

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENRC 08-14 Alternative Water Resource Projects
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Kliner / Perkins	Dixon / Hamby
Committee on Environmental Protection	5 Y, 0 N	Kliner	Kliner
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill authorizes water management districts throughout the state to enter into agreements with private parties, regional water supply authorities, and water utilities that may provide private parties long term consumptive use rights, based upon innovative and extraordinary contributions to alternative water resource development projects or water quality and environmental enhancement and restoration projects.

The bill amends the Rural Land Stewardship Program, ¹ adding land used for water storage, alternative water supply, or water quality enhancement to the list of lands that receive the highest number of transferable rural land use credits. The bill also increases the incentives available for owners who establish alternative water resource development projects within rural land stewardship areas. Specifically, the bill provides priority for funding under the Water Protection and Sustainability Program, and provides a preference for a consumptive use permit pursuant to s. 373.233, F.S. In addition, the reservoir or aquifer storage and recovery well may be considered a preferred water supply source under s. 373.2234, F.S.

The bill does not appear to have a significant fiscal impact on state or local government.

¹ s. 163.3177(11)(d), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill authorizes water management districts to enter into agreements with private parties and others that may provide private parties long term consumptive use rights, based upon innovative and extraordinary contributions to alternative water resource development projects or water quality and environmental enhancement and restoration projects. The bill amends the Rural Land Stewardship Program, adding land used for water storage, alternative water supply, or water quality enhancement to the list of lands that receive the highest number of transferable rural land use credits. The bill also increases the incentives available for owners who establish alternative water resource development projects within rural land stewardship areas

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Alternative Water Supply

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:

- 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) define the roles of the water management districts and local governments 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 Program² are available for project construction costs for alternative water supply development projects selected by a water management district for inclusion in the program.

Rural Land Stewardship

Rural Land Stewardship is an incentive-based system that encourages the voluntary preservation and private stewardship of natural resources, retention of rural uses and agriculture, and accommodates economic growth and diversification in a sustainable rural character. It provides a mechanism to recognize the public value of resources such as the environment, listed species and their habitat, agriculture, Florida culture, open space, etc., and creates a “currency” where those values can be exchanged for increased development in a sustainable fashion on lands not having the same values.

The Florida Rural Lands Stewardship Program (program) was created by the 2001 Legislature. The original program provided for the creation of a Rural Land Stewardship pilot program allowing up to five local governments to adopt rural land stewardship areas ranging in size from 50,000 to 250,000 acres. These Rural Land Stewardship Areas (RLSAs) would be located outside of the urban fringe of municipalities and established urban growth areas. RLSAs would be adopted by Comprehensive Plan amendment, subject to Department of Community Affairs (DCA) review pursuant to s. 163.3184, F.S., which would provide criteria for designation of receiving areas in which innovative planning and development strategies may be applied. During the 2004 legislative session, legislation³ was enacted removing the program from its pilot project status so it could be implemented statewide. Additionally, the legislation:

- Allowed for the designation of a RLSA through a future land use map overlay;
- Lowered the minimum size threshold for an RLSA from 50,000 to 10,000 acres, in addition to removing a ceiling size;
- Allowed for the creation of multi-county RLSAs, subject to Plan Amendments in each affected county;
- Required DCA, DEP, water management districts and regional planning councils to provide technical assistance to local governments interested in designating RLSAs;
- Allowed transferable land use credits to be assigned at different ratios based on the natural resources and other beneficial uses of the land; and
- Exempted a comprehensive plan amendment establishing a RLSA from the twice per year limitation of the frequency of plan amendments.

In 2005, the Legislature made yet more changes⁴ to the program, including a provision providing that the highest number of credits can be assigned not only to the most environmentally valuable land, but also to areas where open space and agricultural land are a priority

The 2006 Legislature adopted additional revisions⁵ stating: “The total amount of transferable rural land use credits within the rural land stewardship area must enable the realization of the long-term vision

² s. 403.890, F.S.

³ Section 5, Chapter 2004-372, Laws of Florida

⁴ Section 17, Chapter 2005-290, Laws of Florida

⁵ Section 2, Chapter 2006-220, Laws of Florida

and 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.”

To implement a new RLSA, the law,⁶ as amended, states: “[a] local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify DCA in writing of its intent to designate” a RLSA. According to its 2007 Rural Lands Stewardship Annual Report, DCA encourages participation by local and multi-county governments of different sizes and rural characteristics in establishing RLSAs.

DCA is required to implement “a process by which the department [DCA] may authorize local governments to designate all or portions of land classified in the future land use element as predominantly agriculture, rural, open, open-rural, or a substantively equivalent land use, as a rural land stewardship area.”⁷ In an April 2007 memo to Highlands County, DCA Secretary Tom Pelham outlined specific steps that DCA recommends interested parties take when pursuing a rural land stewardship program:

- Prior to giving written notification to DCA, a conference be held between the proper county officials and the DCA planning staff to discuss the proposed RLSA, including applicable planning requirements, potential technical assistance from state agencies to the county, and the DCA’s expectations regarding future comprehensive plan amendments for the RLSA.
- A public workshop to be held by the Board of County Commissioners and county staff, including participation by DCA staff.
- When a county decides to proceed with the RLSA process, written notification to DCA is necessary. Such notification should contain data and analysis describing the basis for the designation, including the extent to which the RLSA enhances rural land values, controls urban sprawl, provides necessary open space for agriculture and protection of the natural environment, promotes rural economic activity, and maintains rural character and the economic viability of agriculture.

Pursuant to the law, DCA will review the comprehensive plan amendment designating a RLSA. The amendment, as required by s. 163.3177(d)4, F.S., should provide:

- Criteria for the designation of receiving areas within RLSAs in which innovative planning and development strategies may be applied.
- Goals, objectives, and policies setting forth the innovative planning and development strategies to be applied within RLSAs.
- A functional mix of land uses, including adequate available workforce housing, including low, very-low and moderate income housing in accordance with rule 9J-5.006(5)(1), Florida Administrative Code, adopted through zoning and land development regulations.
- A process that encourages visioning pursuant to s. 163.3167(11), F.S., to ensure that innovative planning and development strategies comply.
- Control of sprawl through use of innovative strategies and creative land use techniques consistent with the provisions of rule 9J-5.006(5)(1), Florida Administrative Code.

Once the local government adopts, by ordinance, the comprehensive plan amendment to create a RLSA, a methodology for creation and use of transferable rural land use credits (stewardship credit) must be established. According to DCA, “A great deal of flexibility is provided to local governments in establishing the methods for credit generation and transfer . . .”⁸ The total number of stewardship credits within a given RLSA should be adequate to accommodate the long-term vision and goals for the 25-year or greater projected population of the RLSA, which may take into consideration the anticipated effect of the proposed receiving areas. Transferable rural land use credits may be assigned at different ratios of credits per acre according to the natural resource or other beneficial use characteristics of the

⁶ s. 163.3177(11)(d)3, F.S.

⁷ s. 163.3177(11)(d)1, F.S.

⁸ Florida Department of Community Affairs’ Rural Land Stewardship 2007 Annual Report

land and according to the land use remaining following the transfer of credits, with the highest number of credits per acre assigned to the most environmentally valuable land or, in locations where the retention of open space and agricultural land is a priority, to such lands.

To implement a new RLSA, the law,⁹ as amended, states: “[a] local government, in conjunction with a regional planning council, a stakeholder organization of private land owners, or another local government, shall notify DCA in writing of its intent to designate” a RLSA. According to its 2007 Rural Lands Stewardship Annual Report, DCA encourages participation by local and multi-county governments of different sizes and rural characteristics in establishing RLSAs.

Under current law, the statutes provide the following steps for establishing a RSLA:

- A local government, in conjunction with a regional planning council, a stakeholder organization of private landowners, or another local government, shall notify DCA in writing of its intent to designate a RSLA. A description of the basis for the designation, including a list of benefits to be derived from RLSA must be included in the written notification. The RLSA must be at least 10,000 acres and be located outside municipalities and established urban growth boundaries. The RLSA must be designated by a comprehensive (comp) plan amendment.
- The comp plan amendment designating a RLSA shall be subject to review by DCA and must contain certain information as required by statute¹⁰ relating to receiving areas, innovative planning and development strategies, visioning of future appearance of the RLSA, and the control of sprawl.
- A receiving area shall be designated by the adoption of a land development regulation. Prior to this designation, the local government must provide DCA a 30-day period in which to review a proposed receiving area for consistency with the RLSA plan amendment and to provide comments to the local government. A listed species survey must be performed at the time of designation of a receiving area. If listed species occur on the receiving area site, the statute¹¹ requires the developer to take necessary precautions in order to protect those species in accordance with applicable regulations.
- Upon the adoption of a comp plan amendment creating a RLSA, the local government shall establish the methodology for the creation, conveyance, and use of transferable rural land use credits otherwise referred to as stewardship credits. The total amount of transferable rural land use credits within the RLSA must enable the realization of the long-term vision and goals for the 25-year or greater projected population of the RLSA, which may take into consideration the anticipated effect of the proposed receiving areas. Transferable rural land use credits have certain limitations as imposed by Florida law.¹²
- Owners of land within the RLSA should be provided incentives to enter into rural land stewardship agreements with state agencies, water management districts, and local governments to achieve mutually agreed upon conservation objectives. Such incentives may include: opportunities to accumulate transferable mitigation credits; extended permit agreements; opportunities for recreational leases and ecotourism; payment for specified land management services on publicly owned land, or property under covenant or restricted easement in favor of a public entity; or option agreements for sale to public entities or private land conservation entities, in either fee or easement, upon achievement of conservation objectives.

DCA is charged with reporting to the Legislature annually on the results of the implementation of RLSAs authorized. DCA is also required to provide technical assistance to local governments in order to encourage mixed-use, high-density urban infill and redevelopment projects, as well as promote the transfer of development rights within these areas. Laws relating to state and regional planning, as well

⁹ s. 163.3177(11)(d)3, F.S.

¹⁰ s. 163.3177(11)(d)4, F.S.

¹¹ s. 163.3177(11)(d)5, F.S.

¹² s. 163.3177(11)(d)6, F.S.

as the state comprehensive plan govern the implementation of a RLSA, and s. 163.3177(11)(h), F.S., gives DCA rule-making authority necessary to implement the provisions of the RLSA law.

Florida currently has two designated RLSAs, the Collier County RLSA (217,483 acres) and the Adams Ranch Stewardship Project in St. Lucie County (22,384 acres); however, eight local governments (Brevard, Collier, Glades, Highlands, Manatee, Osceola, St. Lucie, and Volusia counties) are in the process of implementing or are considering implementing RLSAs.¹³

Effect of Proposed Changes

Alternative Water Supply

The bill adds a new subsection (7) to s. 373.196, F.S., authorizing the water management districts throughout the state to enter into agreements with private parties, regional water supply authorities, and water utilities that may provide private parties long term consumptive use rights 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.

Rural Land Stewardship

The bill amends s. 163.3177(11)(d)6., F.S., adding *land used for water storage, alternative water supply, or water quality enhancement as part of the plan approved by the Legislature or water management district for the restoration or recovery of a specific water body* to the list of lands that can receive the highest number of transferable rural land use credits per acre.

The bill amends s. 613.3177(11)(d)7, F.S., adding several possible incentives for owners of land within rural land stewardship areas to enter into rural land stewardship agreements and establish alternative water resource development projects, including priority for funding under the Water Protection and Sustainability Program, and a preference for a consumptive use permit pursuant to s. 373.233, F.S.¹⁴ In addition, the reservoir or aquifer storage and recovery well may be considered a preferred water supply source under s. 373.2234, F.S.¹⁵

C. SECTION DIRECTORY:

Section 1: adds subsection (7) to s. 373.196, F.S., authorizing water management districts to enter into agreements with private parties in the development of alternative water supply projects.

Section 2: amends sub-paragraph 6. of, and adds sub-paragraph 7. to, s. 163.3177(11)(d), F.S., expanding the list of projects that receive the highest number of transferable rural land use credits per acre, and increasing the number of incentives that may be available for owners of land within rural land stewardship areas to enter into rural land stewardship agreements and establish alternative water resource development projects.

Section 3: provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹³ Florida Department of Community Affairs' Rural Land Stewardship 2007 Annual Report

¹⁴ In the event there are competing applications for the same source, the Rural Land Stewardship applicant would receive preference over the other applicant.

¹⁵ There must be sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1)(regional water supply planning), while sustaining existing water resources and natural systems.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 governing Board has the authority to allocate water to the use that is most in the public interest. The proposed amendment to this section gives the WMD the authority to give long term water rights ("long term" is not defined) to an entity outside of this permitting process through an agreement (although the

three prong test to receive a CUP contained in s. 373.223(1), F.S. must still be met). It appears that the agreement would not be subject to the competing use provisions of s. 373.233, F.S., and would dedicate the water to a particular user, with no consideration of what use was the most in the public interest. It also appears that this provision may allow “water banking” as whatever water right was granted under the agreement would appear to make water unavailable to other users. It also may allow the recipient of the “water right” to market that water, also outside of the consumptive use permitting process. While this sort of agreement is arguably worth consideration for entities contributing to solving water supply problems, it is unclear why it would be appropriate to give consumptive use “water rights” for projects that contribute to water quality or environmental restoration projects.

New (f) 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.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A