

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB NRPL 18-01 Ratification of a St. Johns River Water Management District Rule Related to the Implementation of the Silver Springs Minimum Flows and Water Levels Prevention Strategy
SPONSOR(S): Natural Resources & Public Lands Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Moore	Shugar

SUMMARY ANALYSIS

Silver Springs is an Outstanding Florida Spring (OFS) and is required to have a minimum flow and water level (MFL) adopted by rule. If the OFS is below or projected to fall below the MFL within 20 years, then a recovery or prevention strategy must be adopted concurrently with the MFL. In June 2017, the St. Johns River Water Management District (SJRWMD) adopted by rule the MFL for Silver Springs. The MFL is being met; however, by 2025, the projected water use demands of the area cannot be met under the established frequent low flow for the OFS. Accordingly, the SJRWMD concurrently moved to adopt by rule a prevention strategy for the OFS, which includes the development of additional water supplies and other regulatory action to prevent the existing flow or water level from falling below the established MFL. The prevention strategy includes two water supply development projects, the Lower Floridan Aquifer Conversion Project and the Wetland Recharge Park Project, which will reduce potential impacts to Silver Springs. The SJRWMD is required to pay at least 25 percent of the total project cost for each project. The remaining costs would be incurred by water users.

A statement of estimated regulatory costs (SERC) must be prepared if a proposed rule will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 aggregated within one year after implementation. If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification.

The SJRWMD's SERC for the proposed consumptive use rule associated with the Silver Springs MFL prevention strategy indicates that the proposed rule will exceed \$1 million aggregated within five years after implementation. Accordingly, the proposed rule was submitted to the Legislature for ratification.

The bill ratifies the SJRWMD's proposed consumptive use rule related to the prevention strategy for Silver Springs, which will be incorporated into the SJRWMD's "Applicant's Handbook, Consumptive Uses of Water" (Handbook). The Handbook is a publication adopted by rule pursuant to rule 40C-2.101, Florida Administrative Code (F.A.C.). The bill states that it serves no other purpose and will not be codified in the Florida Statutes. The bill specifies that after becoming law, its enactment and effective dates will be noted in the F.A.C., the Florida Administrative Register, or both, as appropriate.

The bill will have a negative fiscal impact on state government, local governments, and the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Silver Springs is an Outstanding Florida Spring¹ (OFS) located in Marion County, Florida. OFSs are required to have a minimum flow² and water level³ (MFL) adopted by rule by July 1, 2017.⁴ A recovery or prevention strategy must be adopted concurrently with the MFL, if the OFS is below or is projected to fall below the MFL within 20 years.⁵

In June 2017, the St. Johns River Water Management District (SJRWMD) adopted by rule the MFL for Silver Springs.⁶ The MFL is being met; however, by 2025, the projected water use demands of the area cannot be met under the established frequent low flow for the OFS.⁷ Accordingly, the SJRWMD has concurrently moved to adopt by rule a prevention strategy for the OFS, which includes the development of additional water supplies and other regulatory action to prevent the existing flow or water level from falling below the established MFL.⁸

Prevention Strategy

A prevention strategy must include the development of additional water supplies and regulatory actions to prevent the existing flow or water level from falling below the established MFL. A prevention strategy must include a phased-in approach or a timetable, which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with and, to the maximum extent practical, to offset reductions in permitted withdrawals.⁹

For an OFS, a prevention strategy must also include: a list of all specific projects identified for implementation; a priority listing of each project; the estimated cost and completion date of each project; the source and amount of financial assistance to be made available by the WMD¹⁰ for each project, which may not be less than 25 percent of the total project cost unless a specific funding source(s) is identified which will provide more than 75 percent of the total project cost; an estimate of each project's benefit to the OFS; and an implementation plan designed with a target to achieve the adopted MFL no more than 20 years after the adoption of a prevention strategy.¹¹

¹ An "Outstanding Florida Spring" includes all historic first magnitude springs, including their associated spring runs, as determined by the Department of Environmental Protection using the most recent Florida Geological Survey springs bulletin and the following additional springs, including their associated spring runs: De Leon Springs; Peacock Springs; Poe Springs; Rock Springs; Wekiwa Springs; and Gemini Springs; s. 373.802(4), F.S.

² The minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area; s. 373.042(1)(a), F.S.

³ The minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area; s. 373.042(1)(b), F.S.

⁴ Section 373.042(2)(a), F.S.

⁵ Section 373.805(1), F.S.

⁶ Rule 40C-8.031(7), F.A.C.; The rule has since been amended and the current reference to the Silver Springs MFL is found in subsection (10).

⁷ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledvelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 8, 2018).

⁸ Section 373.0421(2), F.S.; SJRWMD. *Prevention Strategy for the Implementation of Silver Springs Minimum Flows and Levels* (April 2017), https://www.sjrwmd.com/static/mfls/ssmfl/Silver_Prevention_Strategy_Draft.pdf (last visited Jan. 8, 2018).

⁹ Section 373.0421(2), F.S.

¹⁰ The Northwest Florida WMD and the Suwannee River WMD are not required to meet this financial assistance requirement; s. 373.805(4)(d), F.S.

¹¹ Section 373.805(4)(a)-(f), F.S.

The SJRWMD's prevention strategy includes two water supply development projects, the Lower Floridan Aquifer (LFA) Conversion Project and the Wetland Recharge Park Project, which will reduce potential impacts to Silver Springs. The LFA Conversion Project will convert existing Upper Floridan Aquifer (UFA) wells, which extend a few hundred feet below ground, to LFA wells, which extend more than 1,000 feet below ground. The SJRWMD estimates that the cost of the LFA Conversion Project would range between \$23.82 million to \$44.97 million. The SJRWMD's estimates that the total cost for all prevention strategy projects will be approximately \$14 million. The SJRWMD estimates that its 25 percent portion of the project would be approximately \$1.8 million to \$9.06 million. The remaining costs would be incurred by water users.¹²

Statement of Estimated Regulatory Cost and Legislative Ratification

Before the adoption of a rule, an agency must prepare a statement of estimated regulatory costs (SERC) if the proposed rule will have an adverse impact on small business¹³ or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 aggregated within one year after implementation.¹⁴ If a SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification.¹⁵

The SJRWMD's SERC for the Silver Springs prevention strategy indicates the proposed rule will exceed \$1 million aggregated within five years after implementation. Accordingly, the proposed rule was submitted to the Legislature for ratification.

Effect of Proposed Changes

The bill ratifies the SJRWMD's proposed consumptive use rule related to the prevention strategy for Silver Springs, which will be incorporated into the SJRWMD's "Applicant's Handbook, Consumptive Uses of Water" (Handbook). The Handbook is a publication adopted by rule pursuant to rule 40C-2.101, Florida Administrative Code (F.A.C.).

The bill states that it serves no other purpose and will not be codified in the Florida Statutes. The bill specifies that after becoming law, its enactment and effective dates will be noted in the F.A.C., the Florida Administrative Register, or both, as appropriate. The bill specifies that it does not alter rulemaking authority delegated by prior law, constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S. The bill also specifies that it does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

B. SECTION DIRECTORY:

Section 1. Ratifies a rule of the St. Johns River Water Management District.

Section 2. Provides an effective date of becoming a law.

¹² SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 8, 2018).

¹³ Section 288.703(6), F.S., defines "small business."

¹⁴ Sections 120.54(3)(b) and 120.541(1)(b), F.S.

¹⁵ Sections 120.541(2)(a) and (3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The SJRWMD's 25 percent share of the estimated cost of the LFA Conversion Project is approximately \$1.8 million to \$9.06 million. The SJRWMD's total cost for all prevention strategy projects will be approximately \$14 million.¹⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The remaining 75 percent of the estimated cost of the LFA Conversion Project is approximately \$5.42 million to \$27.17 million, which will be a cost on water users. Additionally, water users who pump groundwater from the LFA would pay 100 percent of the increased operating costs. Increased operating costs represents the difference to pump water from the UFA, approximately \$19,100 per year, versus the slightly greater cost to pump water from the LFA, approximately \$22,900 per year, and the difference to treat fresh water from the UFA, approximately \$560,000 per year, versus the greater costs to treat brackish water from the LFA, approximately \$4,117,000 per year.¹⁷

Applicants who request an increase in permitted water use from the UFA beyond their 2024 water demand will incur new costs when applying for a new consumptive use permit (CUP), CUP modification, or CUP renewal. Of the 119 cities and counties within the SJRWMD, approximately 49 percent are small counties¹⁸ or cities.¹⁹ The SJRWMD determined that it was not suitable to exempt small counties or cities from the rule.²⁰

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The remaining 75 percent of the estimated cost of the LFA Conversion Project is approximately \$5.42 million to \$27.17 million, which will be a cost on water users. Additionally, water users who pump groundwater from the LFA would pay 100 percent of the increased operating costs. Increased operating costs represents the difference to pump water from the UFA, approximately \$19,100 per year, versus the slightly greater cost to pump water from the LFA, approximately \$22,900 per year, and the difference to treat fresh water from the UFA, approximately \$560,000 per year, versus the greater costs to treat brackish water from the LFA, approximately \$4,117,000 per year.²¹

Applicants who request an increase in permitted water use from the UFA beyond their 2024 water demand will incur new costs when applying for a new CUP, CUP modification, or CUP renewal. The

¹⁶ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 8, 2018).

¹⁷ *Id.*

¹⁸ Section 120.52(19), F.S., defines a "small county."

¹⁹ Section 120.52(18), F.S., defines a "small city."

²⁰ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 8, 2018).

²¹ *Id.*

SJRWMD determined that it was not suitable to exempt small businesses, which are approximately 84 percent of the permitted water users in the Silver Springs area, from the rule.²²

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²² *Id.*