HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1309 Environmental Regulation
SPONSOR(S): Payne, Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7060

FINAL HOUSE FLOOR ACTION: 114 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1309 passed the House on April 1, 2021. The bill was amended in the Senate on April 21, 2021, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2021. The bill includes CS/SB 7060 and CS/SB 7062.

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or sewage sludge, is disposed of by wastewater facilities through transfer to another facility, landfill deposit, incineration, distribution as fertilizer, or land application on permitted sites.

The Central Florida Water Initiative (CFWI) is a collaborative water supply planning effort among the state's three largest water management districts (WMDs), the Department of Environmental Protection (DEP), and other stakeholders. The CFWI has been tasked with addressing the current and long-term water supply needs of Central Florida without causing unacceptable harm to the water resources and associated natural systems.

A statement of estimated regulatory costs (SERC) must be prepared if a proposed rule will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of $200,000 aggregated within one year after implementation. If the SERC shows that the adverse impact or regulatory cost of the proposed rule exceeds $1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification.

The bill ratifies DEP's proposed biosolids rules and proposed CFWI rules and exempts the biosolids rules from review and approval by the Environmental Regulation Commission.

The bill requires DEP, when adopting CFWI rules, to include a drought allocation for supplemental irrigation for agricultural uses and include a process for the applicable WMD to annually examine an agricultural user's five-year moving average supplemental irrigation water use against the annual supplemental irrigation needs in the five-in-10-year rainfall condition.

The bill requires DEP, in cooperation with the relevant WMDs, to provide grants for projects that benefit the CFWI Area and that promote alternative water supplies and protect groundwater resources.

The bill adds projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer to the list of projects that must receive priority funding for loans provided by the Drinking Water State Revolving Fund.

The proposed rules being ratified by the bill will have a negative fiscal impact on the state and local governments and the private sector.

The bill was approved by the Governor on June 21, 2021, ch. 2021-153, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Agency Rulemaking

A rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency.[1] The Legislature grants an agency rulemaking authority through statute and authorizes an agency to adopt, develop, establish, or otherwise create a rule.[2] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[3] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[4]

The formal rulemaking process begins by an agency giving notice of the proposed rule.[5] The notice is published by the Department of State in the Florida Administrative Register (FAR)[6] and must include an explanation of the purpose and effect of the rule, the specific legal authority for the rule, the full text of the rule, a summary of the agency's statement of estimated regulatory cost (SERC), if one is prepared, whether legislative ratification is required, and how a party may request a public hearing on the proposed rule.[7]

The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.[8] If the proposed rule will have an adverse impact on small business[9] or is likely to increase directly or indirectly regulatory costs in excess of $200,000 aggregated within one year after implementation, an agency must prepare a SERC.[10] If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds $1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.[11]

Biosolids

When domestic wastewater is treated, a solid byproduct accumulates in the wastewater treatment plant and must be removed periodically to keep the plant operating properly. The collected material, called biosolids or "sewage sludge," is high in organic content and contains moderate amounts of nutrients.[12]

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[1] Section 120.52(16), F.S.
[2] Sections 120.52(17) and 120.536(1), F.S.
[3] Section 120.536(1), F.S.
[4] *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[5] Section 120.54(3)(a), F.S.
[6] Section 120.55, F.S.
[7] Section 120.54(3)(a), F.S.
[8] Section 120.541(2), F.S.
[9] Section 288.703(6), F.S., defines "small business" to mean an independently owned and operated business that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the $5 million net worth requirement includes both personal and business investments.
[10] Sections 120.54(3)(b) and 120.541(1)(b), F.S.
[11] Sections 120.541(2)(a) and (3), F.S.
[12] DEP, *Domestic Wastewater Biosolids*, available at https://floridadep.gov/water/domestic-wastewater/content/domestic-wastewater-biosolids (last visited Mar. 9, 2021); r. 62-640.200(6), F.A.C., defines the term "biosolids" to mean the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals." The treated effluent or reclaimed water from a domestic wastewater treatment plant is not included. Also, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, other solids as defined in subsection 62-640.200(31), F.A.C., and ash generated during the incineration of biosolids are not included.

Wastewater facilities can dispose of biosolids by transferring them to another facility, placing them in a landfill, incinerating them, distributing them as fertilizer, or land applying them to permitted sites.[13] The option selected for use or disposal is typically stated in the permit issued to the wastewater treatment facility by the Department of Environmental Protection (DEP).[14] Florida produces a total of 340,000 dry tons of biosolids annually, of which approximately two-thirds are beneficially used and one-third is landfilled.[15]

Three classes of biosolids are regulated for beneficial use and are categorized based on treatment and quality: Class B, Class A, and Class AA.[16] Treatment is required to either reduce or completely eliminate pathogens. Class B treatment significantly reduces pathogens, but does not completely eliminate them. Class AA treatment essentially eliminates pathogens and meets strict concentration limits for heavy metals. The Class A treatment level is between Class B and Class AA. While Class A and Class AA can be used for a variety of beneficial purposes, Class B, the lowest quality of biosolids, is typically only used for land application.[17]

Land application is the use of biosolids at a permitted site, such as agricultural land or a golf course, forest, park, or reclamation site, to provide nutrients or organic matter to the soil. The biosolids are applied in accordance with restrictions based on crop nutrient needs, phosphorus limits in the area, and soil fertility.[18] Biosolids contain macronutrients (such as nitrogen and phosphorus) and micronutrients (such as copper, iron, and manganese) that are utilized by crops. The application of these nutrient-rich biosolids increases the organic content of the soil, fostering more productive plant growth.[19] To prevent odor or the contamination of soils, crops, and livestock, land application sites must meet site management requirements such as the construction of site slopes and establishment of setback distances.[20] There are approximately 140 permitted land application sites in Florida.[21]

Class AA biosolids can be land applied or can be distributed and marketed as a commercial fertilizer.[22] Class AA biosolids products are also not subject to site management requirements if distributed and marketed as a fertilizer or distributed and marketed to a person or entity that will sell or give away the biosolids products as a fertilizer or component of a fertilizer.[23] There are approximately 39 facilities in Florida that produce Class AA biosolids.[24] In 2016, 197,115 dry tons of Class AA biosolids product was distributed and marketed in Florida.[25]

The beneficial use of biosolids is regulated by DEP under ch. 62-640, F.A.C., and by the U.S. Environmental Protection Agency (EPA) under Title 40 Code of Federal Regulations Part 503 (Part

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[13] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 3, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 9, 2021).
[14] *Id.* at slide 4.
[15] *Id*. at slide 5.
[16] *Id*. at slide 6.
[17] *Id*. at slide 7.
[18] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 23, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 9, 2021); *see also*, EPA, *A Plain English Guide to the EPA Part 503 Biosolids Rule* (Sept. 1994), 26, available at https://www.epa.gov/sites/production/files/2018-12/documents/plain-english-guide-part503-biosolids-rule.pdf (last visited Mar. 9, 2021).
[19] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 20, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 9, 2021).
[20] *Id*. at slides 8-9.
[21] *Id*. at slide 20.
[22] *Id.* at slide 6.
[23] DEP, *Biosolids in Florida: 2013 Summary* (Dec. 2014), 4, available at https://floridadep.gov/sites/default/files/BiosolidsFlorida-2013-Summary_2.pdf (last visited Mar. 9, 2021).
[24] DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 13, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 9, 2021).
[25] *Id*. at slide 19.

503).[26] Adopted in 1993, Part 503 created standards for the final use or disposal of biosolids generated during domestic wastewater treatment. The standards included general requirements, pollutant limits, management practices, and operational standards for biosolids. Standards were also included for biosolids applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator.[27]

In 1990, DEP adopted rules governing biosolids based on the draft of Part 503 and previously adopted solid waste rules.[28] DEP's rules were revised in 1998 to be consistent with the final version of Part 503. Part 503, a self-implementing program, did not address phosphorus, a major pollutant in Florida.[29] As a result, DEP amended its rules in 2010 to improve site accountability and nutrient management by requiring site permits for the land application of biosolids, requiring nutrient management plans (NMPs), establishing phosphorus limitations, and specifying site management requirements.[30] Additionally, the rules clarified that the disposal and incineration of biosolids must be in accordance with DEP's solid waste[31] and air[32] rules to protect water quality and human health.

NMPs are site-specific plans that specify the rate at which biosolids can be applied in the area, the method of application allowed (i.e., surface application, injection, incorporation, etc.), the zone in which biosolids can be applied, pollutant concentration targets, and cumulative pollutant loading limits from all sources at the application site.[33] NMPs are submitted to DEP along with the permit application for each agricultural site.

Agricultural sites that are required to have a NMP for the application of biosolids are also often required to participate in DACS's agricultural BMP program if the site is located in an impaired watershed because of the potential impact biosolids may have on water quality.[34] Typical BMP practices include nutrient management, irrigation and water table management, and water resource protection. Nutrient management practices for biosolids land application address appropriate source, rate, timing, and placement of nutrients to minimize impacts to water resources. Irrigation and water table management practices address methods for irrigating to reduce water and nutrient losses to the environment and to maximize the efficient use and distribution of water. Finally, water resource protection practices, such as the site management requirements for biosolids, help to reduce or prevent the transport of nutrients and sediments from production areas to water resources. The BMPs for the site are typically included in facility permits.[35]

Biosolids Technical Advisory Committee

In 2018, DEP created a Biosolids Technical Advisory Committee (Biosolids TAC) to evaluate current management practices and explore opportunities to better protect Florida's water resources.[36] The Biosolids TAC was composed of various stakeholders, including environmental and agricultural industry

[26] EPA, *Biosolids Laws and Regulations*, available at https://www.epa.gov/biosolids/biosolids-laws-and-regulations (last visited Mar. 9, 2021).
[27] 40 C.F.R. Part 503.
[28] Chapters 62-701 and 62-709, F.A.C.
[29] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Mar. 9, 2021); *see also*, DEP, *Biosolids Use and Regulations in Florida* (Sept. 2018), slide 11, available at https://floridadep.gov/sites/default/files/Biosolids101-TAC-090518.pdf (last visited Mar. 9, 2021).
[30] DEP, *Biosolids Rule/Permitting* (Nov. 2018), slide 2, available at https://floridadep.gov/water/domestic-wastewater/documents/tac-3-biosolids-rulepermitting (last visited Mar. 9, 2021); *see* ch. 62-640, F.A.C.
[31] Chapter 62-701, F.A.C.
[32] *See* Chapters 62-204, 62-210, 62-212, 62-213, 62-296, and 62-297, F.A.C.
[33] DEP, *NMPs*, available at https://floridadep.gov/water/domestic-wastewater/documents/nutrient-management-plans-biosolids (last visited Mar. 9, 2021); *see also*, r. 62-640.500, F.A.C.
[34] Rule 62-303.200(7), F.A.C., defines "impaired water" to mean a waterbody or waterbody segment that does not meet its applicable water quality standards […] due in whole or in part to discharges of pollutants from point or nonpoint sources.
[35] Section 403.067(7)(c), F.S.; *see* ch. 2016-1, Laws of Fla.
[36] DEP, *DEP Biosolids Technical Advisory Committee*, available at https://floridadep.gov/water/domestic-wastewater/content/dep-biosolids-technical-advisory-committee (last visited Mar. 9, 2021).

experts, representatives of large and small utilities, waste haulers, consultants, and academics.[37] The meetings included presentations and public comments as well as discussions among the Biosolids TAC members, the audience, and DEP.

Based on the deliberations of the Biosolids TAC and feedback from public participants, the Biosolids TAC recommended that DEP take the following actions:

- Permit biosolids in a manner that minimizes migration of nutrients to prevent impairment to waterbodies and amend current permitting rules to:
    - Establish the rate of biosolids application based on site specifics, such as soil characteristics/adsorption capacity, water table, hydrogeology, site use, and distance to surface water;
    - Evaluate the percentage of water extractable phosphorus in all biosolids to inform the appropriate application rate; and
    - Establish criteria for low, medium, and high-risk sites that guide application practices and required water quality monitoring.
- Increase the inspection rate of land application.
- Develop site-specific groundwater and surface water monitoring protocols to detect nutrient migration.
- Develop and conduct biosolids and nutrient management research on nutrient run-off through surface and groundwater flow using various application rates, types of biosolids application, and different geologic conditions.
- Promote innovative technology pilot projects for biosolids processing that could provide a wider range of beneficial end products.[38]

Biosolids Rulemaking

DEP published an initial notice of rule development to amend its biosolids rules[39] on March 22, 2019, and held rulemaking workshops on June 25, 26, and 27, 2019, in various locations across the state. After a notice of proposed rule was published on October 29, 2019, DEP withdrew the rule and started over again. DEP published a new Notice of Rule Development on April 14, 2020, and held a workshop for the new draft rules on September 18, 2020.[40] DEP published a notice of proposed rule on December 3, 2020.[41]

The SERC for the new proposed rule includes the following statewide cost estimates:

- $10 million in capital costs for permitting new land application sites.
- At least $42 million in recurring costs for additional sites and transportation of wet biosolids.
- $1 million in additional monitoring costs.[42]

DEP expects more biosolids to be converted to Class AA biosolids/fertilizer as a result of the proposed rule and estimates the capital cost for additional Class AA biosolids projects to be between $300 and $400 million.[43]

Because the SERC showed that the adverse impact or regulatory cost of the proposed rule exceeded $1 million in the aggregate within five years after implementation, the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.[44]

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[37] *Id*.

[38] DEP, *Biosolids Technical Advisory Committee Recommendations* (January 2019), available at https://floridadep.gov/water/domestic-wastewater/documents/tac-4-biosolids-tac-considerations (last visited Mar. 9, 2021).

[39] Chapter 62-640, F.A.C.

[40] FAR, *Notice List: 62-640*, available at https://www.flrules.org/gateway/result.asp (last visited Mar. 9, 2021).

[41] DEP, *DEP Chapter 62-640, F.A.C., Rulemaking*, available at https://floridadep.gov/water/domestic-wastewater/content/dep-chapter-62-640-fac-rulemaking (last visited Mar. 9, 2021).

[42] DEP, *Statement of Estimated Regulatory Cost (SERC)*, available at https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 9, 2021).

[43] *Id*.

[44] Section 120.541, F.S.

Consumptive Use Permits

Before using waters of the state,[45] a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD)[46] or DEP. The WMD or DEP may impose reasonable conditions necessary to assure that the proposed use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.[47] To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,[48] will not interfere with any presently existing legal use of water, and is consistent with the public interest.[49]

It is possible for consumptive use to lower the flows and levels of waterbodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs must identify and establish the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow[50] and minimum level (MFL).[51]

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained.[52] A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.[53] A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.[54]

Drinking Water State Revolving Fund

The Drinking Water State Revolving Fund (DWSRF) program is a federal-state partnership created within the federal Safe Drinking Water Act to help ensure safe drinking water. The DWSRF program provides financial support to water systems and to state safe water programs.[55] In Florida, the DWSRF program within DEP provides low-interest loans to local governments and private utilities to plan, design, and build or upgrade drinking water systems.[56]

Loan funding is based on a priority system that takes into account public health considerations, compliance, and affordability.[57] The priority system must give special consideration to:

- Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems.

[45] Section 373.019(22), F.S., defines the term "water" or "waters in the state" to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.
[46] Section 373.216, F.S.; *see* chs. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2, F.A.C., for CUP permitting requirements.
[47] Section 373.219(1), F.S.; an individual solely using water for domestic consumption is exempt from CUP requirements.
[48] Section 373.019(16), F.S., defines the term "reasonable-beneficial use" to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest.
[49] Section 373.223(1), F.S.
[50] Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.
[51] Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Apr. 29, 2021).
[52] DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations (last visited Apr. 29, 2021).
[53] Section 373.0421(2), F.S.
[54] *Id*.
[55] EPA, *Drinking Water State Revolving Fund (DWSRF)*, available at https://www.epa.gov/dwsrf (last visited Apr. 29, 2021).
[56] DEP, *State Revolving Fund*, available at https://floridadep.gov/wra/srf (last visited Apr. 29, 2021).
[57] Section 403.8532(9)(a), F.S.

- Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible.
- Projects that contribute to the sustainability of regional water sources.[58]

Central Florida Water Initiative

The Central Florida Water Initiative (CFWI) is a collaborative water supply planning effort among the state's three largest WMDs, including the St. Johns River Water Management District (SJRWMD), the South Florida Water Management District (SFWMD), and the Southwest Florida Water Management District (SWFWMD), and DEP, the Department of Agriculture and Consumer Services (DACS), regional public water supply utilities, and other stakeholders.[59] The CFWI has been tasked with addressing the current and long-term water supply needs of Central Florida without causing unacceptable harm to the water resources and associated natural systems.[60]

The CFWI Area covers five counties, including Orange, Osceola, Polk, Seminole, and southern Lake Counties, and is home to approximately 2.9 million people, which is projected to reach 4.4 million by 2040.[61] The total average surface and groundwater use in the area is projected to increase from 667 million gallons per day (mgd) in 2015 to 908 mgd in 2040. Of these amounts, groundwater represents 635 mgd and 855 mgd, respectively. Public supply constitutes the largest water use in the CFWI Area.[62]

The areas encompassed by the CFWI Area have traditionally relied on groundwater from the Floridan aquifer system as the primary source of water. Evaluations predict that fresh groundwater resources alone will be insufficient to meet 2040 projected water demands and currently permitted allocations for withdrawal without resulting in significant impacts to water resources and related natural systems.[63] These impacts include drying out wetlands, reducing spring flows, lowering lake levels, and degrading groundwater quality from saltwater intrusion.[64]

[58] *Id*.
[59] DEP, *Central Florida Water Initiative Steering Committee Meeting*, available at https://floridadep.gov/Eco-Rest/Eco-Rest/content/26175-central-florida-water-initiative-steering-committee-meeting (last visited Apr. 29, 2021).
[60] Section 373.0465(1)(c), F.S.
[61] Section 373.0465(2)(a), F.S.; CFWI, *What is CFWI?*, available at https://cfwiwater.com/what_is_CFWI.html (last visited Apr. 29, 2021). CFWI, *Regional Water Supply Plan 2020 Planning Document*, ii, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Apr. 29, 2021).
[62] CFWI, *Regional Water Supply Plan 2020 Planning Document*, ii, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Apr. 29, 2021).
[63] *Id*. at 90.
[64] CFWI, *Value of Water*, available at https://cfwiwater.com/value_of_water.html (last visited Apr. 29, 2021).

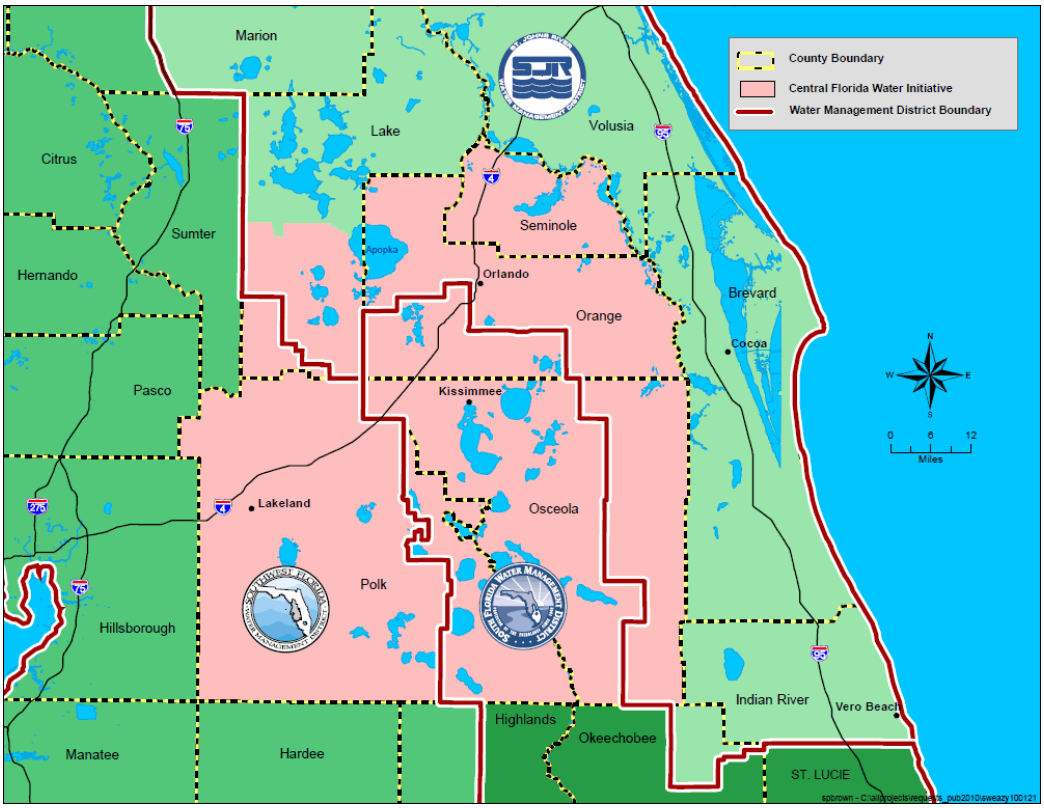

Figure 1. Map of the CFWI Area

In the past, the three WMDs worked independently to resolve water resource issues; however, in 2006, they agreed to a Central Florida Coordination Area (CFCA) Action Plan to address the near-term and long-term development of water supplies in the central Florida region. [65] As a result, the CFWI was created in 2009, building on the CFCA Action Plan.[66] In November 2015, the WMDs' respective governing boards approved the first CFWI Regional Water Supply Plan (RWSP).[67]

The guiding principles for the CFWI process were initially designed to ensure sufficient water was available by:

- Identifying the sustainable quantities of traditional groundwater sources available for water supplies that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Developing strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establishing consistent rules and regulations for the three WMDs that meet their collective goals and implement the results of the CFWI.[68]

The guidelines were updated in April 2016, and adopted in the CFWI 2020 Guiding Document. The revised guiding principles include the following principles and goals:

- Review and update the 2015 CFWI RWSP, as well as the sustainable quantities of traditional groundwater sources available in the CFWI Area that can be used without causing unacceptable harm to the water resources and associated natural systems.
- Monitor progress of regional strategies and solutions identified in the 2015 CFWI Plan.

[65] CFWI, *Regional Water Supply Plan 2020 Planning Document*, available at https://cfwiwater.com/pdfs/CFWI_2020RWSP_FINAL_PlanDocRpt_12-10-2020.pdf (last visited Apr. 29, 2021).
[66] *Id.*
[67] *Id.*
[68] *Id.* at 2.

- Review and update strategies to meet water demands that are in excess of the sustainable yield of existing traditional groundwater sources.
- Establish consistent rules and regulations for the three WMDs that meet the specified goals and implement the results of the CFWI.
- Encourage funding for regional strategies necessary to achieve the objectives of the CFWI.[69]

CFWI Rulemaking

In 2016, the Legislature required DEP, in consultation with the WMDs and DACS, to adopt uniform rules for application within the CFWI in order to develop an alternative water supply instead of a continued reliance on the Floridan aquifer, determining that this would benefit existing and future water users and natural water systems.[70]

In developing the CFWI Plan, DEP, the WMDs, and DACS are required to:

- Consider limitations on groundwater use and opportunities for new, increased, or redistributed groundwater uses that are consistent with CUP conditions.
- Establish a coordinated process for identifying water resources requiring new or revised conditions.
- Consider existing recovery or prevention strategies.
- Include a list of water supply options sufficient to meet the water needs of all existing and future reasonable-beneficial uses.
- Identify, as necessary, which of the water supply sources are preferred water supply sources.[71]

The required rulemaking affects CUPs within the CFWI Area and provides for uniform processes for conducting permit reviews, setting MFLs for certain areas within the boundaries of the CFWI Area, and establishing a variance process; uniform methods for calculating residential per capita water use; a uniform definition of the term "harmful to water resources"; and establishing annual conservation and residential per capita water use goals for CUPs.[72]

DEP issued a notice of rule development on December 30, 2016. Between 2017 and 2020, DEP hosted eight rule development workshops for different portions of the rule. The draft rule was published on November 19, 2020,[73] and a public hearing on the proposed rule was held on December 11, 2020.[74] The draft rule, which incorporates the CFWI Supplemental Applicant's Handbook, was revised on February 9, 2021, to incorporate certain lower cost regulatory alternatives submitted by stakeholders.[75]

The proposed rules apply to CUP applicants and permittees with withdrawal points within the CFWI Area. The proposed rule issued by DEP:

- Establishes methods for calculating per capita water use and annual conservation goals.[76]
- Limits water withdrawals from the Upper Floridan aquifer to the demonstrated 2025 demand (the existing permitted allocation) for public supply, industrial/commercial/institutional, and mining/dewatering water uses.[77]

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[69] *Id.* at 3.
[70] Chapter 2016-1, Laws of Fla.; s. 373.0465(1)(d), F.S.
[71] Section 373.0465(2)(c), F.S.
[72] Section 373.0465(2)(d), F.S.
[73] FAR, Notice of Proposed Rule 62-41.300-305, Volume 46, Number 226 at 5019 (Nov. 19, 2020), *available at* https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2020/46242/46242doc.pdf (last visited Mar. 9, 2021).
[74] DEP, *Central Florida Water Initiative Rulemaking Presentation* (Dec. 11, 2020), available at https://floridadep.gov/sites/default/files/CFWI%20NOPR%20Rulemaking%20Hearing_Staff%20Presentation_0.pdf (last visited Apr. 30, 2021).
[75] FAR, *Notice of Proposed Rule 62-41.300-305, Vol. 47, No. 26 at 733 (Feb. 9, 2021)*, available at https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2021/4726/4726doc.pdf (last visited Apr. 29, 2021).
[76] FAR, *Proposed CFWI Supplemental Applicant's Handbook*, 21-29, available at https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook (last visited Apr. 29, 2021).
[77] *Id*. at 30-31.

- Requires existing CUPs with withdrawal points within the CFWI Area to be modified to be consistent with the new rules.[78]
- Provides for temporary allocations of water required to meet the applicant's reasonable demand beyond the demonstrated 2025 demand while implementing an offset, substitution credit, land use transition, or alternative water supply.[79]
- Provides for variances if there are unique circumstances or hydrogeological factors that make application of the rules unrealistic or impractical, meaning compliance with the rule would create a substantial hardship or violate the principles of fairness.[80]
- Requires permit applicants to provide reasonable assurance that a proposed use will use the lowest quality water source suitable for the purpose.[81]
- Adopts existing recovery and prevention strategies.[82]

DEP published a SERC on November 7, 2020, estimating that the transactional cost of the proposed rule over the next five years will be $18.6 million in permittee, applicant, and consultant time spent in water supply, conservation planning, and investments by public supply utilities to reduce per capita water use, as well as materials.[83] However, according to the SERC, the costs to households and businesses located within the CFWI Area will be offset by the economic benefit to the CFWI economy, resulting in a net negative economic impact of less than $1 million over the five-year period.[84]

Additionally, there will be little prospect of water shortages or impacts to expanded business operations due to the temporary allocations permitted under the proposed rule, no impact to the number of Florida visitors, and no losses to a consumer value from the water shortage. However, there may be some impact to new businesses applying for a CUP.[85]

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) is a non-salaried, seven-member board created within DEP and selected by the Governor and approved by the Senate that represents agriculture, the development industry, local government, the environmental community, residents, and members of the scientific and technical community.[86] The ERC sets standards and rules based on sound scientific and technical validity, economic impacts, and risks and benefits to the public and Florida's natural resources.[87] The ERC may not establish DEP policies, priorities, plans, or directives.[88]

Effect of the Bill

Rule Ratification

[78] FAR, *Notice of Proposed Rule 62-41.301(4)*, available at https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Apr. 30, 2021).
[79] FAR, *Proposed CFWI Supplemental Applicant's Handbook*, 32, available at https://floridadep.gov/water-policy/water-policy/documents/cfwi-2021-02-09-applicants-handbook (last visited Apr. 30, 2021).
[80] FAR, *Notice of Proposed Rule 62-41.303(3)*, available at https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Apr. 30, 2021).
[81] FAR, *Notice of Proposed Rule 62-41.301(2)*, available at https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Apr. 30, 2021).
[82] FAR, *Notice of Proposed Rule 62-41.305*, available at https://www.flrules.org/Gateway/View_notice.asp?id=23903533 (last visited Apr. 30, 2021).
[83] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021), available at https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Apr. 30, 2021).
[84] *Id*. at ES-1 – ES-2.
[85] *Id*. at ES-2.
[86] DEP, *Environmental Regulation Commission*, available at https://floridadep.gov/ogc/ogc/content/environmental-regulation-commission (last visited Mar. 9, 2021); ss. 20.255(6) and 403.804(1), F.S.
[87] Section 403.804(1), F.S.
[88] *Id*.

The bill ratifies DEP's proposed biosolids rules, which are proposed rules 62-640.100, 62-640.200, 62-640.210, 62-640.300, 62-640.400, 62-640.500, 62-640.600, 62-640.650, 62-640.700, 62-640.800, 62-640.850, and 62-640.880, F.A.C., and DEP's CFWI rules, which are proposed rules 62-41.300, 62-41.301, 62-41.302, 62-41.303, 62-41.304, and 62-41.305, F.A.C.

The bill exempts the biosolids rules from review and approval by the ERC.

The bill states that these ratification provisions serve no other purpose and will not be codified in the Florida Statutes. The bill specifies that after becoming law, its enactment and effective dates will be noted in the Florida Administrative Code, the FAR, or both, as appropriate. The bill further specifies that it does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under the Administrative Procedure Act. The bill specifies that it does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

CFWI Agricultural Uses
The bill requires DEP, when adopting CFWI rules, to include a drought allocation for supplemental irrigation for agricultural uses that is based on a two-in-10-year rainfall condition or, if the applicant so requests, is based on a five-in-10-year rainfall condition alone or combined with the two-in-10-year condition. The bill authorizes the applicable WMD to condition, for information only, CUPs to advise permittees that their annual use of water should be less than the drought allocation in all years except for the drought condition that is the basis for the allocation or a more severe drought.

The bill further requires DEP to include a process for the applicable WMD to annually examine an agricultural user's five-year moving average supplemental irrigation water use against the annual supplemental irrigation needs in the five-in-10-year rainfall condition beginning no earlier than five years following the effective date of the adopted CFWI rules. If this annual examination indicates that the agricultural user's five-year moving average use exceeds that needed in such rainfall condition for reasons other than prolonged periods of below average rainfall, the bill authorizes the WMD to modify the agricultural user's permit to include an annual supplemental irrigation allocation based on both the amount of supplemental irrigation required during a two-in-10-year rainfall condition and the amount of supplemental irrigation required during a five-in-10-year rainfall condition. In such case, the supplemental irrigation allocation based on the five-in-10-year rainfall condition must be valid for only five years unless the agricultural user's five-year moving average use continues to exceed the amount of supplemental irrigation needed during a five-in-10-year rainfall condition for reasons other than prolonged periods of drought.

The bill specifies that such requirements may not be construed to limit the ability of DEP or a WMD to establish different supplemental irrigation requirements as part of an existing or future recovery or prevention strategy.

CFWI Grant Program
Subject to appropriation, the bill creates the CFWI Grant Program within DEP and requires DEP, in cooperation with the relevant WMDs, to provide grants for projects that benefit the CFWI Area and that promote alternative water supplies and protect groundwater resources. In allocating such funds, the bill requires priority to be given to projects that use reclaimed water, create new surface water storage, enhance natural systems, recharge groundwater, optimize beneficial uses of water, expand water conservation programs, or projects that are able to demonstrate that a significant financial hardship exists as a result of complying with rules applicable to the CFWI Area.

DWSRF
The bill adds projects that implement water supply plans and develop water sources as an alternative to continued reliance on the Floridan aquifer to the list of projects that must receive priority funding for loans provided by the DWSRF.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill itself does not have a direct fiscal impact; however, the substantive policies of the rules being ratified are expected to have a significant economic impact on local governments and the private sector.

Biosolids
According to the biosolids SERC, implementation of the biosolids rules being ratified by the bill will have a significant negative fiscal impact on the utilities that treat and land apply biosolids, send biosolids to larger treatment facilities, and biosolids treatment facilities that treat and land apply biosolids.

It is estimated that due to the new restrictions for the land application of biosolids, the number of sites eligible for land application will significantly decrease, resulting in approximately $10 million in capital costs for permitting new land application sites and at least $42 million in recurring costs for additional sites and the transportation of wet biosolids for those utilities that must send biosolids to larger treatment facilities. Additionally, it is estimated that permitted land application sites will need to expend an additional $1 million in monitoring costs to comply with the new rule.[89]

CFWI
According to the CFWI SERC, the estimated cost to the SJRWMD, SWFWMD, and SFWMD of implementing the proposed rule is $637,000, and the estimated cost to agencies of monitoring and enforcing the proposed rule is $64,000.[90] It is estimated that the transactional cost of the proposed rule over the next five years will be $18.6 million in permittee, applicant, and consultant time spent in water supply, conservation planning, and investments by public supply utilities to reduce per capita water use, as well as materials. However, according to the SERC, the costs to households and businesses located

[89] DEP, *Statement of Estimated Regulatory Cost (SERC)*, available at https://floridadep.gov/sites/default/files/SERC%2062-640_120320_Final.pdf (last visited Mar. 11, 2021).
[90] *Id*. at ES-6.

within the CFWI Area will be offset by the economic benefit to the CFWI Area economy, resulting in a net negative economic impact of less than $1 million over the five-year period.

Additionally, the rules are anticipated to affect CUPs in the CFWI Area due to the prohibition of additional permitted water withdrawals from the Upper Floridan aquifer after 2025 for public supply and industrial/commercial/institutional water use permittees and applicants.[91] Thereafter, applicants and permittees would need to meet additional water demands with water from alternative sources. The transactional cost of the proposed rule by the year 2040 is estimated to be $190 million annually.[92]

[91] DEP, *Water Policy Rulemaking*, available at https://floridadep.gov/water-policy/water-policy/content/office-water-policy-rulemaking (last visited Apr. 30, 2021); *see also* DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2, available at https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Apr. 30, 2021).

[92] DEP, *Statement of Estimated Regulatory Costs* (Feb. 8, 2021) at ES-2 – ES-3, available at https://floridadep.gov/sites/default/files/CFWI%20SERC%20Report%2002_08_2021%20with%20LCRA_0.pdf (last visited Apr. 30, 2021).