

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB ANR 10-09 Consumptive Use Permits

**SPONSOR(S):** Agriculture & Natural Resources Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Kliner	Reese
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill amends specific sections of Part II of Chapter 373, F.S., relating to consumptive use permits (CUPs). Specifically, the bill:

- Provides that when the Department of Environmental Protection (DEP) or the water management district (WMD) board is evaluating an application for a CUP, and an applicant proposes the implementation of “significant demand management activities” or the use of an alternative water supply project, and provides certain assurances, the permitting agency shall presume that the consumptive use of water is consistent with the public interest.
- Directs the DEP or the WMD board to address a CUP applicant’s reduced need for a permitted water allocation by increasing the permit’s duration, rather than reducing the allocation, provided the reduced need is due to “significant demand management activities” or an alternative water supply project. The DEP or WMD board is required to approve permits for the implementation of “significant demand management activities” for a term for at least 20 years.
- Provides that an applicant will not be subject to a permit revocation by the DEP or the WMD board for nonuse of the resource provided the applicant proves that a reduction in water use is the result of “significant demand management activities” or the development of alternative water supply projects that exceed the requirement of the permit.

The bill appears to have no fiscal impact on local governments. At the state government level, there may be costs associated with rulemaking by the DEP.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Consumptive Use Permits

A consumptive use permit (CUP), also called a water use permit, constitutes authorization to withdraw a specified amount of water for a specified time either from the ground or from a surface water body. CUPs are generally issued by the water management districts (WMDs) under Part II of Chapter 373, F.S., specifically s. 373.223, F.S. State law allows the DEP to issue CUPs where an applicant proposes an "inter-district transfer" of water (i.e. from a source within one WMD to a user in another WMD).

The water permitted to be withdrawn under a CUP is most often used for agricultural and other types of irrigation, for drinking water for public consumption, and in the manufacturing processes of various products. CUPs were created as the key mechanism by which the WMDs and the state can regulate the consumption of water for the most beneficial uses and in the best interest of the public.

People or entities wishing to utilize a water supply – whether an aquifer, a river or lake, or an "alternative supply" such as stormwater or seawater – must obtain a CUP if certain thresholds are exceeded. For example, persons who propose withdrawing water through a well whose diameter exceeds 6 inches, or who would withdraw more than 100,000 gallons a day, or who are supplying more than their domestic needs, must obtain a CUP. Each WMD's list of thresholds is slightly different, as are the penalties for failure to obtain a CUP prior to withdrawing water.

A CUP may be issued only if the applicant can establish that the proposed use of the water meets the "three prong test" specified in ss. 373. 223(1), F.S.; that is, the proposed use of water: (1) is a reasonable-beneficial use (meaning it is both an economic and efficient utilization of water for a purpose and in a manner which is both reasonable and consistent with the public interest); (2) will not interfere with any presently existing legal use of water; and (3) is consistent with the public interest.

## Effect of Proposed Changes

### Conditions for a permit

Currently, subsection (5) of s. 373.223, F.S., provides that an alternative water supply development project identified by a WMD is presumed to be in the public interest, which meets one of the requirements of the “three-prong” test required for the issuance of a consumptive use permit.

The bill provides that if the applicant for a CUP proposes either an alternative water supply project or “significant demand management activities”, and provides assurances of the applicant’s capability to implement the demand management strategies or to design, construct, operate, and maintain the alternative water supply project, the *consumptive use of water* will be presumed to be in the public interest, satisfying one of the requirements of the “three-prong” test required for the issuance of a consumptive use permit. Applicants will be required to comply with the remaining two conditions for a consumptive use permit: demonstrate that the project will have a reasonable beneficial use and does not interfere with any existing legal users.

### Duration of a CUP and Reporting Requirements

The duration of a CUP may vary, and permits may range from five years to twenty years or more, depending upon the circumstances. For instance, s. 373.236, F.S., provides for a 20-year duration for permits approved for the development of alternative water supplies. If the permittee issues bonds for the construction of the project, the permit may be extended, at the request of the permittee, to cover the time required to retire the bonds, provided the WMD board determines that the use will continue to meet the conditions for issuance of the permit. This section authorizes the governing board of a WMD to require a permittee holding a 20-year CUP to file a compliance report every five years during the term of the permit. The report must provide reasonable assurance to the board that the initial conditions for the issuance of the permit are met. A permit that is modified under this section is not subject to review of competing consumptive use applications, provided there is no increase in the permitted allocation, permit duration, and no change in the water source (unless the change is requested by the WMD).

The bill provides direction for the DEP or the WMD board in the event the permittee’s need for the initial water allocation amount decreases due to the use of demand management activities or by the development of an alternative water supply project. Provided the initial conditions for the permit can still be met, the DEP or the WMD board is required to address the decreased need by increasing the duration of the permit, rather than reducing the quantity of water initially permitted. A permit that is modified under this section will not be subject to competing uses provided the increase in permit duration was due to demand management activities or the development of a water supply project that exceeded the requirement of the permit.

The bill provides for a 20-year duration for permits approved for significant demand management activities, and also provides for a permit extension at the request of the permittee to cover the time required to retire bonds that are issued for the construction of a demand management project.

### Revocation of a CUP for Non-use

Currently, s. 373.243, F.S., authorizes the DEP or the WMD boards to revoke a CUP for the nonuse of the water supply allowed by the permit for a period of 2 years or more, unless the user can prove that his or her nonuse was due to extreme hardship caused by factors beyond the user’s control.<sup>1</sup>

The bill provides an exception for a determination of non-use of the resource resulting in a revocation of the permit if the non-use was due to the implementation of demand management activities or due to the development of an alternative water supply project that exceeds the requirement of the permit.

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<sup>1</sup> Other actions that may result in a revocation include: any material false statement in documentation required under the permit or statute, a willful violation of the conditions of the permit, or a violation of any provision of Chapter 273, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends subsection (5) of s. 373.223, F.S., directing the DEP or a WMD board, when evaluating an application for a CUP, where an applicant proposes the implementation of “significant demand management activities” or the use of an alternative water supply project, and provides certain assurances, to presume the consumptive use of water is consistent with the public interest.

Section 2. Amends subsections (4) and (5) of s. 373.236, F.S., directing the DEP or the WMD board to address a CUP applicant’s reduced need for a permitted water allocation by increasing the permit’s duration, rather than reducing the allocation, provided the reduced need is due to “significant demand management activities” or an alternative water supply project, provided the DEP or WMD does not determine the increased duration will not meet the initial conditions of the permit. The DEP or WMD boards are required to approve permits for the implementation of “significant demand management activities” for a term for at least 20 years.

Section 3. Amends subsection (4) of s. 373.243, F.S., providing that an applicant who proves that a reduction in water use that is the result of “significant demand management activities” or the development of an alternative water supply project that exceeds the requirement of the permit will not be subject to a permit revocation by the DEP or the WMD board for nonuse of the resource.

Section 4. Provides an effective date of July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The DEP and WMDs may need to implement rulemaking to develop definitions, examples of “significant demand management activities” and standards for such practices.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Local government public water supply utilities may benefit from the implementation of demand management practices in the same manner as private utilities. See, Part II, C., below.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The implementation of demand management activities may inure to the benefit of utilities that provide public water resources and that implement demand management practices. In theory, demand management activities will “flatten” the demand curve for the subject resource. In practice, one of the activities that might be used is “cost-reflective pricing” in which the cost of water is increased to incentivize conservation. A utility that increases its prices to reduce demand for water may be able to sell to a greater number of customers who will use less but pay more per gallon.

**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 noted.

#### B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Staff recommends the following amendments to the bill as drafted:

- Provide specific rulemaking authority to the DEP to develop definitions, examples, and standards for the implementation of demand management activities when evaluating CUP applications.
- Amend line 30 of the bill to provide that the alternative water supply or the significant demand management activities is consistent with the public interest test.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES