

Legislative session addresses water, land use issues

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The 1997 Legislative Session was unique in several ways. First, Republicans controlled both the House and Senate, a first in modern time. Second, it began and ended on schedule—6:00 p.m. rather than 6:00 a.m. Third, both chambers maintained a deliberate pace, controlling the passage of bills to such a degree that of 2400 bills introduced, approximately 250 passed. Leaders in both chambers kept their promise by limiting their agendas to education, economic development and no new taxes.

The following bills would be of interest to our members:

Water:

CS/HB 715, 1249, 131, and 1339; Introduced by Rep. Laurent

This bill became the primary water-related legislation passed in the 1997 session. The bill is a combination of the pro-business "coalition" bill, the Governor's bill and legislation filed by the chairman of the House Water Resources Management Committee, Rep. John Laurent.

The bill is a compromise bill but it does substantially protect current water users. The bill does not contain a "local sources first" provision which would have been detrimental to counties like Pinellas and Hillsborough.

MFL are minimum flows and levels and WUP are water use permits, the new term for consumptive use permits.

CS/SB 1306 and 1934; Introduced by Sen. Latvala

This is the Brownfield Legislation. Brownfields are generally those industrial or commercial properties which have actual or perceived environmental contamination. Most of these areas are abandoned,

and this legislation is an effort to put these areas back into productive use.

CS/SB 1660

The bill indicates that power-driven farm equipment is to be included in the 3% rather than 6% sales tax rate. Power-driven is defined as moving or stationary equipment that is dependent upon an actual power source in order to perform its purpose, i.e. conveyors, augers and vacuum pumps. This corrects a DOR ruling that such equipment was taxed at 6% rather than 3%.

CS/CS/HB 119 and 1577

This bill is important because of its philosophic direction. The bill directs state lands be managed under a multiple-use concept rather than just for conservation and preservation. As an example, the bill directs that all parcels over 1,000 acres contain an analysis of the multiple-use potential of the parcel to industry, the potential of the parcel to generate revenues to enhance the management of the parcel, including the use of private land managers. In addition, in such parcels, buffers may be formed around areas requiring special protection but the buffer shall not exceed more than 1/2 of the total acreage.

This bill, in one broad stroke, says state-owned lands should start to pay their way and can and should be used for agriculture, sub-agriculture, and water supply and storage.

Establishment and Implementation of MFLs (Minimum Flow Levels):

CS/HB 715, et al requires the Water Management Districts to consider changes and structural alterations to wetlands, surface waters, and groundwater, and the effects such changes have had on the water resource, when establishing MFLs.

This provision would require the WMDs to consider the effect of structural changes to water bodies, such as dams or channelization of rivers, as well as the impact of major flood control works such as the South Florida WMD's Central and Southern Florida Flood Control Project.

In addition to considering the direct alterations caused by structural changes, the WMDs also would be required to

consider indirect changes, such as changes to groundwater levels or hydrologically connected wetlands. The committee substitute specifically states that the consideration in this subparagraph is not to be construed to grandfather-in significant harm caused by consumptive-use withdrawals.

CS/HB 715, et al also recognizes that some water bodies can never be restored to their historic hydrologic functions, or that it is not practicable or technically feasible to do so.

In such cases, the WMDs and DEP would have the discretion to not set MFLs. The WMDs also are directed to not set MFLs for surface water bodies less than 25 acres in area, unless the surface water bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value, or are unique natural resources.

Also exempt would be man-made water bodies — such as cooling ponds, drainage ditches, borrow pits and mining pits — that were constructed prior to a permitting program or are constructed pursuant to the conditions of a permit or a reclamation plan, unless they have a unique hydrologic value.

The WMDs are further directed to implement a recovery or prevention strategy if a water body falls below, or is projected to fall below, its MFL. The recovery or prevention strategy must include a timetable that will allow for development of additional water supplies to offset any reduction in permitted withdrawals. To the extent to which it is practical, the offset must be provided concurrent with any reductions in permitted withdrawals.

CS/HB 715, et al also extends the scientific peer review process to the establishment of MFLs in all five WMDs, not just three counties within SWFWMD, and makes several other refinements.

WMD Accountability:

CS/HB 715, et al provides for staggered appointments of WMD governing board members.

Beginning January 1, 1999, in the first year of a governor's four-year term in office, the governor shall appoint three

members to the governing board of each WMD. In the second and third years the governor shall appoint two members to the governing board of each WMD, except for SWFWMD, where he or she shall appoint three members the SWFWMD board. In the fourth year the governor shall appoint two members of the governing board in each WMD, including SWFWMD.

CS/HB 715, et al also requires WMD Basin Boards to prepare post audits, and it requires each WMD to provide: 1) the tentative budget, 2) the adopted budget, 3) the past year's expenditures, and 4) the post audit to the governor, speaker of the house, president of the Senate, chairs of the legislative committees with substantive or appropriations jurisdiction, the secretary of DEP, and to each county in which it has jurisdiction.

Duration of WUPs:

CS/HB 715, et al requires WUPs be issued for 20 years if there is sufficient information to provide reasonable assurance that permit conditions will be met. The bill allows the WMDs to require a 5-year compliance report when it is necessary to maintain reasonable assurance that the conditions of the permit can continue to be met.

The WMD may modify the permit after receipt of the compliance report. Permit modifications based on the 5-year compliance report shall not subject the permit to competition from other uses, if there is no increase in water allocation or permit duration and no change in water source other than a change requested by a WMD. The bill also clarifies that these changes shall not be construed to limit the WMDs' or DEP's existing authority to modify or revoke WUPs.

Use of public lands:

CS/HB 715, et al would allow lands acquired under the CARL and SOR programs to be used for permissible water resource and water supply development projects if the following conditions are met:

- MFLs have been established for priority water bodies on the land;
- the project complies with consump-

tive use permitting criteria; and

- the project is compatible with the purposes for which the lands were acquired.

Water Resource and Supply Development:

CS/HB 715, et al defines "water resource development" as the formulation and implementation by the WMDs of regional water resource management strategies that range from data collection to construction of groundwater storage systems. Water resource development is declared to be the responsibility of the WMDs.

Also defined is "water supply development," which is the planning, design, construction, operation and maintenance of public or private facilities for water collection, treatment, transmission or distribution for sale, resale or end use.

Water supply development is declared to be the responsibility of local governments and of government- and privately-owned utilities, although the bill provides circumstances under which DEP and the WMDs can assist in such development.

The bill also clarifies existing water planning language and forges stronger links among the Florida Water Plan (currently called the state water use plan), the WMD district water management plans and the regional water supply plans.

The WMDs are directed to plan on a 20-year time frame the development, management and protection of water resources needed to meet the existing and reasonably projected future uses. When planning to meet these needs, the WMDs are directed to assure that water would be available to meet these needs during a 1-in-10 year drought.

WMDs are directed to initiate water resource development to ensure water is available for all existing and future reasonable-beneficial uses and the environment, and participate in the following activities:

- formulate and implement regional water resources development strategies and programs;
- collect data and conduct research to improve the use of surface and groundwater resources for water supply purposes;

poses;

- implement nonstructural programs to protect and manage water resources;
- provide for the construction, operation and maintenance of major public works facilities for replenishment, recapture, storage and enhancement of surface and groundwater resources;
- encourage and promote the development of new technology to maximize the reasonable-beneficial use of surface and groundwater resources;
- cooperate with and assist public and private utilities, regional water supply authorities and public service corporations in the development of water supply delivery systems.



Key 1997 water Legislative action

State water policy revised in 81 pages

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1997 saw a major effort in the legislature of our state government to attempt to come to grips with the water needs of the state and its citizens. House bill 715 is a cumbersome, awkward and somewhat meddlesome 81-page revision on state water policy.

It is at best an attempt to reign in so-called rogue water management districts and set standards to protect our water supply, and at worst a lost opportunity to curtail the unmanageable development of the state. For it is clearly evident that only a moratorium in new housing developments in certain areas of the state will allow for resolution of water deficits and creation of new supplies upon which future development could depend.

Some of the highlights of House Bill 715 are as follows:

- The water management district governing board has power to identify specific uses on designated bodies of water as "undesirable" and can deny permits requesting those uses. Translation: Lake Okeechobee water can now go to the Everglades instead of east coast well fields or drainage ditches.