short-term, 5-year planning period and a long-term, 20-year planning period and must consider, but need not be limited to, the following:

- Water supply infrastructure, including, at a minimum, water supply development projects, water resource development projects, and water conservation;
- Water quality protection and restoration, including, at a minimum, septic system conversion, basin management action plans, and surface water improvement and management plans;
- Wastewater infrastructure;
- Stormwater infrastructure;
- Flood control infrastructure; and
- Environmental restoration.

The review must identify potential funding options, including public and private funding options, to meet the anticipated demand on water resources in the state necessary to comply with legislative intent that sufficient water be available for all existing and future reasonable-beneficial uses and natural systems, and to avoid the adverse effects of competition for water supplies.

The bill requires the assessment to be submitted to the Governor and the Legislature by January 1, 2021, and every 5 years thereafter.

The bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a negative fiscal impact on DEP because of the time and resources necessary to complete the water resources report. If there is overlap with reports that DEP already conducts or for which it provides information to other entities, some costs may be absorbed by these existing efforts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.9339 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on March 26, 2019:

- Requires DEP to complete a comprehensive and quantitative needs-based report on the state's water resources and submit the report to the Governor and the Legislature by January 1, 2021, and every 5 years thereafter.

- Requires DEP to coordinate with private and public sector entities, using any sources of information it deems reasonably reliable.
- Requires the report to:
 - Determine the level of need by considering infrastructure funding needs, including, but not limited to, residential, commercial, environmental, agricultural, and industrial needs.
 - Be based on a short-term, 5-year planning period and a long-term, 20-year planning period.
 - Include water supply infrastructure, water quality protection and restoration, wastewater infrastructure, stormwater infrastructure, flood control infrastructure, and environmental infrastructure.
 - Identify potential funding options to meet the anticipated demand on water resources in the state, including public and private funding options.

B. Amendments:

None.