The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL:	CS/SB 550
INTRODUCER:	Committee on Environmental Preservation and Conservation and Senator Constantine
SUBJECT:	Environmental Protection
DATE:	March 24, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	**Fav/CS**
2.				
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This is a comprehensive committee substitute (CS) dealing with multiple water issues. Specifically the CS:

- Reorganizes various provisions of ch. 373, F.S., into a new part VII.
- Permits funding for alternative water supply projects through the State Board of Administration (SBA).
- Expands the definition of alternative water supply to include conservation projects.
- Adds a Blue Belt assessment criterion to the alternative water supply ranking criteria.
- Repeals portions of legislation passed in 2009 (SB 2080); removing provisions that require the delegation of permit decisions from a water management district (WMD, district) governing board to the executive director for certain permits.
- Establishes criteria for the development of a statewide stormwater management rule.
- Expands the definition of "pollution" to include nutrients when their concentrations in water bodies cause imbalances in the ecosystem.
- Provides specific authority to the Department of Environmental Protection (DEP) to establish water quality criteria to limit nutrient loading in water bodies.

- Requires the DEP, in cooperation with the WMDs, to create and maintain an online portal available to the public listing all consumptive use permits (CUP).
- Directs the DEP to create numeric nutrient criteria for the state that will fulfill the U.S. Environmental Protection Agency's (EPA) mandate under the federal Clean Water Act.
- Directs that $200 million in bonds may be issued for sewage collection, treatment and disposal in the Florida Keys Area of Critical State Concern.
- Provides specific standards that central wastewater facilities and onsite sewage treatment and disposal systems (septic systems) in the Florida Keys Area of Critical State Concern must meet.
- Permits residents of the Monroe County to adopt by referendum a 1-cent surtax to pay for stormwater and wastewater upgrades.
- Extends the deadline of compliance for central wastewater facilities and septic systems upgrades to December 31, 2015 from July 1, 2010.
- Provides procedures for removal of the designation of the Florida Keys Area of Critical State Concern once all requirements of the Administration Commission are met.
- Creates regional management entities (RME) for septic system inspection, maintenance, repair and replacement for all septic systems in the state.
- Provides for duties, powers and implementation requirements for RMEs.
- Directs the DEP to submit a report to the Governor and Legislature on the effects of reclaimed water use by February 1, 2012.
- Clarifies that wastewater facilities contributing flow to another wastewater facility that discharges to an ocean outfall must meet the 60-percent reuse requirement for any diverted quantity of wastewater flow. The percentage of the diverted flow processed as reuse will be applied to the facility discharging to an ocean outfall.
- Bans the land application of class AA, class A and class B wastewater residuals, except for class AA residuals marketed, distributed and applied as fertilizer products, after July 1, 2015.
- Bans the land application of septage after January 1, 2015, or sooner if the septage is produced as the result of operations from a RME.
- Renames the "Florida Water Pollution Control Financing Corporation" as the "Florida Water Pollution Control and Drinking Water Financing Corporation."
- Adds and modifies definitions to conform to the creation of the new corporation and its expanded duties, provides rulemaking authority, and specifies additional criteria concerning loan recipients' ability to repay their loans.
- Creates the "Florida Springs Protection Act."
- Provides specific requirements for septic systems and agricultural operations in spring zones.
- Authorizes governmental agencies and entities to engage in rule making to administer the provisions of the Florida Springs Protection Act.
- Expands the Acquisition and Restoration Council's ranking criteria for Florida Forever funding to contain a springs protection criterion.
- Directs the University of Florida's Water Institute to serve as the lead advisory body to provide the Legislature scientifically-based policy recommendations for water resources.
- Directs the Building Commission to develop recommendations that result in water conservation.
- Reinforces the WMDs duty to negotiate disputes in good faith before proceeding to litigation against other governmental entities.

- Requires the lining of all construction and demolition debris landfills constructed after July 1, 2010.
- Clarifies penalties for damaging or destroying any drainage works constructed in any WMD.

The CS contains technical and conforming changes.

The CS provides for multiple effective dates.

The CS amends ss. 11.45, 120.52, 163.3167, 163.3177, 163.3191, 189.404, 189.4155, 189.4156, 215.47, 215.619, 259.105, 298.66, 367.021, 369.317, 373.019, 373.036, 373.0363, 373.0421, 373.0695, 373.079, 373.083, 373.118, 373.129, 373.223, 373.2234, 373.229, 373.236, 373.4131, 373.536, 373.59, 378.212, 378.404, 380.0552, 381.0065, 381.00655, 381.0066, 403.031, 403.061, 403.086, 403.0891, 403.1835, 403.1837, 403.707, 403.8532, 403.8533, 403.890, 403.891, 553.77 and 682.02, F.S.

The CS creates part VII of ch. 373, F.S., consisting of ss. 373.701, 373.703, 373.705, 373.707, 373.709, 373.711, 373.713 and 373.715, F.S., and part IV of ch. 369, F.S., consisting of ss. 369.401, 369.402, 369.403, 369.404, 369.405, 369.406 and 369.407, F.S. It also creates ss. 373.631 and 403.0675, F.S.

The CS repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962 and 373.1963, F.S., and ss. 4, 5 and 6 of ch. 99-395, L.O.F., as amended.

The CS renumbers s. 373.71, F.S., as s. 373.69, F.S.

II. Present Situation:

Florida Senate Select Committee on Florida's Inland Waters

On October 7, 2009, Senate President Jeff Atwater created the Florida Senate Select Committee on Florida's Inland Waters. In so doing, he recognized the importance that Florida's surface and groundwaters have on the state. The task set before the committee was to travel the state and listen and learn from constituents. To that end, six meetings were scheduled around the state.

In conjunction with the public hearings, the members of the committee and staff were invited on several site visits. Each site visited exemplified a unique challenge for Florida's water resources, from agricultural best-management practices to saltwater intrusion.

At the end of the hearings, the Select Committee unanimously adopted a final report containing 13 recommendations:

1. The definition of alternative water supply projects should be expanded to include projects that demonstrate quantifiable water conservation. Such projects would then be eligible for Water Protection and Sustainability Trust Fund funding. Projects might include repairing municipal delivery systems and upgrading agricultural irrigation systems.

2. Funding for alternative water supply projects, including conservation projects, should be restored, at a minimum, to its original funding level. In order to achieve this goal, an innovative, recurring source of funding must be found.
3. In light of recent EPA proposed rules for Florida's water bodies, the DEP should continue its rulemaking to adopt quantitative nutrient water quality standards and its discussion with the EPA in hopes that the implementation of those standards in conjunction with implementation of total maximum daily loads and basin management action plans may satisfy the requirements of the federal Clean Water Act.
4. The "local sources first" policy should be maintained in its current form and emphasis directed towards water conservation and alternative water supply projects instead.
5. Aquifer and water resource protection measures must be adopted that reduce nitrogen and phosphorus loading.
6. Implement a watershed approach for springs protection, where needed, using the Surface Water Improvement and Management Program as a basis for its development.
7. The Legislature should consider the creation of regional management entities to effectuate a septic tank inspection and maintenance program. Counties and municipalities should have authority over the regional management entities.
8. Ban the land application of class A and B residuals from domestic wastewater facilities and the land spreading of septage from septic tank pump outs. Ensure that class AA residuals marketed as a fertilizer product are applied to the land at proper agronomic rates.
9. Require the DEP to study the effects that reclaimed water have on nutrient loading in Florida's water bodies and report its findings to the Legislature. If it is determined that using reclaimed water has negative effects, then the DEP must provide recommendations in its report that eliminate such effects.
10. Blue belt tax exemptions should be examined and expanded or other incentives given to compensate landowners in high-water recharge areas to hold more water on their land.
11. Utilize existing state water institutes and councils, such as the University of Florida's Water Institute, to provide their recommendations to the Legislature based on the best available science.
12. Direct the Florida Building Commission to evaluate and update existing building policies and codes, focusing on updating existing water conservation measures and including new measures. Examples of such measures are requiring ultra-low flush toilets (1.28 gallons/flush) or rainwater catchment devices for new construction.
13. Require the water management districts to negotiate disputes in good faith. When such negotiations do not reach an agreement, the districts shall submit to an alternative dispute resolution process, such as mediation or arbitration, before proceeding to court.

Along with the reorganization of ch. 373, F.S., the recommendations formed the basic structure on which the CS was drafted.

Reorganization of ch. 373, F.S.

Chapter 373, F.S., has undergone multiple revisions and additions since its enactment in 1957. The various major revisions have rendered the sections regulating water resources difficult to read as a whole, let alone navigate and understand from a regulatory perspective. This complexity, and the resultant inherent regulatory difficulties, stem from the multiple purposes of ch. 373, F.S., as it has evolved over the last 50 years.

As originally enacted in 1957, the primary purpose of ch. 373, F.S., was flood control. The regulatory structure was not built for water resource planning or development as no substantial need existed at the time. The 1972 revisions focused more on water resource management, for example codifying the creation of the five WMDs. The regulatory structure set in place then, which still exists today, created water managers that are both regulators and suppliers.

Both the 1997 and 2005 major additions required water managers to forecast and plan for future water use, looking at 10, 15 and 20-year planning horizons. The studies and data collected by the state's water managers show that traditional sources of water are not going to be sufficient to meet Florida's need in 2020. Yet, it was not until SB 444, passed in 2005, that a dedicated funding source was created for the development of alternative water projects. Since SB 444's enactment in 2005, funding for alternative water supply development has subsequently been eliminated from the Water Protection and Sustainability Trust Fund due to budget shortfalls.[1] The definition of alternative water supplies does not include quantities derived from conservation projects.[2] The "local sources first" policy was part of the 1998 amendments to s. 373.016, F.S. The policy discourages transmission of water between jurisdictions until all reasonable traditional and alternative water resources have been exhausted.[3]

HB 1111 was introduced during the 2009 Legislative session. The bill was a consensus product created by experts in water policy. It proposed creating a new Part VII of ch. 373, F.S., to reorganize many sections of part I of ch. 373, F.S., and various other sections in the Florida Statutes that address water supply policy, planning, production and funding. The bill passed unanimously through both the House Government Accountability Act Council and the House General Government Policy Council before being indefinitely postponed. The goal of the bill was a non-substantive reorganization of the relevant sections. Detailed analysis of the bill illuminated numerous, unintended substantive changes.

Delegation of Authority by Water Management District Governing Boards

Direct oversight for each of the five districts' activities is provided by a Governing Board whose members are appointed by the Governor and subject to confirmation by the Florida Senate.[4] Each Governing Board hires an Executive Director who must also be confirmed by the Florida Senate. In addition, pursuant to s. 373.026(7), F.S., the DEP is authorized to "exercise general supervisory authority over all water management districts."

The districts direct a wide range of programs, initiatives and actions to fulfill their statutory requirements. The specific duties of the districts include water use permitting, well construction, environmental resource permitting, water conservation, education, land acquisition, water resource and supply development, and supportive data collection and analysis efforts.

The Florida Environmental Reorganization Act of 1993 (ch. 93-204, Laws of Florida) created the environmental resource permitting program (ERP). Operationally the ERP program is now

[1] 2009-2010 Florida Budget.
[2] § 373.019(1), F.S. (2009).
[3] § 373.016(4)(a), F.S. (2009).
[4] § 373.073(1)(a), F.S. (2009).

jointly implemented by the DEP through its district offices and the WMDs. Most of the ERP permits are issued by the districts; however, large projects with statewide implications are issued by the DEP.

The CUP program includes permitting, compliance and enforcement, and water shortage plan support and enforcement. Any entity or person that wants to use large amounts of water, except those exempted by statute or rule, are required to obtain a CUP. These permits are issued for a finite duration and, upon expiration, must be renewed.

In 2009 the Legislature passed CS/CS/SB 2080 (ch. 2009-243, L.O.F.), which contained provisions concerning the delegation of permit decisions from the governing boards of WMDs to the executive directors. Specific provisions of the legislation mandated that the governing boards delegate to the executive directors the authority to take final agency action concerning permit applications for CUPs and ERPs. These changes where based on recommendations contained in a 2008 Senate interim report that found nearly 100% of all governing board decisions relating to the issuance of permits for CUPs and ERPs adopted the staff recommendation.[5]

Upon the 2009 Legislation becoming law, some interest groups expressed concern that the mandated delegation eliminated a critical portion of the public review process and would have the effect of reducing public input.

Nutrient Management in Florida's Water Bodies

The State of Florida has initiated rulemaking to adopt quantitative nutrient water quality standards to facilitate the assessment of designated use attainment for its waters and to provide a better means to protect state waters from the adverse effects of nutrient over enrichment. The addition of excess nutrients, often associated with human alterations to watersheds, can negatively impact water body health and interfere with designated uses of waters. Impacts include noxious tastes and odors in drinking water, algal blooms and excessive aquatic weeds in swimming and boating waters, and altering the natural community of flora and fauna.
The DEP plans to develop numeric criteria for phosphorus and nitrogen and possibly for their response variables, recognizing the differences in Florida's hydrology and geology, the nutrient levels of the state's waters, and the variability in ecosystem response to nutrient concentrations. The DEP's preferred approach is to develop cause and effect relationships between nutrients and valued ecological attributes and to establish nutrient criteria that ensure that the designated uses of Florida's waters are maintained.

Florida currently uses a narrative nutrient standard to guide the management and protection of its waters. Chapter 62-302.530, F.A.C., states, "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna." The narrative criteria also states that, for all waters of the state, "the discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter [Chapter 62-302, F.A.C.]. Man-induced nutrient enrichment (total nitrogen or total phosphorus)

[5] Interim Report 2008-212, Agency Sunset Review of the Water Management Districts, by the Senate Committee on Environmental Preservation and Conservation.

shall be considered degradation in relation to the provisions of Sections 62-302.300, 62-302.700, and 62-4.242, F.A.C."

The DEP has relied on this narrative for many years because nutrients are unlike any other "pollutant" regulated by the federal Clean Water Act. Most water quality criteria are based on a toxicity threshold, evidenced by a dose-response relationship, where higher concentrations can be demonstrated to be harmful, and acceptable concentrations can be established at a level below which adverse responses are seen. In contrast, nutrients are not only naturally present in aquatic systems, they are necessary for the proper functioning of life.
The DEP has been actively working with EPA on the development of numeric nutrient criteria. The DEP submitted its initial Draft Numeric Nutrient Criteria Development Plan to the EPA in May 2002, and received mutual agreement on the Numeric Nutrient Criteria Development Plan from EPA in July 2004. The DEP revised its plan in September 2007 to more accurately reflect its evolved strategy and technical approach, and received mutual agreement on the 2007 revisions from the EPA.

The Florida Wildlife Federation filed a lawsuit in 2008 seeking to require the EPA to promulgate numeric nutrient water quality standards for Florida waters. The EPA settled the lawsuit and entered into a consent decree with the Florida Wildlife Federation. After EPA analyses of the facts in Florida and discussions with the DEP, on January 14, 2009, the EPA made a determination that numeric nutrient criteria in Florida were necessary to meet the requirements of the federal Clean Water Act. The EPA determined that Florida's existing narrative criteria on nutrients in water was insufficient to ensure protection of the state's water bodies. The determination recognized that, despite Florida's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient over-enrichment remains a significant challenge in Florida and is likely to worsen with continued population growth and land-use changes. The January 14, 2009 determination stated the EPA's intent to propose numeric nutrient standards for lakes and flowing waters in Florida within twelve months of the determination, and for estuaries and coastal waters, within 24 months of the determination. The final EPA rule is scheduled for promulgation in October, 2010.

Stormwater Management

Florida receives approximately 40 to 60 inches of rain each year from about 130 storm events. While about 80% of the storms are small, with less than 1 inch of rainfall, the state also experiences torrential downpours and hurricane rains. This rainfall causes runoff carrying sediment, fertilizers, pesticides, oil, heavy metals, bacteria, and other contaminants to enter surface waters, causing adverse effects from increased pollution and sedimentation. The implementation of erosion control measures consistent with sound agricultural and construction operations is essential to minimizing these impacts.[6]

Florida's stormwater regulatory program requires the use of best management practices (BMPs) during and after construction to minimize erosion and sedimentation and to properly manage runoff for both stormwater quantity and quality. BMPs are control practices that are used for a

[6] *See*, Florida Stormwater Erosion and Sedimentation Control Inspector's Manual, July 2008. Available at: <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>. Last accessed on March 21, 2010.

given set of conditions to achieve satisfactory water quality and quantity enhancement at a minimal cost. Each BMP has specific application, installation, and maintenance requirements that should be followed to control erosion and sedimentation effectively. Accepted engineering methods must be used in the design of these control measures, such as those established by the DEP, the Department of Transportation, the U.S. Department of Agriculture's, the Natural Resources Conservation Service, the International Erosion Control Association, the American Society of Civil Engineers, the U.S. Army Corps of Engineers, or other recognized organizations.[7]

Part IV of ch. 373, F.S., governs the management and storage of surface waters. Section 373.403(10), F.S., defines "Stormwater management system" to mean:

> a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

Section 373.413, F.S., provides in part:

- Except for the exemptions set forth herein, the governing board or the department may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district. The department or the governing board may delineate areas within the district wherein permits may be required.
- A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:
  - Name and address of the applicant;
  - Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
  - Location of the work;
  - Sketches of construction pending tentative approval;
  - Name and address of the person who prepared the plans and specifications of construction;
  - Name and address of the person who will construct the proposed work;
  - General purpose of the proposed work; and
  - Such other information as the governing board or department may require.

Section 373.117, F.S., addresses certification by professional engineers, and provides:

- If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by ch. 471, F.S., the department or governing board of a water management district may require, as a condition of

[7] *Id.*

granting a permit or license, that a professional engineer licensed under ch. 471, F.S., certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board.

- The cost of such certification by a professional engineer shall be borne by the permittee.
- No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

For purposes of part I of ch. 403, F.S., relating to pollution control, s. 403.0877, F.S., addresses certification by professionals regulated by the Department of Business and Professional Regulation. The section provides:

- Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under ch. 471, F.S., a professional landscape architect licensed under part II of ch. 481, F.S., a professional geologist licensed under ch. 492, F.S., or a professional surveyor and mapper licensed under ch. 472, F.S., for an activity that is not within the definition or scope of practice of the regulated profession.
- If an application for a permit or license to conduct an activity regulated under this chapter, ch. 373, F.S., ch. 376, F.S., or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the department or a water management district, requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action that such activity or corrective action has, to the best of his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.
- The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.
- A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the department or board.

Finally, s. 403.0896, F.S., addresses training and assistance for stormwater management system personnel. The section provides for the Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments, shall develop training and assistance programs for persons

responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.[8]

Florida Keys Area of Critical State Concern

In 1975, the Administration Commission designated the Florida Keys as an Area of Critical State Concern. The designation was challenged and, in 1978, the Florida Supreme Court declared that the designation process constituted an invalid delegation of legislative authority to an administrative agency. In response, the 1979 Florida Legislature, amended the criteria and process for designating Areas of Critical State Concern, and statutorily re-designated the Florida Keys as an Area of Critical State Concern. The City of Key West petitioned and was approved for removal from the Area of Critical State Concern in 1981.[9] The majority of the rest of Monroe County, including its municipalities, remains within the Area of Critical State Concern.[10] The Administration Commission oversees growth management provisions in areas included under the designation. Among the elements of the growth management Work Program are the planning, design and implementation of centralized wastewater management systems and upgraded onsite sewage treatment and disposal systems (septic tanks) by municipalities within Monroe County and the county itself.[11]

Chapter 99-395, L.O.F., as amended, provides requirements and standards for wastewater facilities and septic tanks in Monroe County that must be met by July 1, 2010. Ch. 99-395, L.O.F., applies to all wastewater facilities and septic tanks regardless of ownership; however, local governments or other entities are not required to build new facilities or systems.

Pursuant to the Administration Commission Work Program and the June 2000 Monroe County Sanitary Wastewater Master Plan, the plan has been for local governments to build central facilities and to require package plants and septic tank owners to connect to central systems when available.[12] Package plant and septic tank owners have generally been waiting for completion of local government facilities because chapter 99-395, L.O.F., gives local governments in the Keys the authority to mandate connection of package plants and onsite systems within 30 days of central system availability. Package plant and septic tank owners have been reluctant to invest in expensive upgrades to their systems to comply with chapter 99-395, L.O.F., only to be forced, in some cases in as little as 30 days, to pay expensive connection fees, impact fees and monthly user charges for central sewer as it becomes available. All package plants and septic tanks not upgraded by July 1, 2010 will be in violation of ch. 99-395, L.O.F., on July 1, 2010. Owners of the systems will be subject to enforcement by the DEP or the Department of Health (DOH) depending on the type of system.

[8] The Consortium was created by s. 33, ch. 89-279, L.O.F.
[9] Department of Community Affairs, *Florida Keys Area of Critical State Concern Removal of Designation Report*, 2008. Available at: <http://www.dca.state.fl.us/fdcp/DCP/acsc/Files/RemovalofDesignationReport.pdf>. Last accessed March 21, 2010.
[10] § 380.0552, F.S. (2009).
[11] Administration Commission, Rule 28-20, F.A.C.
[12] According to the U.S. Environmental Protection Agency, package plants are pre-manufactured treatment facilities used to treat wastewater in small communities or on individual properties capable of processing up to half a million gallons per day.

As of February 2010, the cities of Key West, Key Colony Beach and Layton operate facilities in compliance with the July 1, 2010 deadline. The city of Marathon and the Key Largo Wastewater Treatment District are nearing completion of central systems for their service areas but will not meet the July 1, 2010 deadline. The Village of Islamorada and Monroe County, for its unincorporated areas, are in various stages of planning, design and construction of facilities. These facilities are years from completion.

The Florida Water Pollution Control Financing Corporation

The Florida Water Pollution Control Financing Corporation is a nonprofit public-benefit corporation for financing or refinancing water pollution control activities. The Corporation is governed by the Governor's Budget Director, the Chief Financial Officer, the Secretary of DEP The executive director of the SBA shall direct and supervise the affairs of the corporation. The corporation's purpose is to issue bonds that increase the capacity of the State Revolving Fund to provide low-interest loans to local governments. The Clean Water State Revolving Fund has provided more than $2.2 billion in loans during the past 20 years, including more than $150 million last year to plan, design, and build wastewater and stormwater facilities across the state.

Ocean Outfall Requirements

There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties discharging approximately 400 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.[13]

Wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008 are required to install a reuse system no later than December 31, 2025. The reuse systems must be capable of providing a minimum of 60 percent of the wastewater facilities actual annual flow for beneficial reuse. The actual annual flow is calculated using the annual average flow through a wastewater facility's ocean outfall from 2003 through 2007.

Wastewater facilities operating ocean outfalls receive a significant portion of their annual average flow from other wastewater facilities located outside their direct service areas. There is a potential that flow received from outside their service areas could be diverted to other wastewater facilities that do not discharge to ocean outfalls, and therefore, would not have to comply with the 60 percent beneficial reuse requirement of ocean outfalls. Thus, diverting flow could circumvent the intent of the law to capture 60 percent of the flow currently being disposed of through ocean outfalls. Diversion may also prevent wastewater facilities discharging through ocean outfalls from meeting the 60 percent target for reuse. The reuse calculation does not consider quantities diverted from the wastewater facility, only the total average annual quantity from 2003 to 2007. In 2005, these wastewater facilities had reached approximately 94 percent of their permitted flow capacity.[14] As such, even small flow diversions have significant compliance consequences. For example, if a wastewater facility received an average of 100 million gallons per day from 2003 to 2007, it would be required to produce 60 million gallons per day of reuse

[13] Ben Koopman, et al., *Ocean Outfall Study, Final Report*. 2006. University of Florida, Gainesville. Prepared for the Florida Department of Environmental Protection. Available at:
<http://www.dep.state.fl.us/water/reuse/docs/OceanOutfallStudy.pdf>. Last accessed March 21, 2010.
[14] *Id.*

by 2025 to be in compliance. If 20 million gallons per day were diverted, the facility would still be required to produce 60 million gallons of reuse per day to comply, or 75 percent of the flow. If enough flow is diverted, it is possible that wastewater facilities discharging to ocean outfalls will be required to produce greater than 100 percent of the flow they receive as reuse.

The discharge of wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system authorized by the DEP. A backup discharge may occur only during periods of reduced demand for reclaimed water, such as periods of wet weather, and must comply with the advanced wastewater treatment and management requirements of s. 403.086, F.S.

Florida Springs

Florida has more than 700 recognized springs; 33 first magnitude springs with a flow of more than 100 cubic feet per second that discharge more than 64 million gallons of water per day; 191 second magnitude springs with an average flow of 10 to 100 cubic feet per second that discharge from 6.46 to more than 64 million gallons of water per day; 151 third magnitude springs with a flow of 1 to 10 cubic feet per second that discharge 600,000 to 6.46 million gallons of water per day.[15] Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's watershed. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

The Florida Springs Task Force was created in 1999 to recommend strategies for protecting and restoring Florida's springs. The multi-agency task force produced a report in November of 2000 entitled "*Florida's Springs, Strategies for Protection and Restoration*" which was the basis of the Florida Springs Initiative within the DEP. The report identified management strategies such as coordinated land use planning and ordinances that protect spring recharge basins, funding and implementing best management practices, and the acquisition of spring recharge basins to protect springs from land use practices that reduce water quality and quantity. The report also identified regulation strategies to protect spring flow, and a funding mechanism for implementing the strategies contained in the report. The report suggested the creation of a Springs Protection and Restoration Trust Fund funded by a 25-cent increase in automobile tags. Under the Florida Springs Initiative, the Legislature has provided at least $2.5 million each year since 2001 to support projects for springs restoration, research and protection.

The DOH conducts an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.[16] The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (OSTDS) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and course providers for septic tank contractors, funds a hands-on

[15] See Bulletin No. 66, *Springs of Florida*, Florida Geological Survey. Available at: <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm>. Last accessed March 21, 2010.
[16] § 381.006, F.S. (2009).

training center, and mediates OSTDS contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.[17]

The DOH does not currently have a statewide septic system inspection program but has produced the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program."[18] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic system inspections at a cost of between $83.93 to $215 per inspection. Florida has between 2.3 and 2.7 million septic systems with the estimated failure rate during the initial round of inspections to be 9.5 percent. There is no active management of septic systems in Florida.

The Wekiva Basin

The Wekiva Basin, consisting of the Wekiva River, the St. Johns River and their tributaries along with associated lands in Central Florida, is part of a vast wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve. The Wekiva Parkway is a limited access highway or expressway constructed between State Road 429 and Interstate 4, specifically incorporating the corridor alignment recommended by the Wekiva River Basin Area Task Force and the S.R. 429 Working Group. The Wekiva Parkway and related transportation facilities must follow the design criteria contained in the recommendations of the Wekiva River Area Task Force adopted by reference by the Wekiva River Basin Coordinating Committee, subject to reasonable environmental, economic and engineering considerations. In 2004, the Legislature enacted the Wekiva Parkway and Protection Act, part III, ch 369, F.S. The act implemented the recommendations of the Wekiva River Basin Coordinating Committee's Final Report of March 16, 2004, and provides legislative intent and a legal description of the Wekiva Study Area. The majority of the land within the Study Area contributes groundwater recharge to the Wekiva River and springs. The act required each local government within the Study Area to adopt a master stormwater management plan and a wastewater facility plan for joint planning areas and utility service areas where central wastewater systems are not readily available.

The act directs that funds expended by the Department of Transportation and Orlando-Orange County Expressway Authority to purchase interests in certain lands shall be eligible as environmental mitigation for road construction related impacts in the Wekiva Study Area. The act specifies the offset of road construction impacts as the only use of mitigation credits. Currently, there is a surplus of mitigation credits available to mitigate the Wekiva parkway expansion that cannot be used for other mitigation purposes within either the Wekiva Study Area or the Wekiva parkway alignment corridor.

[17] Description of the Bureau of Onsite Sewage from the DOH website. Available at: <http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html>. Last accessed March 21, 2010.
[18] The Department of Health. Available at: <http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf>. Last accessed March 21, 2010.

University of Florida Water Institute

There are no officially designated advisory bodies to issue scientifically-based policy recommendations to the Governor and Legislature. Although Florida's waters are some of the most highly studied and data-rich waters in the nation, there is a disconnect between the experts and the policy makers.

The University of Florida's Water Institute's core mission is to bring together talent from throughout University of Florida to address complex water issues through innovative interdisciplinary research, education, and public outreach programs. The Institute's vision is to create interdisciplinary teams, comprised of leading water researchers, educators and students; develop scientific breakthroughs; engineer creative solutions for water problems; and recommend policy and legal solutions for complex issues. The Institute is dedicated to creating strong partnerships with concerned stakeholders to identify and prioritize critical water issues requiring interdisciplinary expertise but practical solutions. The Institute held a two-day water symposium in February 2010, bringing together experts from around the country to discuss critical issues related to water resources.

The Florida Building Commission

The Florida Building Commission (Commission) is a collegial body created by s. 553.74, F.S. The Commission is comprised of 23 members, 22 of whom are required to meet statutorily described professional qualifications, and a chairperson. The Governor appoints the commissioners who are subject to confirmation by the Florida Senate. All appointments are for terms of four years, except the chair, who serves at the pleasure of the Governor.

The Florida Building Code
Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help to ensure economic viability through the availability of safe and affordable buildings and structures. However, the Florida Building Code (code) does not address water conservation or products that result in water conservation.

Section 553.73, F.S., provides for the code. The code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The code was developed and is updated and maintained by the Commission that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

The code is updated every three years by the Commission. The Commission may amend the code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer. A proposed amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement are established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance. The latest revisions to the code occurred in 2008.[19]

The commission is also authorized to hear appeals from decisions of local boards regarding the interpretation of the code, issue declaratory statements relating to the code, determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use and develop a Building Code Training Program.

Product Approval
Product performance standards are integral to the scheme used by building codes to establish minimum building safety and performance standards. Traditionally, products are evaluated for compliance by engineering groups, which are independent of the manufacturers, then their evaluations are provided to the authority having jurisdiction for general approval or acceptance of the product.

Alternative Dispute Resolution by Water Management Districts

Presently, disputes between governmental entities are governed by ch. 164, F.S., the Florida Governmental Conflict Resolution Act (act). The act was implemented in 1999 (ch. 99-279, L.O.F.) as a mechanism for the resolution of disputes between governmental entities which must be followed prior to litigation. Under the act, before a governmental entity can file a law suit against another governmental entity, notice of intent to file suit must be given to the potential defendant, at least 45 days prior to filing suit. The party receiving notice must hold a public meeting within 30 days after receipt of this notice. At this meeting, the disputing governing bodies must discuss the proposed litigation in an effort to amicably settle the controversy.

The statute provides for an exception to the notice and public meeting requirements of this act if the governmental entity finds that Aan immediate danger to the health, safety, or welfare of the public requires immediate action.≅[20] If a governmental entity is found not to be negotiating in good faith, it will be required to pay the attorney's fees and costs of the other party in that proceeding. The act does not preclude any party to the litigation from availing itself of all available legal remedies.

[19] § 140, ch. 2008-4; § 10, ch. 2008-191; and § 108, ch. 2008-227, L.O.F. (2008).
[20] § 164.1041(2), F.S. (2009).

Construction and Demolition Debris Landfills

Construction and demolition (C&D) debris consists of materials that are generated from residential and commercial buildings, renovations and various types of demolition. C&D materials include wood, steel, glass, brick, concrete, asphalt, wallboard, rock, soils, tree remains, and other vegetative matter. Only non-water soluble and non-hazardous materials are considered C&D. C&D constitutes 25 percent of Florida's municipal solid waste stream. Florida has 83 landfills and 75 C&D disposal sites where C&D debris can be disposed, only two of which are lined. 73 C&D disposal sites are unlined. The DEP has indicated that unlined C&D landfills are environmentally problematic and may pose a threat to water resources from leachate and runoff.

Penalties for Obstructing District Structures

Section 298.66, F.S., provides for penalties for anyone who obstructs drainage canals and watercourses or other water control structures constructed by the districts. This statute predates the creation of the five WMDs or other water control districts. As currently drafted, the penalties only apply to someone who interferes with structures or watercourses constructed by any district. If a water control structure was constructed by an entity that predates either a WMD or a water control district, there would be no penalty for obstructing , damaging or destroying the structure or watercourse.

III. Effect of Proposed Changes:

Section 1 creates part VII of ch. 373. F.S., consisting of ss. 373.701, 373.703, 373.705, 373.707, 373.709, 373.711, 373.713 and 373.715, F.S., The goal of which is a non-substantive reorganization of the relevant parts of ch. 373, F.S. relating to water supply policy, planning, production and funding. The creation of the following sections comprise the reorganization:

- Section 373.701, F.S., declares the state's water supply policy.
- Section 373.703, F.S., provides powers and duties concerning water production of the water management districts.
- Section 373.705, F.S., provides direction concerning water resource and water supply development. Specific provisions describe the role of the state and local governments, enumerate legislative intent, detail funding requirements of the districts, and provide ranking criteria for funding projects.
- Section 373.707, F.S., addresses alternative water supply development. Specific provisions included in this section:
  - Provide legislative intent;
  - Call for coordination in the development of water supply plans;
  - Direct that funding responsibilities be shared but that water suppliers shall have primary responsibility;
  - Detail the role of the WMDs relative to water resource development including alternative water supply development;
  - Detail the role of local governments regarding alternative water supply development, and requires that the water management districts are to separately detail budgetary expenditures for both traditional and alternative water supply development projects;
  - Provide for revenue sharing of funds deposited into the Water Protection and Sustainability Trust Fund among the water management districts;

  - Provide directions for the cost-sharing of projects among local sponsors, the water management districts and the state concerning the funding of alternative water supply projects;
  - Directs that the water management districts are to establish factors to be used in determining the eligibility and ranking of alternative water supply projects;
  - Provide administrative procedures to be used in developing the ranking list of alternative water supply projects, including whether local governments have implemented a blue belt assessment program;
  - Provide for full cost recovery for those utilities, regulated by the Public Service Commission, and that are engaged in constructing alternative water supply projects;
  - Specify conditions that may be placed, by the water management districts, on reuse projects; and
  - Allows the water management districts, through the DEP, to seek funding from the SBA for projects that have a regional benefit or will be implemented by a multi-jurisdictional entity.
- Section 373.709, F.S., provides for the development of regional water supply plans. Specifically the provisions include specific components and procedures to be used for developing the plans.
- Section 373.711, F.S., outlines the technical assistance the WMDs are to provide to local governments
- Section 373.713, F.S., encourages the creation of regional water supply authorities. Specific provisions detail the types of agreements needed and provide the power and duties they may exercise. This section provides authority to develop and own alternative water sources, to have interest in lands, and to grant preferential rights to member parties. It also includes a prohibition against water withdrawals that could harm those areas from which the water is withdrawn.
- Section 373.715, F.S., provides specific assistance to the West Coast Regional Water Supply Authority. These provisions are similar to those provided in s. 373.713, F.S., but are altered to deal with the unique issues concerning the creation of this water supply authority which pre-dates the provisions moved to s. 373.713, F.S.

Sections 2 thru 26 provide the necessary technical and conforming changes necessary to create part VII of ch. 373, F.S. Specifically, these sections amend ss. 120.52, 163.3167, 163.3177, 163.3191, 189.404, 189.4155, 189.4156, 367.021, 373.019, 373.036, 373.0363, 373.0421, 373.0695, 373.223, 373.2234, 373.229, 373.236, 373.536, 373.59, 378.212, 378.404, 403.0891, 403.890, 403.891 and 682.02, F.S. Section 10 of this CS contains the only substantive change to these 25 sections. It expands the definition of alternative water supplies to include quantifiable water savings from water conservation projects.

Section 27 renumbers s. 373.71, F.S., as s. 373.69, F.S., to account for new s. 373.701, F.S.

Section 28 repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962 and 373.1963, F.S., as they are redundant with the creation of part VII of ch. 373, F.S.

Section 29 amends s. 373.079, F.S., striking a provision that directed the WMD governing boards to delegate to the executive directors the authority to take final agency action on permit applications for CUPs and ERPs.

Section 30 amends s. 373.083, F.S., striking provisions that allow a WMD governing board to delegate permit decisions to the executive director and allow the executive director to delegate those decisions to district staff. Additionally, this section removes a provision that expressly prohibits any member of a governing board from intervening in any matter related to the review of permit applications if such permit applications will be referred to the governing board for final action.

Section 31 amends s. 373.118, F.S., allowing WMD governing boards to delegate by rule the ability for executive directors to take final agency action on permit applications. This provision also grants authority for the executive director to further delegate authority to district staff.

Section 32 creates s. 373.4131, F.S., establishing criteria for the development of a statewide stormwater management rule. Specific provisions provide:

- Legislative intent of the need for a uniform rule to manage nutrients in stormwater.
- Definitions for "nutrient", "redevelopment", and "stormwater quality treatment requirements."
- Direction that the rule provide for geographic differences in physical and natural characteristics such as rainfall, soils, topography and vegetation.
- Adoption of a rule no later than July 1, 2011, that must be implemented by the water management districts or delegated local pollution control programs without having to adopt it pursuant to ch. 120, F.S.
- Provide that existing rules for basin management action plans, total maximum daily loads, the Everglades Agricultural Area restoration, Northern Everglades and Lake Okeechobee restoration, and Lake Apopka restoration can continue to be modified as necessary.
- Prohibit, unless specifically authorized, any variances from the new stormwater rule.
- Provide that any existing stormwater rules superseded by the new rule may be repealed without further action.
- That existing rules remain fully in force until the new rule is in full force.
- Requirements that the rule shall establish treatment requirements necessary to meet water quality standards, including nutrient standards. Presumes compliance for stormwater discharged from a system meeting the requirements of the rule regardless if the standards are narrative or numerical.
- That notwithstanding general treatment requirements established by the rule, a set of alternative treatment requirements shall be created for redevelopment of sites totaling 10 acres or less and retrofitting of systems where such treatment results in a net reduction in the discharge of nutrients and other pollutants. It also provides that treatment requirements for redevelopment be based upon a feasibility assessment of stormwater best-management practices that consider certain factors.
- The rule may also establish alternative treatment requirements for sites with legacy pollutants from past activities.

Subsequent to the adoption of the rule the following shall continue to be governed under current rules: operation and maintenance of stormwater systems legally in existence before effective date of new rule; or activities approved in a permit issued pursuant to these new provisions but prior to the rule becoming effective. However, any permit issued under the provisions of the new rule

cannot be modified if it would extend construction for a period beyond four years or make changes that would substantially change stormwater quality impacts regardless of whether it lessens or increases the discharge.

This section provides that the new rule shall not apply to stormwater management systems serving agriculture.

Section 33 amends s. 403.031, F.S., modifying the definition of "pollution" to provide that nutrients become pollution in a water body when they cause an imbalance of naturally occurring aquatic flora or fauna. It also defines "first magnitude springs" and "second magnitude springs."

Section 34 amends s. 403.061, F.S., requiring the DEP to maintain a web portal listing all CUPs issued by the districts. It also provides specific authority to the DEP to establish water quality criteria to limit nutrient loading in water bodies that cause an imbalance of naturally occurring aquatic flora or fauna.

Section 35 creates s. 403.0675, F.S., allowing for the establishment and implementation of numeric nutrient standards. Specific provisions:

- Provide legislative findings of the need to develop specific numeric standards that are reflective of site specific factors. It cites the total maximum daily load program as the best mechanism for developing these standards.
- Direct that the DEP, by August 16, 2010, submit to the EPA numeric nutrient standards. The submission shall include site specific numbers, the methodology used and a schedule for developing additional numbers.
- Provide that the submission to the EPA is not subject to challenge under ch. 120, F.S.
- Detail the methodology to be used by the DEP for establishing numbers. Specific provisions require that: all streams to be categorized into existing basins; a prioritization of streams be established; a planning list and schedule for the establishment of numbers be adopted; site specific numbers be adopted by rule; all numbers be expressed using certain scientific expressions; and numbers adopted for impaired waters be submitted to the EPA.
- Require the DEP adopt numeric criteria as follows for first and second magnitude springs by January 1, 2011 and for lakes by July 31, 2011. Such criteria must be developed in accordance with the state's total maximum daily load program.
- Provide that certain existing numeric criteria shall be sufficient to meet the requirements of this section. Specifically, these are for those criteria approved by the EPA as of March 1, 2010 and those for Tampa Bay and its bay segments as already approved by the DEP. Parties shall retain their right to challenge the existing standards as provided under ch. 120, F.S.
- Allow for public comment on the proposed new numeric criteria but such criteria shall not be subject to challenge under ch. 120, F.S.
- If the EPA disapproves, approves in part, or conditions its approval of these numeric criteria, that standards shall not take effect until ratified by the Legislature.
- Condition the adoption of additional or more stringent numeric criteria for manmade lakes, canals or ditches, or streams converted to canals before 1975, on a determination by the Environmental Regulation Commission of their appropriate designated uses. In order to

facilitate the adoption of numeric criteria, the DEP shall propose by rule a new designated use or classification for these waters by October 31, 2010.
- Directs the DEP at its next review of water quality criteria to review the standards adopted under this section.

Section 36 amends s. 215.619, F.S., clarifying that bonding capacity shall not exceed a total of $200 million or $50 million per year, and eliminates the restriction that all bonds must be issued within four fiscal years. This section provides the purposes for which the bond proceeds may be used within the Florida Keys Area of Critical State Concern and that proceeds shall be managed by the DEP. Technical and conforming changes are included.

Section 37 amends s. 380.0552, F.S., providing:
- Additional legislative intent concerning the importance of protecting environmentally sensitive lands and nearshore water quality in the Florida Keys, and assurances for safely evacuating the Keys' population.
- Procedures for removal of the Area of Critical State Concern designation upon a demonstration that the intent provisions have been meet and all tasks identified in the rules of the Administration Commission have been completed.
- Reporting requirements beginning on November 30, 2010, by the state land planning agency. The agency must report annually to the Administration Commission the progress of the Florida Keys towards completing the tasks required by the rules. In addition, the agency shall recommend removal of the designation if it determines that all tasks have been completed, all pertinent comprehensive plans, development regulations and the administration of such are adequate to protect the Keys, and that a local government has adopted a resolution requesting the removal of the designation.
- A requirement that the Administration Commission, upon receipt of an annual report, determine whether the designation should be removed. If the commission determines that the designation should remain, it is directed to report to the local governments action that need completion to have the designation removed.
- The Administration Commission's decision concerning the designation is subject to review under ch. 120, F.S.
- Inclusion of additional principles in comprehensive plan amendments that address the amendment to legislative intent in subsection (2) of s. 380.0552, F.S.
- Contains additional compliance requirements for the Florida Keys comprehensive plan amendments. The amendments shall detail construction schedules and financing plans for wastewater management improvements, and they must provide a hurricane evacuation clearance time of 24 hours for permanent residents.

This section also contains technical and conforming changes.

Section 38 amends 381.0065, F.S, incorporating the specific onsite system requirements in ch. 99-395, L.O.F., into s. 381.0065, F.S. The requirements for onsite systems of this section are as follows:
- Highlights the existing policy that local governments are responsible for upgrades and shall comply with schedules adopted by the Administration Commission.

- Requires that septic tanks must cease discharge by December 31, 2015, or comply with new discharge standards.
- Provides that septic tanks discharging to an injection well must provide basic disinfection.
- Requires that on or after July 1, 2010, all new, modified, or repaired septic tanks must comply with new discharge standards. However, if a property is scheduled for central sewer connection by December 31, 2015 and the owner has paid an assessment or connection fee, he or she will be required to meet a set of minimum standards for the septic tank until connected to a central sewer. Septic tanks meeting the minimum levels of treatment under this provision must be monitored for nitrogen and phosphorus concentrations.
- Directs the DOH to enforce the provisions of this section.
- Allows local government entities to require properties on septic tanks to connect to central sewer within 30 days after notice of it becoming available.
- Provides a definition, guidelines, duties, power and implementation criteria for the creation of responsible management entities.
- Bans the land application of septage after January 1, 2015.

This section also contains technical changes.

Section 39 amends s. 381.00655, F.S., requiring a RME in a jurisdiction where the local governing body requires owners of septic systems to connect to an investor-owned sewerage system to pay connection fees. Obsolete language specifying owner responsibilities for connection is stricken.

Section 40 amends s. 381.0066, F.S., requiring an operating permit for an RME of at least $10 per year. The DOH is required to complete an evaluation of RME fee schedules by January 1, 2015, and report its findings to the Legislature. The DOH must also included a justification for fees and any possible stream lining due to the implementation of the RME program.

Section 41 amends s. 403.086, F.S., requiring the DEP to submit a report on the effects of reclaimed water on the environment by February 1, 2012. The section also specifies that facilities that contribute domestic wastewater to facilities discharging through ocean outfalls to meet the 60 percent reuse requirement for all quantities diverted. And, provides that the diverted quantity produced for reuse is credited to the facility that originally accepted the flow for discharge to an ocean outfall.

This section also incorporates the specific wastewater facility requirements in ch. 99-395, L.O.F., into s. 403.086, F.S. It provides specific legislative findings that: poorly treated effluent from small wastewater facilities and onsite systems, including septic tanks, harms the coastal environment and threatens the local economy; the only practical and cost-effective way to improve wastewater management is to implement Administration Commission rules and the 2000 Monroe County Sanitary Master Wastewater Plan; and construction and operation of a central wastewater systems is in the public interest. The requirements for domestic wastewater facilities (facilities), including privately owned systems, of this section are as follows:

- Provides provisions to conform deadlines for wastewater systems created in Section 38 of the CS for onsite systems
- Prohibits facilities from discharging wastewater into surface waters.

- Highlights the existing policy that local governments are responsible for constructing and operating central systems by December 31, 2015, and must comply with Administration Commission rules.
- Details design requirements for all new or expanded wastewater facilities beginning December 31, 2015.
- Provides requirements for Class V injection wells along with variances for the operations of other types of injection wells.
- Provides for limited, automatic permit extensions for certain facilities.
- Creates deadlines to bring currently operating wastewater facilities into compliance with new standards.
- Provides additional requirements for discharges, even though in compliance, which are demonstrated to cause a violation of state water quality standards.
- Directs all facilities to monitor effluent for total nitrogen and phosphorus concentrations and maintain a properly certified staff to ensure compliance with DEP rules.
- Allows local government entities to require facilities owned by other entities to connect to central sewer within 30 days after notice of it becoming available.

This section includes technical and conforming changes.

Section 42 repeals the provisions of chapter 99-395, L.O.F., that are being incorporated into statutory law in section 41 of this CS.

Section 43 amends s. 11.45, F.S., providing conforming changes.

Section 44 amends s. 403.1835, F.S., providing technical and conforming changes.

Section 45 amends s. 403.1837, F.S., renaming the "Florida Water Pollution Control Financing Corporation" as the "Florida Water Pollution Control and Drinking Water Financing Corporation." This section also contains technical and conforming changes to accommodate the expanded duties of the new corporation.

Section 46 amends s. 403.8532, F.S., adding and modifying definitions to conform to the creation of the new corporation and its expanded duties; providing rulemaking authority and additional criteria concerning an existing provision that requires loan recipients' to demonstrate their ability to repay loans.

Section 47 amends s. 403.8533, F.S., providing that the Drinking Water Revolving Loan Trust Fund can be used for loans authorized under the new corporation and that the trust fund is exempt from constitutional termination provisions.

Section 48 creates part IV of ch. 369, F.S., consisting of ss. 369.401, 369.402, 369.403, 369.404, 369.405, 369.406 and 369.407, F.S. The creation of the following sections comprise "Florida Springs Protection Act":

- Section 369.401, F.S., provides a short title.
- Section 369.402, F.S., establishes legislative findings and intent.
- Section 369.403, F.S., provides definitions for: "cooperating entities," "department," "estimated sewage flow," "first magnitude spring," "karst," "onsite sewage treatment and

disposal system," or "septic system," "second magnitude spring," "spring," "springshed, " and "usable property."

- Section 369.404, F.S., designates all counties and municipalities that contain a first or second magnitude spring as "spring protection zones." Directs the DEP to create a priority ranking schedule for springs based on the extent of nitrogen impairment and creates deadlines for compliance based on those rankings. Additionally, this section:
  - Allows counties or municipalities to submit an application to the DEP to exempt certain geological areas from inclusion in a spring protection zone if they can prove that the exempted areas will not lead to new or continued degradation of a spring.
  - Directs the DEP to develop standards and rules that provide the minimum scientific methodologies, data or tools for use by counties and municipalities for their applications for exemptions.
  - Allows the department to deny or modify an exemption application by a county or municipality, subject to ch. 120, F.S., review.
- Section 369.405, F.S., requires agricultural operations to implement best-management practices including nutrient management. This section also requires local governments, in cooperation with the department and the WMDs, to create remediation plan for nitrogen loading to groundwater by the deadlines and priority rankings in s. 369.404, F.S.
- Section 369.406, F.S., provides for additional requirements that apply to all spring protection zones. The specific provisions include:
  - All new septic systems installed on or after January 1, 2011, on properties abutting a water body or water segment that is listed as impaired or within a designated spring protection zone must meet of standard of 3 milligrams per liter total nitrogen at the property line. Compliance does not require groundwater monitoring. The DOH is directed to develop by rule the necessary septic system design standards to meet this requirement.
  - Provides setback requirements for new systems or those needing repair.
  - Bans the land application of septage and residuals, except for class AA marketed and distributed as fertilizer by dates certain.
  - Directs the DEP, in cooperation with affected entities, to develop revised rules for animal feeding operations in order to address nutrient pollution issues.
- Section 369.407, F.S., establishes rules:
  - The department, the Department of Health, and the Department of Agriculture and Consumer Services are provided rule making authority to administer the provisions of this part.
  - The Department of Agriculture and Consumer Services shall:
    - Be the lead agency in coordinating the reduction of agriculture nonpoint sources of pollution for springs protection;
    - Study and if necessary , initiate rule making with cooperating entities and stakeholders to implement new or revised best-management practices; and
    - As needed, revise its best-management practices rules to require implementation of the modified practice within a reasonable time.
  - The Department of Health is authorized to grant hardship variances.

Section 49 amends s. 259.105, F.S., directing the Acquisition and Restoration Council to give priority to projects that fall within a spring protection zone created pursuant to s. 369.404, F.S.

Section 50 amends s. 369.317, F.S., providing that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and wetlands requirements in s. 373.414(8)(a), F.S. This change will allow the use of mitigation credits for other projects or developments within the study area or expansion corridor.

Section 51 creates s. 373.631, F.S., providing legislative intent to use the academic bodies of the State University System to serve as advisory bodies for science-based water recommendations. It also directs the University of Florida's Water Institute to serve as the lead entity and issue a report to the Legislature by February 1, 2011 and every two years after.

Section 52 amends s. 553.77, F.S., directing the Florida Building Commission to develop recommendations that result in the conservation of water resources. The Commission must consider products that exceed the National Energy Policy Act requirements for water use and may consider other entities certifications.

Section 53 amends s. 215.47, F.S., making up to 25 percent of all funds managed by the SBA available for potential investment in alternative water and water resource development projects. This is estimated to be between $30-40 billion.

Section 54 amends s. 373.129, F.S., reemphasizing that WMDs have a duty to negotiate conflicts in good faith before proceeding to litigation against another governmental entity, as provided in s. 164.1031, F.S.

Section 55 amends s. 403.707, F.S., requiring the lining of all new landfills constructed after July 1, 2010 that will accept construction and demolition debris.

Section 56 amends s. 298.66, F.S., providing penalties for anyone who obstructs, damages or destroys any drainage watercourse or structure in any district. This section fixes a potential loophole in the law that addresses drainage watercourses or structures constructed prior to existence of the WMDs or other water control districts.

Section 57 amends s. 212.054, F.S., providing that a county designated as an area of critical state concern may levy a discretionary surtax of 1 percent to be approved by voter referendum. The proceeds from the surtax may be used to repay, refinance or construct infrastructure related to stormwater and wastewater treatment.

Section 58 provides for an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, of the State Constitution provides that the Legislature may not require a county or municipality to expend funds or take action resulting in the

expenditure of funds unless certain criteria are met. This CS contains two requirements that need further scrutiny.

The CS requires Monroe County and municipalities within the Florida Keys Area of Critical State Concern to update their comprehensive plans with new elements by December 31, 2015. Monroe County and affected municipalities will be able to meet this requirement within their normal comprehensive plan revision cycles. As such, no additional funds are required.

The creation and administration of responsible management entities will require counties and municipalities to expend funds. To that extent, it is a mandate. However, the CS creates a revenue stream that the counties and municipalities control and may raise or lower rates as they see fit to maintain proper operating capital and reserves. As such, this requirement meets the constitutional test the Legislature authorizes enactment of a funding source not available to the counties or municipalities on February 1, 1989.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The creation of responsible management entities to maintain septic systems will create an additional fee on owners of these systems where none exists today. While the actual cost will be determined by the RME and the participating local governments, preliminary estimates range from $5-30. However, the fee must be weighed against the potential benefits. Once owners of a septic tanks begin paying the nominal fee, they will not be responsible for the inspection, pumpout, maintenance, repair, replacement or upgrades necessary to comply with higher standards from either the DEP or the EPA.

B. Private Sector Impact:

There are many and varied impacts to the private sector. Generally, capital projects and infrastructure needed to comply with environmental regulations and supplying increased water resources will lead to higher utility rates. Those costs are indeterminate to the individual private citizen. However, there will also be indirect benefits in the form of clean water, greater economic activity, potentially higher property values, etc., which are also indeterminate. The specific provisions of this CS that affect the private sector are as follows:

- New part VII, ch. 373, F.S.,: the public may benefit indirectly from the streamlining process of the reorganization.

- There will be an impact on the private rate payers of water utilities and other entities availing themselves of the new funding option through the SBA for water projects. The SBA will require a guaranteed rate of return based on a revenue stream. The rate payers are the revenue stream. However, when using SBA loans for financing, there is no match requirement. The impact to the rate payer of whether utilities must match or must guarantee a rate of return is unknown.
- If a local government implements a blue belt program, landowners could take advantage of the program to reduce their taxes. Since implementation of the program is voluntary, the impact cannot be determined.
- The EPA estimates it will cost between $102 to $130 million per year to implement the DEP proposed nutrient criteria rules and an additional to $10.1 million more per year to meet the EPA's enhanced nutrient criteria. These costs will likely be distributed through the private sector resulting in everything from higher utility rates to higher prices for agricultural produce. The direct costs are indeterminate.
- The private sector will have negligible additional costs to comply with the requirements of this CS related to the Florida Keys Area as the CS incorporates the requirements of ch. 99-395, L.O.F. However, the CS creates some heightened standards not included in ch. 99-395, L.O.F, that will impact private owners of wastewater facilities or septic tanks. Those impacts are indeterminate and will vary based on individual circumstances that cannot be determined at this point.
- Responsible management entities are similar to insurance programs in that you pay a small fee upfront to protect against large potential loses later. See "Tax/Fee Issues" section. However, there will be a severe shortage of septic tank contractors and hundreds, if not thousands of jobs will be created to comply with the requirement that every septic tank be inspected every five years. Currently, only 17,000 septic tanks are inspected and pumped out each year. The DOH estimates there are between 2.3 and 2.7 million septic tanks in Florida. This equates to over 500,000 inspections each year. The DOH also estimates that ten percent are failing, requiring the replacement of a minimum of 50,000 systems over the next ten years.
- Agricultural operations will face some additional costs to implement the necessary best-management practices required in spring protection zones. The specific cost is unknown because the practices have not yet been developed. However, it should be noted that even without the legislation, many of these agricultural operations may still be required to implement best-management practices as a result of the state's implementation of the Total Maximum Daily Load program.
- Owners of septic systems within a spring protection zone will also face the potential for increased costs related to central sewer connection or meeting heightened standards. These costs cannot be determined at this time because of the possibility of coverage under a RME, which may significantly reduces expenditures in these zones.
- The expansion of mitigation credits for use within the Wekiva parkway alignment corridor will allow additional projects and developments to take advantage of a surplus of banked credits.
- Re-emphasizing the districts' duty to negotiate conflicts in good faith may save one tax payer's dollar from suing another tax payer's dollar and may save significant resources that would then be freed up for other expenditures. However, per private resident, the amount is likely to be insignificant.

- Lined landfills cost an estimated $150,000 per acres. 40 acres is the recommended minimum size for a landfill.

C. Government Sector Impact:

Governmental entities will likely be required to spend significant sums to comply with the requirements of this CS. Either the DEP or the EPA will implement numeric nutrient criteria for the state by the end of 2010. As mentioned above, the likely yearly cost of implementation will run well into the hundreds of millions of dollars. The upfront cost will be borne by governmental entities through the issuance of debt or other methods of raising capital. However, the costs will ultimately fall on the tax and rate payers. The specific provisions of the CS that directly affect governmental entities are as follows:

- Access to SBA loans for water projects may provide entities an opportunity for large cash infusions with little upfront costs. No matching funds are required to access SBA funds. Such loans, however, may be matched with federal grants or other funds, which may lower financing charges over the life of the loan. Current rates on guaranteed loans are hovering around 3.5 percent.
- As mentioned above, the costs of remediating stormwater systems and meeting numeric nutrient criteria will be extensive. Since the numbers are not yet know, the exact costs are indeterminate.
- The estimated cost to comply with all requirements in the Florida Keys Area is over $350 million. The CS does not require any further action than what is already required by ch. 99-395, L.O.F. However, the CS extends the compliance deadline to December 31, 2015 from July 1, 2010. By extending the compliance deadline, the CS may save local governments from having to pay significant fines, penalties and litigation costs related to missing the 2010 deadline.
- Responsible management entities and participating local governments will likely have extensive setup and administrative costs in the first few years. Further, the costs of replacing and repairing septic tanks in their respective services areas will be significant based on DOH's estimate that ten percent are currently in a failing state. However, after five years, the operational costs will shift from repair and replacement to more of a maintenance role. The single greatest cause of septic tank failure is lack of routine maintenance.
- Creating the "Florida Water Pollution Control and Drinking Water Financing Corporations" will allow the corporation to access twice the amount of funds currently available.
- According to the DEP, there will be no fiscal impact if entities currently contributing flow to a facility discharging to an ocean outfall continue to send 100 percent of their flow to these facilities. However, if an entity diverts flow, it would be responsible for the costs of complying with the 60 percent beneficial reuse requirement in this CS for the diverted flow. The facility discharging through an ocean outfall would get credit toward its reuse requirement for the quantity diverted from its facility and may have reduced compliance costs. If the CS does not pass and if significant flow is diverted from facilities operating ocean outfalls, those facilities would have significantly higher compliance costs. It is also possible that if enough flow was diverted, compliance with the 60 percent requirement would be technically infeasible.

- The compliance costs for government agencies and entities within spring protection zones are likely extensive, but indeterminate. It is not known what nutrient criteria will be adopted.
- The proposed change will allow state agencies and the St. Johns River Water Management District additional flexibility in determining how mitigation credits may be applied within the Wekiva Study Area and the Wekiva parkway alignment corridor. The benefit of this flexibility is unknown.
- Both the University of Florida Water Institute and the Florida Building Commission will not have any significant costs associated with the requirements of the CS.
- Water management districts may realize a decrease in litigation expenses by submitting to alternative dispute resolution. The savings, if any, are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 23, 2010:
There are no changes between the proposed committee substitute and the committee substitute. The change in designation of the legislation is a procedural requirement.

B. Amendments:

None.