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## The Comprehensive Water Law: Its Provisions and Significance

**F**lorida Senate Bill 552, commonly named the “Comprehensive Water Bill,” was signed into law by Gov. Rick Scott on January 21, 2016. This new law is arguably the most far-reaching and complex environmental legislation in more than a decade. The law sets the course for state water resource management in the face of several challenges brought about by increasing demands for water and population growth. It will have a lasting effect on state and local governments, public and private utilities, landowners, farmers and ranchers, developers and industrial users, environmental groups, and homeowners. The law contains new protections for springs, water conservation incentives, and significant improvements to Florida’s water governance structure. This article highlights the provisions of the law; forecasts potential future legislative, and other regulatory activities; and demonstrates that Florida’s water resources management strategies will continue to evolve.

### Background

Our state’s sustained economic prosperity depends upon satisfying projected water supply demands, developing water storage capacity, and protecting the health of sensitive ecosystems. While these goals may seem at odds, recent successes demonstrate otherwise. Successful water conservation measures — mainly graduated rate structures and increased reclaimed water usage — have allowed many areas of

the state to absorb growth with flat or declining potable water use. For example, in 2014, over 150 million gallons per day (MGD) of treated wastewater was reused for cooling and irrigation purposes in the Southwest Florida Water Management District.<sup>1</sup> Also, water quality restoration programs, such as the Tampa Bay Estuary Program and the Lower St. Johns River Basin Management Action Plan, have paid significant dividends, improving marquee aquatic ecosystems in growing communities.<sup>2</sup>

Notwithstanding the results of focused conservation efforts and the abundance of water in our aquifers, the legislature recognized that the state cannot stand idle. Alternative water supplies will need to continue to be developed to provide an ever-growing population with potable water. The projected increased demand for water in Florida by 2030 is 1.3 billion gallons per day more than in 2005.<sup>3</sup> In fact, the projected use of potable water in Lake, Orange, Osceola, Seminole, and Polk counties, arguably several of the areas undergoing the fastest rate of growth in the state, is projected to increase to 525 MGD in 2020.<sup>4</sup> That is an increase of over 89 MGD since 2010. These new demands must be met. Meanwhile, the state must continue to address legacy water resource challenges. Some coastal freshwater aquifers are experiencing saltwater intrusion due to historic groundwater pumping, and densely sited septic tanks appear to cause nutrient over-enrichment in once pristine springs and estuarine

systems. Longstanding regulatory programs must be continually updated to ensure efficient and effective resource protection.

The legislature grappled with these issues over the past two years. The end result was the Comprehensive Water Bill.<sup>5</sup> As the new law reaches just about every facet of water resource governance, planning, and management, it is essential for stakeholders represented by private- and public-sector attorneys, planners, elected officials, and the public at large, to understand its various provisions and implementation timelines.

### Comprehensive Water Bill Provisions

• *Springs* — The law contains extensive provisions related to Florida’s springs, starting with a requirement to designate spring sheds, called priority focus areas, for each large, first-magnitude spring, plus six additional springs, to be defined as an outstanding Florida spring no later than July 1, 2018. It also sets deadlines for implementation of existing water quality and water supply regulations within the priority focus areas. For water quality, each designated spring must begin its assessment for impairment by July 1, 2016, and the assessment must be complete by July 1, 2018. For an outstanding Florida spring with an existing limit on nutrient levels, called a total maximum daily load (TMDL), the law requires initiation of restoring the impaired water via a basin management action plan (BMAP) by July 1, 2016,

and adoption of the BMAP within two years.<sup>6</sup> Local governments have responsibilities to adopt fertilizer ordinances within a priority focus area by July 1, 2017, and, if septic tanks are significant contributors of nutrient loadings, develop a septic tank remediation plan.<sup>7</sup> Notably, the law authorizes a septic tank remediation plan to prohibit new septic tanks on lots smaller than one acre in sensitive areas.<sup>8</sup> For water supply, outstanding Florida springs that may be vulnerable to reduction in their minimum flow due to withdrawals are required to have a minimum flow and level (MFL) by July 1, 2017, or adopt them by emergency rule after that date. Any necessary recovery or prevention strategy must be adopted at the same time as the MFL. Restoration of outstanding Florida spring flow and quality must be achieved within 20 years.<sup>9</sup>

- *Central Florida Water Initiative (CFWI)* — The CFWI is product of the recognition that the provision and management of groundwater resources should be based on macro-scale aquifer system boundaries, not the surface water system considerations that led to the boundaries of the state's water management districts. The law codifies many of the results and practices to date of the CFWI's cross-water management district planning efforts and also requires that it develops uniform water management regulations within the CFWI region, including a uniform approach for the three districts intersecting in the CFWI to evaluate whether a proposed withdrawal will harm the water resources.<sup>10</sup>

- *Florida Department of Environmental Protection* — The Florida Department of Environmental Protection (FDEP) has steadily moved to feature several of its programs on various websites, and recognizing those advancements, the law requires FDEP to maintain and make available through its website, and a mobile app, a database of conservation lands in the state. It requires progress reports on metrics, such as basin management action plans and maximum daily loads, and, depend-

ing on how efficient these are, also requires a report on strategies for the recovery of impacted water bodies. Finally, it directs the FDEP to review the feasibility of a web-based interactive map with information on MFLs, recovery strategies, TMDLs, and BMAPs. It also directs FDEP to adopt a special designation to protect surface waters that are withdrawn, treated, and then used for potable water supply.<sup>11</sup>

- *Everglades* — The law revises laws related to permitting in the northern Everglades by generally making those statutes consistent with current law elsewhere in the state regulating water quality.<sup>12</sup>

- *Water Supply Plans* — The law makes adjustments designed to make water supply plans more useful. It requires updating a water supply plan for any new water recovery strategies or when a consumptive use permit application is denied to protect a minimum flow and level. The law allows a water management district to unilater-

ally designate and develop an alternative water supply project in another district. Water supply plans are also directed only to include projects that are technically and financially feasible; describe the projects designed to achieve MFLs; and provide the amount of water to be made available for consumptive uses and natural systems. The bill provides that public-private partnerships may enter into for groundwater recharge on private agricultural lands.<sup>13</sup>

- *Regulatory Changes* — The law makes a number of adjustments to the existing regulatory structures for water supply management. It requires that water recovery/prevention strategies for MFLs must be set at the same time as the MFL.<sup>14</sup> It also prohibits water management districts from reducing consumptive use permit allocations due to successful water conservation efforts during the term of the permit, which removes a longstanding "use it or lose it" disincentive for permit-

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tees, and it further allows water management districts to offer permit extensions as an incentive for extraordinary water conservation efforts.<sup>15</sup> Also, water management districts are prohibited from reducing agricultural consumptive use permit allocations during the term of the permit due to weather events, diseases, crop changes, and market conditions, among other factors. Finally, in the event of competing consumptive use permit applications, where neither is a renewal, the water management district must give priority to the user closest to the source.<sup>16</sup>

• *Others* — There are other changes including the codification of water management district requirements for monitoring water usage on wells greater than 100,000 gallons per day, or using an eight-inch or larger pipe, and requiring water management districts to consider preferred water supply sources for users for whom development of new supplies is not technically or financially feasible.<sup>17</sup> One of the provisions that will likely have a long-lasting legacy for planning beyond 2030 is that it directs the legislature's Office of Economic and Demographic Research to perform an annual assessment on water supply, water quality, land management expenditures, and projections of expenditures to help determine whether adequate water is available for all consumptive uses and natural systems.<sup>18</sup> This last piece, particularly when considered in combination with the changes to the regional water supply planning process, should result in improved water infrastructure planning and funding in the state.

### What Is on the Horizon?

It is anticipated that as the provisions of the new law are implemented, they will create new processes, rules, and perhaps generate rule challenges. Given the law's reach, a wide array of Florida business, local government, and environmental stakeholders will need to monitor closely the law's implementation. Indeed, legal counsel, engineers,

and other consultants tasked with protecting clients' interests will need to learn the new regulatory schemes and help shape their implementation through public rulemaking processes.

### New Processes and Rulemaking

• *Priority Focus Areas and Outstanding Florida Springs* — Spring assessments will include evaluation of a spring's minimum flow, which is dependent on rainfall cycles, local groundwater water pumping, and recharge practices, and it will include an evaluation of activities potentially affecting spring water quality, such as septic tanks, domestic wastewater treatment, fertilizer use, and stormwater management. Once water flow and water quality targets are established, management programs to address anthropogenic factors and to attain water resource targets will be implemented via the MFL (water flow) and TMDL (water quality) programs.

• *Fertilizer Regulation by Local Governments* — In 2013, the legislature encouraged that all jurisdictions in Florida adopt the "State of Florida Model Fertilizer Ordinance,"<sup>19</sup> and in some jurisdictions closer to impacted water bodies, such as the Indian River Lagoon, residential lawn fertilization is banned altogether.<sup>20</sup> For the most part, ordinances restrict the application of fertilizers between June and September or the "rainy season," when the fertilizer is more likely to run off and find its way to state surface waters. As a result of the spring laws and implementation of new state numeric nutrient criteria rules, it is likely that more cities or counties will adopt fertilizer ordinances, if they have not already. The effectiveness and consistent application of various local government fertilizer ordinances, many of which depart from the base requirements of the model ordinance, is often a point of contention among different Florida stakeholder groups.

• *Harmful to the Water Resources When Issuing Consumptive Use Permits* — The new law reaffirms

the "harm" standard above which additional withdrawals of water would be significantly harmful to the water resources or ecology of the area.<sup>21</sup> However, the actual definition of "significantly harmful to the water resources" remains unsettled. More importantly, the effort to arrive at a definition will be led under the central authority of the FDEP since water management districts differently interpret what constitutes "harm." It is likely that arriving at a uniform definition of "harm" will have an impact on a water body or spring maximum flow and levels; however, it is also likely that arriving at a consistent definition will be an arduous and legally intensive effort that may spawn litigation.

• *Water Supply Plans* — There are several provisions that create new procedures for water management districts, such as updating water supply plans when a consumptive use permit is denied to protect an MFL. The water management districts will need to develop metrics to evaluate the technical feasibility of a water project and provide opportunities for stakeholders to provide input on feasibility determinations. Of particular note to watch is the inter-water management district relationship, which will be tested when a district may designate and develop an alternate water supply in another district.<sup>22</sup> The inter-basin transfer of water will likely result in a process open to input from several stakeholders.

• *Water Supply Regulatory Changes* — Several regulations have changed. Among the most notable are that water management districts will initiate guidance on distributed water storage, or "water farming," practices since the law encourages it; therefore, more public and private sector players are expected to enter this relatively new area.

• *Water Quality Programs* — It is likely that the new enforcement provisions for basin management action plans, which may range from warning notices to enforcement actions, will trigger guidance or

rulemaking to clarify what actions will trigger increasing penalties. Yet undefined is the framework and technological elements by which the private sector will have access to demonstrate “nutrient reduction technologies, programs, or practices” as called for in the new law.<sup>23</sup>

• *Local Government Requirements Regarding Septic Tanks* — Besides the fertilizer requirement described above, the law triggers that local governments containing watersheds called priority focus areas to coordinate the creation and implementation of “septic tank remediation plans.”<sup>24</sup> This is a controversial and potentially costly provision since it is still unknown who will bear the costs of upgrading a septic tank or connecting a household to a sewer system. It is likely that these remediation plans and associated processes to implement them will involve FDEP, Department of Health, and public as well as private waste water utilities.

• *Enhanced Role of the Office of Economic and Demographic Research* — The law assigns a prominent and crucial role to this research and forecasting arm of the legislature. It not only tasks the office with evaluating the state of water supply for Florida, but it assigns a key role in ensuring adequate funds are available to finance water availability for various competing interests.<sup>25</sup> The role of this office in any future legislative appropriations cannot be overstated. It is anticipated that future FDEP (and water management districts) legislative budget requests and appropriations

for capital projects designed to improve water quality and land management expenditures related to water quality will be subject to this new layer of scrutiny, in addition to that typically provided via House or Senate appropriations committees. The result could be a stronger link between newly improved regional water supply processes and the legislative appropriations process. This could, in turn, lead to more sound infrastructure investments to ensure that a growing state has the water it needs to prosper.

### Conclusion

As discussed above, the Comprehensive Water Law impacts every facet and level of government regarding the future of water availability, quality, and supply. Future legislative sessions will likely see the state build upon this new law. Several issues are surely to be tackled in future legislative sessions, such as stronger water conservation incentives, enhanced use of the aquifers for water storage to meet seasonal water demands, promoting reclaimed water utilization for restoration and supply, and continuing funding for spring restoration. Stakeholders should monitor the efforts of FDEP and water management districts through workshops, rulemaking, and other activities. □

<sup>1</sup> Southwest Florida Water Management District, Reclaimed Water Use in the District for 2014, [www.swfwdm.state.fl.us/conservation/reclaimed](http://www.swfwdm.state.fl.us/conservation/reclaimed).

<sup>2</sup> Florida Department of Environmental Protection, Best Management Practices (May 2015), [www.dep.state.fl.us/water-](http://www.dep.state.fl.us/water-sheds/docs/bmap/)

[sheds/docs/bmap/](http://www.dep.state.fl.us/water-sheds/docs/bmap/).

<sup>3</sup> Florida Department of Environmental Protection, Office of Water Policy, Water Use Trends in Florida, [www.dep.state.fl.us/water/waterpolicy/docs/factsheets](http://www.dep.state.fl.us/water/waterpolicy/docs/factsheets).

<sup>4</sup> Central Florida Water Initiative, Regional Water Supply Plan (2015).

<sup>5</sup> Florida Springs Water Protection Act of 2016, S.B. 552, 2016 Session.

<sup>6</sup> FLA. STAT. §373.8037(1) (2016).

<sup>7</sup> FLA. STAT. §373.807(2) (2016).

<sup>8</sup> FLA. STAT. §373.807(3) and §373.811(2) (2016).

<sup>9</sup> FLA. STAT. §373.805(1) (2016) and §373.807 (1)(b)(8) (2016).

<sup>10</sup> FLA. STAT. §373.0465 (2016).

<sup>11</sup> FLA. STAT. §259.032(9)(f) (2016).

<sup>12</sup> FLA. STAT. §373.4595 (2016).

<sup>13</sup> FLA. STAT. §373.4591(1) (2016).

<sup>14</sup> FLA. STAT. §373.4592(2)(i) (2016).

<sup>15</sup> FLA. STAT. §373.227(5) (2016).

<sup>16</sup> FLA. STAT. §373.227(6) (2016).

<sup>17</sup> FLA. STAT. §373.223(6) (2016).

<sup>18</sup> FLA. STAT. §403.928(1)(a) (2016).

<sup>19</sup> FLA. STAT. §403.9337 (2013).

<sup>20</sup> Indian River County, Ordinance No. 2013-014, available at <http://www.ircstormwater.com/fertilizer.htm>.

<sup>21</sup> FLA. STAT. §373.0465 (2)(b)(5)(d)(1) (2016).

<sup>22</sup> FLA. STAT. §373.37(3) (2016).

<sup>23</sup> FLA. STAT. §373.4591(1)(c) (2016).

<sup>24</sup> FLA. STAT. §373.807(1)(a) (2016).

<sup>25</sup> FLA. STAT. §403.928(1) (2016).

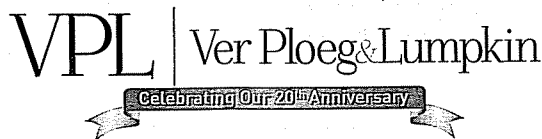
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