

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB ANR 10-10 Water Conservation  
**SPONSOR(S):** Agriculture & Natural Resources Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Agriculture & Natural Resources Policy Committee	11 Y, 0 N	Kliner	Reese
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**SUMMARY ANALYSIS**

The bill codifies the name of the currently existing state-wide water conservation program and the attendant guide, the Conserve Florida Clearinghouse, and the Conserve Florida Clearinghouse Guide (the Guide), respectively. The bill provides that the Guide is an appropriate tool to assist public water supply utilities in developing plans in order to meet conservation requirements for obtaining consumptive use permits (CUPs). Water management districts and public water supply utilities are encouraged to use the Guide to develop conservation plans, report conservation practices and measures used in CUPs, evaluate proposals for cost sharing of conservation activities, and assessing the effectiveness of conservation projects.

Use of the Guide is encouraged, but not mandatory, for a public water supply utility to develop a goal-based water conservation plan, however, any plan must include a means to measure the utility's progress toward its conservation goal or goals. A proposed plan may serve as a partial or as an entire alternative to water conservation requirements adopted by the district.

Current law provides that water conservation requirements imposed as a condition of obtaining a CUP shall be deemed satisfied if a utility provides reasonable assurance that its plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the water management district. The bill removes the comparison between the utility's plan and the water management districts' adopted water conservation requirements. In its place the bill requires a goal-based water conservation plan submitted by a utility be designed to achieve the water conservation goal or goals in a cost-effective manner, considering the utility's customers, service area, and other individual circumstances of the utility.

The bill also deletes an obsolete statutory provision requiring the DEP to submit a progress report on water conservation efforts by December 1, 2005.

The bill has an effective date of July 1, 2010, and does not appear to have a significant fiscal impact to state or local government.

## 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

Following an exceptionally severe drought in 1999-2001, the Department of Environmental Protection (DEP), along with the state's five water management districts, water providers, water users, and other stakeholders, participated in the Florida Water Conservation Initiative, a collaborative effort to address water conservation measures. In the final report of the Initiative, published in April 2002, the participants collectively recommended further pursuit of a wide range of water conservation tools, including agriculture and landscape irrigation techniques, indoor water use, the use of reclaimed water, and measures for industrial, commercial, and institutional water use.<sup>1</sup> The report recognized public water supply as the second largest water use sector in Florida, and acknowledged conservation as an important management tool for public water supply utilities. The DEP, the water management districts, the Florida Public Service Commission, the Utility Council of the American Water Works Association (Florida Section), the Utility Council of the Florida Water Environment Association, and the Florida Rural Water Association signed a Joint Statement of Commitment to cooperatively develop a comprehensive water conservation program.<sup>2</sup>

During the 2004 Regular Session, the Florida Legislature enacted HB 293, which codified many of the findings presented in the final report of the initiative. HB 293 created, among other things, a new section 373.227, F.S., encouraging the use of efficient, effective, and affordable water conservation measures, and providing that a goal-based, accountable, tailored water conservation program should be emphasized for public water supply utilities. The section states that the overall water conservation goal of the state is "to prevent and reduce wasteful, uneconomical, impractical, or unreasonable use of water resources." To achieve these conservation objectives, the legislation emphasizes "goal-based, accountable, tailored, and measurable water conservation programs for public water supply." The section directs the DEP, in cooperation with the water management districts and the other stakeholders, to develop a statewide water conservation program for public water supply utilities, and to create a clearinghouse or inventory for water conservation programs and practices available to public water supply utilities which provides an integrated statewide database for information on public water supply conservation programs and practices and their effectiveness.<sup>3</sup>

<sup>1</sup> [http://www.dep.state.fl.us/water/waterpolicy/docs/WCI\\_2002\\_Final\\_Report.pdf](http://www.dep.state.fl.us/water/waterpolicy/docs/WCI_2002_Final_Report.pdf)

<sup>2</sup> [http://www.dep.state.fl.us/water/waterpolicy/docs/JSOC--new\\_small.pdf](http://www.dep.state.fl.us/water/waterpolicy/docs/JSOC--new_small.pdf)

<sup>3</sup> In addition, the program must include cost and benefit data on individual water conservation practices, standardized public water supply conservation definitions, and standardized quantitative and qualitative performance measures.

Pursuant to s. 373.227, F.S., water management districts must give public water supply utilities wide latitude in selecting a rate structure when utilities use water conservation or drought rate structures as a conservation practice. The district may not revise or fix rates, and their rate review is limited to whether the utility has provided reasonable assurance that the rate structure contains a schedule of rates designed to promote efficient use of water by providing economic incentives.

As part of an application for a consumptive use permit (CUP), the water conservation requirements that are imposed as a condition of obtaining a CUP shall be deemed satisfied if the utility provides reasonable assurance that a proposed goal-based water conservation plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the district.<sup>4</sup> If the plan fails to meet the water conservation goal(s) by the timeframes specified in the permit, the utility is required to revise the plan to address the deficiency or employ the water conservation requirements that would otherwise apply in the absence of an approved goal-based plan.

The DEP and the other stakeholders developed common definitions and performance measures for evaluating water conservation programs and practices. The definitions and measures have been incorporated into a water conservation planning and reporting guide that is available online. The Guide is an interactive web-based application (software and database) to aid utilities in developing utility-specific conservation goals, selecting best management practices to meet those goals, measuring and reporting results, and adjusting their conservation programs as needed to better meet conservation goals.<sup>5</sup>

### Effect of Proposed Changes

The bill codifies the name of the currently existing state-wide water conservation program and the attendant guide, the Conserve Florida Clearinghouse, and the Conserve Florida Clearinghouse Guide (the Guide), respectively. The bill provides that the Guide is an appropriate tool to assist public water supply utilities in developing plans in order to meet conservation requirements for obtaining consumptive use permits (CUPs). Water management districts and public water supply utilities are encouraged to use the Guide to develop conservation plans, report conservation practices and measures used in CUPs, evaluate proposals for cost sharing of conservation activities, and assessing the effectiveness of conservation projects.

Use of the Guide is encouraged, but not mandatory, for a public water supply utility to develop a goal-based water conservation plan. A plan must include a means to measure the utility's progress toward its conservation goal or goals and may serve as a partial or as an entire alternative to water conservation requirements adopted by the district.

Current law provides that water conservation requirements imposed as a condition of obtaining a CUP shall be deemed satisfied if a utility provides reasonable assurance that its plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the water management district. The bill removes the comparison between the utility's plan and the water management districts' adopted water conservation requirements. In its place the bill requires a goal-based water conservation plan submitted by a utility be designed to achieve the water conservation goal or goals in a cost-effective manner, considering the utility's customers, service area, and other individual circumstances of the utility.

The bill also deletes an obsolete statutory provision requiring the DEP to submit a progress report on water conservation efforts by December 1, 2005.

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<sup>4</sup> A consumptive use permit, 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 under Part II of Chapter 373, specifically Section 373.223, F.S. State law allows the Department of Environmental Protection to issue CUPs where an applicant proposes an "inter-district transfer" of water (i.e. from a source within one water management district to a user in another water management district). 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.

<sup>5</sup> <http://www.conservefloridawater.org/default.asp>

**B. SECTION DIRECTORY:**

Section 1. Amends s. 373.227, F.S., providing a name for the currently existing state-wide water conservation program and program guide to assist public water supply utilities in developing water conservation plans. While use of the guide is not mandatory, this section encourages utilities to use the guide, and requires that any water conservation plan must be designed to achieve the water conservation goal or goals in a cost effective manner, considering the utility's customers, service area, and other individual circumstances of the utility.

Section 2. 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:

Rulemaking by the DEP may be necessary to address the standard by which a utility meets the water conservation requirements that are imposed as a condition for receiving a CUP by the utility's use of a water conservation plan.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**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:

**B. RULE-MAKING AUTHORITY:**

None is provided. Existing law grants broad rulemaking authority to the DEP for the amended subsections in s. 373.227, F.S.

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

The bill removes current law requiring the WMD to approve a goal-based conservation plan if:

- The utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the district and
- Is otherwise consistent with s. 373.223, F.S.

Section 373.223, F.S., provides conditions for a CUP and includes the requirement that the use of the resource be a reasonable-beneficial use, does not conflict with other existing, legal uses, and is in the public interest (the three-prong test). It is unclear what, if any, effect the removal of this requirement will have since all CUPS must generally meet the three-prong test. In any event, the bill leaves intact current law requiring a utility to revise the proposed goal-based plan if it fails to meet the water conservation goal or goals by the timeframes specified in the permit. One assumes that such a permit will include the statutory requirements listed in s. 373.223, F.S.

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

On March 17, 2010, the Agriculture and Natural Resources Committee adopted one amendment offered by Representative Williams. The amendment:

- Requires a goal-based water conservation plan to include a schedule for implementing the water conservation goal or goals
- Requires a goal-based water conservation plan that is submitted to a water management district be designed to achieve the water conservation goals in a cost effective manner, considering the utility's customers, service area, and other individual circumstances of the utility.
- Removes from the original bill (and from Florida Statutes) the requirement that the district must approve the conservation plan if the utility provides reasonable assurance that the plan will achieve effective water conservation at least as well as the water conservation requirements adopted by the district and is otherwise consistent with s. 373.223, F.S.