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Recent Developments in Land Use and Environmental Law

Wes Strickland

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The recent developments section was researched and written by Wes Strickland, J.D., Florida State University College of Law (expected 1999).

RECENT DEVELOPMENTS IN LAND USE AND ENVIRONMENTAL LAW*

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I. FEDERAL CASES

Bennett v. Spear, 117 S.Ct. 1154 (1997).

In a unanimous opinion written by Justice Scalia, handed down on March 19, 1997, the United States Supreme Court granted standing to a group of ranchers and irrigation districts to sue for economic harm caused by enforcement of the Endangered Species Act of 1973 (ESA).[1] The claimants sued to challenge a biological opinion issued by the Fish and Wildlife Service in accordance with the ESA, which recommended that the Bureau of Reclamation reduce the water supply of the Klamath Irrigation Project in order to save two species of fish.[2] Specifically, the claimants sued for violation of sections 1533 and 1536 of the ESA.[3] Noting that the claimants were seeking to vindicate economic, rather than environmental interests, the Ninth Circuit Court of Appeals held that the claimants lacked standing under the ESA's citizen suit provision since they failed to meet the "zone of interests" test.[4] The Court granted the claimants standing to seek judicial review of their section 1533 claims under section 1540(g), the ESA's citizen suit provision,[5] even though they "are seeking to prevent application of environmental restrictions rather than to implement them."[6]

The language of section 1540(g) provides that "any person may commence a civil suit" to enforce the ESA.[7] The Court rejected the Ninth Circuit's application of the zone of interests test to this provision.[8] Rather, the Court read the provision at face value to allow

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1. Endangered Species Act of 1973, Pub. L. No. 93-205 § 2, 87 Stat. 884 (codified as amended at 16 U.S.C. §§ 1531-1544 (1985 & Supp. 1997)).

2. *See Bennett*, 117 S.Ct. at 1158-59.

3. *See id.*

4. *Id.* at 1160.

5. 16 U.S.C.A § 1540(g) (1985 & Supp. 1997).

6. *Bennett*, 117 S.Ct. at 1163.

7. 16 U.S.C.A § 1540(g).

8. *See Bennett*, 117 S.Ct. at 1163.

"everyman" to enforce the ESA.[9] The Court stated that the subject matter of the legislation (the environment) and the "obvious purpose" of the citizen suit provision to allow enforcement by "private attorneys general" are sufficient reasons to grant standing in this case.[10] The Court further held that the claimants satisfied Article III standing requirements since they suffered an injury in fact that is fairly traceable to enforcement of the ESA.[11] The Court held that the claimants' section 1536 claims are not reviewable under the ESA citizen suit provision[12] but are reviewable under the Administrative Procedure Act (APA).[13] The Court also held that biological opinions issued according to the ESA constitute final agency action for purposes of review under the APA.[14]

Suitum v. Tahoe Regional Planning Agency, 117 S.Ct. 1659 (1997).

The United States Supreme Court ruled on May 27, 1997 that Mrs. Suitum, the petitioner in an action against the Tahoe Regional Planning Agency (TRPA), could seek judicial review of an alleged regulatory taking of her property.[15] Mrs. Suitum claims that the TRPA has taken her property in violation of the Fifth and Fourteenth Amendments by forbidding her to construct a home on her lot near Lake Tahoe.[16] However, the TRPA contended in the proceedings below that Mrs. Suitum's claims were not yet ripe, since she never formally sought and received a final decision concerning certain Transferable Development Rights (TDRs) which allegedly constitute just compensation.[17] The Ninth Circuit Court of Appeals affirmed a holding by the district court that Mrs. Suitum's claims were not yet ripe for judicial review, since the actual value of her TDRs will remain unknown until the TRPA makes a final decision.[18] In an opinion by Justice Souter, the Supreme Court reversed the Ninth Circuit's holding.

The Court held that Mrs. Suitum satisfies the prudential ripeness principle, set forth in *Williamson County Regional Planning Comm'n v.*

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9. *Id.*
10. *Id.* at 1167.
11. *See id.* at 1163.
12. *Id.* at 1166.
13. Administrative Procedure Act, Pub. L. No. 89-554, 80 Stat. 392 (codified as amended at 5 U.S.C. §§ 701-706 (1996)).
14. *Bennett*, 117 S.Ct. at 1169.
15. *See Suitum*, 117 S.Ct. at 1670.
16. *See id.* at 1662.
17. *See id.* at 1664.
18. *See id.*

Hamilton Bank,[19] that she receive a final decision from the Agency imposing the regulations on her property.[20] The Court held that it was enough for the TRPA to classify Mrs. Suitum's land as falling entirely within a zone restricted from development.[21] The majority discussed the relevance of the TDRs to the question of ripeness. First, the Court stated that, since the parties do not dispute whether Mrs. Suitum would receive the TDRs, no discretionary decision is left to be made by the TRPA.[22] Second, the Court stated that any dispute about the value of Mrs. Suitum's TDRs is an issue of fact about possible market prices, which the district court may decide.[23] On the other hand, Justice Scalia, joined by Justices O'Connor and Thomas in a concurring opinion, would not have mentioned TDRs in deciding the ripeness issue.[24] Basically, the concurring Justices consider TDRs to relate solely to the question of compensation and not to the question of whether a taking has occurred.[25] The Court declined to address any broader issues relating to Mrs. Suitum's property, such as whether a taking exists entitling Mrs. Suitum to compensation.

United States v. Olin Corp., 107 F.3d 1506 (11th Cir. 1997).

On March 25, 1997, the Eleventh Circuit Court of Appeals reversed a district court's dismissal order in a clean-up liability case brought by the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[26] The government filed suit against Olin seeking a clean-up order and reimbursement for response costs.[27] Relying on *United States v. Lopez*,[28] the district court ruled that CERCLA liability would violate the Commerce Clause in this case, since the contamination was confined to Olin's own property.[29] The district court also ruled that CERCLA's response cost liability scheme does not apply

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19. 473 U.S. 172 (1985).
20. *Suitum*, 117 S.Ct. at 1664-65.
21. *See id.* at 1669.
22. *See id.* at 1661
23. *See id.*
24. *See id.* at 1671-72 (Scalia, J., concurring).
25. *See id.*
26. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, Title III, § 302, 94 Stat. 2808 (codified as amended at 42 U.S.C. §§ 9601-9675 (1995)).
27. *See Olin*, 107 F.3d at 1508.
28. 514 U.S. 549 (1995).
29. *See Olin*, 107 F.3d at 1508.

retroactively to disposals occurring prior to CERCLA's enactment.[30] The Eleventh Circuit reversed both of the district court's rulings.[31]

First, the Eleventh Circuit held that regulating on-site disposal facilities is a valid exercise of the power delegated to Congress under the Commerce Clause.[32] After examining the legislative history of CERCLA, the court concluded that, even though Congress did not include legislative findings or a jurisdictional element within the statute, contamination clean-up is still a valid exercise of Congressional power because on-site release of hazardous waste substantially affects interstate commerce.[33]

The court went on to hold that CERCLA's response cost liability scheme applies retroactively to hazardous waste disposals occurring before CERCLA's enactment.[34] After acknowledging that courts generally disfavor retroactive application of statutes, the Eleventh Circuit determined that the legislative intent underlying CERCLA dictated that the statute should apply retroactively and not just to future owners and operators.[35] The court noted that its decision was in accord with decisions by every other court having occasion to decide the issue of retroactive application of CERCLA liability.[36]

Sierra Club v. Martin, 110 F.3d 1551 (11th Cir. 1997).

On April 29, 1997, the Eleventh Circuit Court of Appeals reversed a preliminary injunction granted to the Sierra Club and a number of other environmental groups that had ordered the United States Forest Service (Forest Service) and a group of timber contractors to stop all timber cutting projects in the Chattahoochee and Oconee National Forests in Georgia.[37] The district court held that Sierra Club would likely succeed on the merits since the timber cutting projects would directly kill at least 2,000 to 9,000 migratory birds in violation of the Migratory Bird Treaty Act (MBTA).[38] The district court further held that Sierra Club could obtain injunctive relief under the APA, even though the MBTA does not create a private right of action.[39] In reversing the district court's grant of a

30. *See id.* at 1508-09.
31. *See id.* at 1509.
32. *See id.* at 1510-11.
33. *See id.*
34. *See id.* at 1514.
35. *See id.* at 1515.
36. *See id.* at 1512 n.13 (noting other district courts in accord with this position).
37. *See Martin*, 110 F.3d at 1552.
38. *See id.*
39. *See id.*

preliminary injunction, the Eleventh Circuit held that the MBTA is a criminal statute that does not apply to the federal government.[40] Thus, the Eleventh Circuit held that the Forest Service's formal actions were not in violation of the MBTA, and Sierra Club was unable to seek judicial relief under the APA.[41]

United States v. Eidson, 108 F.3d 1336 (11th Cir. 1997).

On March 31, 1997, the Eleventh Circuit Court of Appeals affirmed a conviction of officers of a wastewater disposal company for violating the Clean Water Act (CWA).[42] The defendants were charged and convicted for the illegal dumping of pollutants into navigable waters of the United States.[43] Specifically, the defendants had dumped pollutants into a man-made drainage ditch that eventually emptied into Tampa Bay.[44] The Eleventh Circuit held that "navigable waters," as defined in the CWA, included a drainage ditch, even though, under the classic understanding of the term, it was a non-natural tributary of a navigable water.[45] The Eleventh Circuit recognized that Congress "intended to regulate the discharge of pollutants into all waters that may eventually lead to waters affecting interstate commerce."[46] The fact that the drainage ditch was man-made was immaterial since the end result would be the same had it been a natural tributary of Tampa Bay.[47]

Miccosukee Tribe of Indians of Florida v. United States, 105 F.3d 599 (11th Cir. 1997).

On February 10, 1997, the Eleventh Circuit Court of Appeals reversed a district court decision that had dismissed a claim brought under the citizen suit provision of the CWA by the Miccosukee Tribe of Indians of Florida (Tribe) against the United States Environmental Protection Agency (EPA).[48] The Tribe alleged that the EPA failed to comply with its duties under the CWA by not reviewing Florida's water quality standards that had recently been adopted in the Everglades Forever Act (EFA).[49] The Tribe alleged that Florida's water

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40. *See id.* at 1556.
41. *See id.*
42. *See Eidson*, 108 F.3d at 1339.
43. *See id.* at 1340.
44. *See id.*
45. *Id.* at 1342.
46. *Id.* at 1341.
47. *See id.* at 1342.
48. *See Miccosukee Tribe*, 105 F.3d at 600.
49. *See id.* at 601.

quality standards under the EFA violated the anti-degradation requirements imposed by the CWA.[50] The district court dismissed the Tribe's suit for lack of subject matter jurisdiction, ruling that the Administrator had no duty to review Florida's water quality standards under the EFA because Florida never submitted these standards to the Administrator for review.[51]

The Eleventh Circuit reversed, holding that the "district court inappropriately relied on Florida's representations that the EFA did not change Florida's water quality standards."[52] The court further noted that, regardless of whether a state fails to submit new or revised standards, an actual change in its water quality standards could invoke the mandatory duty imposed on the Administrator of the EPA to review such new or revised standards.[53] The court concluded by stating that the CWA citizen suit jurisdiction depended on whether the EFA actually changed Florida's water quality standards. The Tribe's claim was remanded for determination of that issue.[54]

II. FLORIDA CASES

Harris v. Wilson, 693 So. 2d 945 (Fla. 1997) and *Lake County v. Water Oak Management Corp.*, 1997 WL 217408 (Fla. May 1, 1997).

On March 20, 1997, the Supreme Court of Florida decided *Harris v. Wilson*, and on May 1, 1997, the court issued an unpublished opinion[55] for *Lake County v. Water Oak Management Corp.* The issues in both cases are virtually identical. In *Harris*, the court upheld Clay County's special assessment for solid waste disposal, even though the ordinance only applied to residential properties in the unincorporated areas of the county.[56] Similarly, in *Lake County*, the court upheld Lake County's special assessment for solid waste disposal, relying on its recent decision in *Harris*.[57] Additionally, in *Lake County*, the court upheld Lake County's special assessment for fire protection services over the protest of the assessed property owners that the fire protection services were not special services but were of

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50. *See id.*
51. *See id.*
52. *Id.* at 602.
53. *Id.*
54. *Id.* at 603.
55. The *Water Oak* opinion is unpublished and was subject to revision or withdrawal at the time of this writing.
56. *See Harris*, 693 So. 2d at 949.
57. *See Lake County*, 1997 WL 217408 at *1.

general benefit to the entire community.[58] In both cases, the court relied on its two-prong test set forth in *Sarasota County v. Sarasota Church of Christ, Inc.*[59] According to that test, the court will uphold a special assessment so long as: (1) the services at issue provide a special benefit to the assessed property; and (2) the assessment for the services is properly apportioned.[60]

First, in *Harris*, the supreme court held that Clay County's special assessment for solid waste disposal provided a special benefit to the assessed property owners since "only developed residential properties in the unincorporated areas of the county . . . are the properties that contribute to the solid waste disposal problem for which the county is unable otherwise to adequately obtain payment to cover the cost of disposal."[61] The court further held that the assessment was properly apportioned since the amount imposed accurately reflected the actual cost of disposal per lot, the cost was equally distributed among the owners and bore a rational relationship to the benefits received by the owners, and the determination of which owners were to be assessed was reasonable.[62]

In *Lake County*, the supreme court primarily addressed the special benefit prong of the *Sarasota County* test. The court upheld Lake County's special assessment for fire protection services as a special benefit since "the greatest benefit of those services is to owners of real property."[63] In so holding, the court stated that "the test is not whether the services confer a 'unique' benefit or are different in type or degree from the benefit provided to the community as a whole; rather, the test is whether there is a 'logical relationship' between the services provided and the benefit to real property."[64] The court concluded by finding that fire protection services specially benefit owners of real property by, among other reasons, providing for lower insurance premiums and enhancing the value of the property.[65] These benefits are sufficient to constitute a logical relationship between the services provided and the benefit conferred.[66] Thus, the court has essentially decided to allow any special assessment so long as the county imposing it can provide a logical reason for doing so.

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58. *See id.*
59. 667 So. 2d 180 (Fla. 1995).
60. *See Lake County*, 1997 WL 217408 at *2.
61. *Harris*, 693 So. 2d at 948.
62. *See id.* at 949.
63. *Lake County*, 1997 WL 217408 at *3.
64. *Id.*
65. *See id.*
66. *See id.*

Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997).

On March 27, 1997, the Supreme Court of Florida held that amendments to comprehensive land use plans, adopted pursuant to chapter 163, *Florida Statutes*, are legislative decisions that are subject to a fairly debatable standard of review.[67] The respondent, Yusem, was seeking declaratory and injunctive relief against the petitioner, Martin County (County), to order the County to rezone Yusem's property from agricultural to residential.[68] To do so, however, would require the County to amend its comprehensive land use plan.[69] The trial court relied on *Snyder v. Board of County Commissioners* (*Snyder I*)[70] and applied a strict scrutiny standard of review to the County's denial of Yusem's requested rezoning amendment.[71] The Fourth District Court of Appeal reversed the trial court's ruling, but the majority agreed with the strict scrutiny standard of review,[72] based upon the supreme court's opinions in *Board of County Commissioners v. Snyder* (*Snyder II*)[73] and *City of Melbourne v. Puma*.[74] In *Snyder II*, the supreme court held that "rezoning actions that have a limited impact on the public and that can be seen as policy applications, rather than policy setting, are quasi-judicial decisions."[75] The district court concluded that the County's decision was quasi-judicial "because to increase the density on Yusem's fifty-four acres would have a limited impact on the public."[76]

In the instant opinion, the supreme court recognized that its decision in *Snyder II*, read in conjunction with its decision in *Puma*, could reasonably have lead the district and trial courts in this case to conclude that plan amendments are quasi-judicial decisions.[77] The supreme court further noted, however, that several other district courts have read its decisions in *Snyder II* and *Puma* to conclude that plan amendments are legislative, rather than quasi-judicial decisions.[78] The court then made clear its position on this issue by expressly holding that all amendments to comprehensive land use

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67. *Yusem*, 690 So. 2d at 1288.
68. *See id.* at 1291.
69. *See id.*
70. 595 So.2d 65 (5th DCA 1991), *quashed*, 627 So.2d 469 (Fla. 1993).
71. *See Yusem*, 690 So.2d at 1290.
72. *See id.*
73. 627 So.2d 469 (Fla. 1993).
74. 630 So.2d 1097 (Fla. 1994).
75. *Yusem*, 690 So.2d at 1290.
76. *Id.*
77. *See id.* at 1293.
78. *See id.*

plans are legislative decisions.[79] In so holding, the court cited to Judge Pariente's dissent in the district court's opinion to reject the application of a functional analysis used in rezoning cases, such as in *Snyder II*, to cases involving amendments to comprehensive land use plans.[80]

Essentially, the supreme court found that amendments to a comprehensive land use plan, like the adoption of the plan itself, result in formulation of policy, rather than application of policy.[81] Finally, the court held that, since amendments to comprehensive plans are legislative actions, the "fairly debatable" standard of review applies in these cases.[82] This standard of review is highly deferential to the decision of the legislative body.[83] So long as reasonable persons can differ as to an action's propriety, the legislative body's decision will be upheld.[84] Therefore, the supreme court has decided to allow counties broad discretion in amending their comprehensive land use plans.

III. NOTABLE BILLS FROM FLORIDA'S 1997 LEGISLATIVE SESSION**

HB 1641 Comprehensive Planning and Land Management Chapter 97-253, *Florida Statutes*

This bill includes several major provisions. It provides that the limitation on the frequency of amendments to a local government comprehensive plan does not apply to amendments to the schedule of capital improvements of the capital improvements element. It directs the Department of Community Affairs (DCA), in consultation with a technical committee, to evaluate statutory requirements for evaluation and appraisal of comprehensive plans. The bill repeals requirements that state and regional agencies establish by rule procedures for coordinated agency review for projects in the Florida Keys Area of Critical State Concern, and instead, enacts interagency agreements with respect to such projects. In addition, it repeals the requirement that the DCA establish, by rule, procedures and criteria for a developer to petition for authorization to submit a proposed

79. *See id.*
80. *See id.* at 1294.
81. *See id.* at 1295.
82. *Id.*
83. *See id.*
84. *See id.*

** The following bill summaries were adopted directly from the Florida Legislature's home page, Florida Online Sunshine, which may be found on the internet at http://www.leg.state.fl.us. The home page includes complete copies of each bill passed in 1997 Legislative Session.

areawide development of regional impact for a defined planning area.

CS/HB 1119 & 1577 Natural Resource Management—
Land Acquisition and Management
Chapter 97-164, *Florida Statutes*

This bill stresses the importance of good stewardship of public lands and that multiple-use management strategies, where appropriate, focus on providing public access, resource protection, ecosystem maintenance, and public-private partnerships. It directs the Department of Environmental Protection (DEP) and the Water Management Districts (WMDs) to create "land management review teams" to audit whether properties are being managed according to their plans and determines the management funding needs of those lands. These teams shall include local citizens, soil and water conservation districts, and environmental advocates, as well as agency staff.

This bill also initiates a process to close out the Preservation 2000 (P2000) program. By October 1, 1997, DEP and the WMDs are directed to complete studies that pinpoint which lands on their acquisition lists are necessary to acquire in order to either protect endangered species, complete a project so that it can be adequately managed, or link parcels for wildlife corridors or multi-use greenways. It provides that, beginning in fiscal year 1998-1999, agencies with more than one-third of their land-management plans overdue shall not receive their acquisition funds.

This bill specifies that all revenues generated by a land-managing agency through multiple-use management shall be retained by that agency for land management purposes. Additionally, it merges the Land Management Advisory Council and the Land Acquisition Advisory Council, which should help ease the transition after the conclusion of the P2000 program from a focus on land acquisition to an emphasis on properly managing public lands.

This bill further specifies that acquiring lands once used as cattle-dipping vats is in the public interest. The state and other political subdivisions will not be held liable under state law solely because they acquired cattle-dipping vat land.

This bill relaxes one of the eligibility requirements for payment in lieu of taxes for small counties, making eligible an additional six small counties for payment in lieu of taxes if DEP or the WMDs have acquired lands with P2000 funds within their boundaries. It establishes authority for counties over 500,000 to create, by local option, green utilities to collect revenues for exotic-plant control.

This bill also authorizes the development of ecosystem management agreements between regulated entities operating within a defined ecosystem management area and DEP or other state regulatory agencies, provided that the agreement will have a net ecosystem benefit, and the regulated entities have internal environmental management systems. Such agreements are designed to include the following: permit processing, project construction, operations monitoring, enforcement actions, proprietary approvals, and compliance with development orders and comprehensive plans. The agreements are voluntary for both the regulated entity and DEP, and may act as final agency action.

HB 1323 Water Protection
Chapter 97-236, *Florida Statutes*

This bill addresses the requirements of the 1996 amendments to the federal Safe Drinking Water Act that Florida must meet in order to qualify for federal funds to finance improvements to outdated or inadequate public drinking water systems. The bill provides technical and other forms of assistance to eligible systems. It makes Florida eligible to receive substantial federal dollars over the next five years, possibly a five-to-one or six-to-one match. The bill sets aside at least 15% of the funds available for loans to public water systems that serve 10,000 or fewer people, and allocates up to 15% of the funds to disadvantaged communities. Additionally, this bill transfers the licensure program for water and domestic wastewater treatment plant operators from the Department of Business and Professional Regulation to DEP.

CS/SB 550 Oil and Gas Drilling
Chapter 97-49, *Florida Statutes*

This bill eliminates the option of joining the Mineral Trust Fund to satisfy surety requirements when applying for oil and gas drilling permits. It directs the Governor and Cabinet, with recommendations from DEP, to determine the amount of surety required of applicants for drilling permits.

CS/SB 1306 Brownfields Redevelopment Act
Chapter 97-277, *Florida Statutes*

This bill creates the Brownfields Redevelopment Act. The bill requires brownfields to be designated by a local government by resolution. It provides that certain notice requirements be followed during designation. It also requires persons responsible for site

rehabilitation to enter into site rehabilitation agreements that detail clean-up and redevelopment plans. It details eligibility criteria, liability protections, and reopener provisions for brownfield sites. The bill establishes pilot projects at EPA designated sites and establishes a brownfield redevelopment bonus for the creation of jobs. Additionally, it details minimum clean-up criteria to be used for the rehabilitation of these sites.

The bill contains additional provisions related to: the underground petroleum storage tank program (claims filing deadline, audit authority, and competitive bidding pilot); the filing deadline for the annual operation license granted sources of air pollution; and concerns raised by the Joint Administrative Procedures Council concerning exemptions for used oil generators.

CS/HB 1775 South Florida Water Management District—Oversight and Accountability
Chapter 97-258, *Florida Statutes*

This bill provides increased oversight and accountability of the South Florida Water Management District regarding implementation of the Everglades Forever Act. The bill creates a joint legislative committee with specific oversight responsibility. Requirements are imposed on the district to periodically report on the Everglades Construction project and to disclose information regarding plans to borrow or incur debt. Additionally, statutory guidance for administration of the Everglades Trust Fund is provided.

CS/SB 788 Natural Resources
Chapter 97-25, *Florida Statutes*

This bill is the first step in the process of ratifying the Apalachicola-Chattahoochee-Flint River Basin Interstate Compact, which is under a compact between the states of Florida, Alabama, and Georgia and the federal government. The goal of the compact is to establish a long-term management plan for the Apalachicola-Chattahoochee-Flint River Basin. Congress must still approve the compact.

CS/HB 715 Water Resources—Management
Chapter 97-160, *Florida Statutes*

This bill is a comprehensive update of Florida's water law and policy. It requires the WMDs to consider changes and structural alterations to wetlands, surface waters and groundwater, and the effects such changes have had on a water resource when establishing minimum flows and levels. It states that no significant harm

to Florida's water resources or the ecology, caused by withdrawals, shall be grandfathered-in due to the way the Legislature directs the WMDs to set minimum flows and levels. The bill directs the WMDs to implement a recovery or prevention strategy if a water body falls below, or is projected to fall below, its minimum flow or level. The recovery or prevention strategy must include a timetable that will allow for development of additional water supplies concurrent with any reductions in permitted withdrawals. The bill recognizes that for some surface waterbodies, recovery to historical hydrology is not practical and gives the WMDs the discretion not to set minimum flow levels in certain circumstances.

This bill provides for staggered appointments of WMD governing board members. Additionally, it provides for more extensive review of WMD financial management and budgets. It directs that attorneys employed by the WMDs represent the legal interests or position of the governing board. The bill directs the WMDs to initiate water resource development to ensure water is available for all existing and future reasonable uses and creates stronger linkages among state, WMD, and regional water planning.

The bill requires water use permits to be issued for twenty years if there is sufficient information to provide reasonable assurance that permit conditions will be met and allows the WMDs to require a five year compliance report. It extends eligibility for Water Quality Assurance Trust Fund dollars to people who want to build or improve potable wells in areas delineated by DEP as having contaminated groundwater. The bill reclassifies discharges from desalination or demineralization facilities from industrial wastewater to drinking water byproduct for certain size facilities, as long as certain water quality standards were met. It also addresses a number of issues related to commercial fishing, including the creation of a special activity license for sturgeon, establishment of a bait fish pilot program, and implementation of the constitutionally-imposed net ban.