

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 Committee on Community Affairs

BILL: CS/SB 768

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simpson

SUBJECT: Everglades Improvement and Management

DATE: March 28, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.	Toman	Yeatman	CA	Favorable
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 768 amends section 373.4592, Florida Statutes, to amend legislative intent to include the revised definition of the Long-Term Plan and that best management practices (BMPs) in the Everglades Agricultural Area (EAA) are effective nutrient management tools. The CS revises the definition of “Long-Term Plan” to incorporate the Restoration Strategies Water Quality Plan. It also allows the South Florida Water Management District (SFWMD) to continue to collect and use ad valorem funds for the continued implementation of the Long-Term Plan. The CS requires the SFWMD to conduct a use attainability analysis after completion of all projects and improvements. The CS also extends the agricultural privilege tax and allocates recurring funds from general revenue and recurring funds from the Water Management Lands Trust Fund for the Long-Term Plan.

CS/SB 768 amends section 373.4592 of the Florida Statutes, and creates an unnumbered section of law.

II. Present Situation:

The Everglades is a series of rivers, lakes, and estuaries that support a variety of flora and fauna not found anywhere else in the world. The historical Everglades covered 11,000 square miles of south Florida extending from Kissimmee through the tip of the Florida Peninsula.¹

In the 1800s, early colonial settlers began to drain the Everglades in an effort to make the land more suitable for agriculture. By the early 1900s, the drainage process was well developed and urban areas along the east coast were beginning to grow.²

In 1948, Congress authorized the Central and South Florida Project for Flood Control to provide flood control, supply water for municipal, industrial and agricultural uses, prevent salt water intrusion, and preserve fish and wildlife in the Everglades.³ The project included 1,000 miles of levees, 720 miles of canals and almost 200 water control structures. A portion of the area drained was designated the EAA, which spans 700,000 acres and is approximately 27 percent of the historic Everglades.⁴

The flood control project dramatically changed the quantity and quality of water delivered to the Everglades, which significantly impacted the ecosystem. The high concentration of phosphorus delivered through urban and agricultural stormwater runoff promoted algae growth and the growth of non-native plants. By the 1980s, the freshwater flow through the Everglades declined by 70 percent, the wading bird population dropped by 90 percent, and the Everglades was reduced to half the historical size.⁵

In 1988, the federal government filed a suit against the SFWMD, and Florida alleging state water quality standards on federal lands were being violated as a result of the high nutrient concentrations discharged into the Everglades from urban and agricultural areas. In 1992, all parties to the lawsuit entered into a settlement agreement.⁶

In 1991, the Legislature passed the Marjorie Stoneman Douglas Everglades Protection Act (Act) to restore the Everglades. The Act directed the SFWMD to adopt the Everglades Surface Water Improvement and Management (SWIM) Plan, which included strategies to bring facilities into compliance with water quality standards. The SFWMD was also directed to identify and acquire lands for the purpose of water management, create a permitting system, and develop funding mechanisms. The Act provided the SFWMD the ability to adopt stormwater management utility

¹ National Parks Service, *Everglades, History and Culture*, <http://www.nps.gov/ever/historyculture/index.htm> (last visited Mar. 18, 2013).

² *Id.*

³ Clay J. Landry, *Who drained the everglades? The same folks who are now restoring them.* (March 2002), available at <http://perc.org/sites/default/files/mar02.pdf> (last visited Mar. 28, 2013).

⁴ Duke University Wetland Center, *Everglades Agricultural Area*, <http://www.nicholas.duke.edu/wetland/ea.htm> (last visited Mar. 28, 2013).

⁵ DEP, *Everglades Radio Network*, <http://www.dep.state.fl.us/evergladesforever/about/default.htm> (last visited Mar. 28, 2013).

⁶ *United States vs. South Florida Water Management District*, Case No. 88-1886 CIV-HOEVELER (S.D. Fla.) available at [http://www.law.miami.edu/library/everglades/lawarticles/fsu_landuse_vol17_1_rizzardi%20\(86kb\).pdf](http://www.law.miami.edu/library/everglades/lawarticles/fsu_landuse_vol17_1_rizzardi%20(86kb).pdf) (last visited Mar. 18, 2013).

fees and gave it the authority to levy a per-acre ad valorem assessment in the Everglades Agricultural Area.⁷

The 1992 federal settlement agreement established interim and long-term phosphorus concentration limits for the Everglades National Park and the Loxahatchee National Wildlife Refuge. The agreement also required the state build and operate a minimum of 32,000 acres of storm water treatment areas (STAs) and implement a regulatory program to require farms to implement BMPs and directed the state to adopt the SWIM plan.⁸

Everglades Forever Act

In 1994, the Legislature enacted the Everglades Forever Act (EFA). The EFA outlines the state's commitment to restore the Everglades by improving water quality and quantity and works in conjunction with the federal government's Comprehensive Everglades Restoration Program (CERP), which focuses on improving water delivery and timing within the Everglades. The primary goals of the EFA are to improve water quality by reducing phosphorus levels, to restore the hydrology of the ecosystem, and to restore and protect the native plant and animals by reducing the invasive, exotic species in the Everglades.⁹

The EFA requires the SFWMD and the DEP to numerically interpret the Class III phosphorus criterion that is necessary to meet water quality standards in the Everglades Protection Area¹⁰ in a manner that does not cause an imbalance in the natural populations of aquatic flora and fauna. The EFA required a 10 part per billion default phosphorus criterion go into effect until a rule was adopted. The deadline for rule adoption was December 31, 2003.¹¹ In 2003, the DEP adopted the rule to establish a long-term geometric numeric phosphorus criterion of 10 parts per billion for Class III waters in the Everglades Protection Area.¹²

In 2003, the Legislature passed SB 626 to amend the EFA and implement the "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-term Water Quality Goals" (Long-Term Plan). The SFWMD is responsible for implementing the Long-Term Plan and the subsequently approved amendments. The Long-Term Plan identifies the best available phosphorus reduction technology to be used in combination with BMPs and STAs to achieve the phosphorus criterion in the Everglades Protection Area.¹³

The EFA specifies that the Long-Term Plan is to be implemented in two phases. The initial phase is from 2003 to 2016, followed by a second 10-year phase. The second phase must be approved and codified in the EFA prior to the implementation of projects. The law specifies that it is in the public interest to review the EFA at least 10 years after implementation of the initial

⁷ See Chapter 91-80, Laws of Fla.

⁸ *United States v. South Florida Water Management District*, 847 F. Supp. 1567 (S.D. Fla. 1992).

⁹ See s. 373.4592, F.S.

¹⁰ The Everglades Protection Area includes Water Conservation Areas 1, 2A and 2B, 3A and 3B, and Everglades National Park.

¹¹ *Supra* note 9.

¹² See Chapter 62-302, F.A.C.

¹³ *Id.*

phase. The review ensures that the Everglades Protection Area is achieving state water quality standards and that the Long-Term Plan is using the best available technology.¹⁴

The agricultural privilege tax was implemented in 2003 under SB 626. The “polluter pays” principle was passed as a constitutional amendment in the 1996 General Election but had not yet been implemented due to some question as to whether the amendment was self-executing, required legislative action, or whether the EFA implemented the amendment. The Supreme Court of Florida determined the amendment was not self-executing and required legislative implementation.¹⁵ The EFA specifies that those that cause or contribute to pollution in the C-139 Basin and the EAA are responsible for the cost of the cleanup and are required to pay an agricultural privilege tax. In the C-139 basin, the per-acre tax for tax notices mailed from November 2003 through November 2013 is assessed using the total acreage on the basin tax roll in 2001. The agricultural privilege tax in the EAA is assessed at \$35 per-acre for notices mailed from 2006 through 2013. In order to encourage the performance of BMPs an incentive discount of \$10 per acre is provided against the agricultural privilege tax.¹⁶

The legislature also passed SB 54A in 2003, which provided bonding authority for an additional \$800 million to improve water quality in the Everglades.

The SFWMD has implemented the Long-Term Plan over the last decade, as well as the research and design components of the plan. The information gathered under the Long-Term Plan process has been valuable for optimizing STA design, engineering, construction, maintenance, and operation techniques. The performance of the STAs is limited by existing configurations and footprints, biogeochemical interactions and hydrological constraints; therefore, the SFWMD has been identifying new technologies to implement the next phase of the Long-Term Plan.¹⁷

In 2010, the U.S. District Court, Southern District of Florida, issued an order requiring, among other items, that the U.S. Environmental Protection Agency (EPA) issue an “Amended Determination” on its review of the state water quality standards. The court also required the DEP to amend the phosphorus rule and required the Legislature to revise the EFA to conform to federally-approved water quality standards. The EPA issued the Amended Determination on September 3, 2010, which identified a discharge phosphorus limit and the STA expansions, that the EPA believed was necessary to achieve the phosphorus criterion. As part of the Amended Determination, the EPA also recognized that other projects may be identified by the state as an alternative to those identified in the Amended Determination in order to achieve the phosphorus criterion.¹⁸

As a result of the Amended Determination, Governor Scott directed the DEP and the SFWMD to develop a feasible alternative for phosphorus reduction. The DEP and SFWMD, in consultation

¹⁴ *Id.*

¹⁵ *Advisory Opinion to the Governor, 1996 Amendment 5 (Everglades)*, 706 So. 2d 278 (Fla. 1997), available at <http://www.law.fsu.edu/library/flsupct/90042/90042ever.pdf> (last visited Mar. 28, 2013).

¹⁶ *Supra* note 9.

¹⁷ DEP, *Senate Bill 768 Agency Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

¹⁸ U.S. EPA, *Amended Determination*, available at

http://www.epa.gov/region4/water/wqs/documents/1_AD_final_version_09_03_10.pdf (last visited Mar. 28, 2013).

with the EPA, used the information collected through implementation of the Long-Term Plan to develop feasible, cost effective alternatives based on the best available science and that would result in compliance with the discharge limitation necessary to achieve the Everglades phosphorus criterion. The alternatives were included in state-issued National Pollutant Discharge Elimination System (NPDES) permits, the EFA permits, and the accompanying consent orders.

The EFA authorizes the SFWMD to levy ad valorem taxes up to 0.1 mill within the Okeechobee Basin. The proceeds are the sole, direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and implementation of the Long-Term Plan. In order for the projects to be implemented beyond 2016 and have district ad valorem revenues contribute to the funding of the projects, the Legislature must approve the Restoration Strategies plan as the second phase of the Long-Term Plan.¹⁹

The Restoration Strategies Regional Water Quality Plan

On September 12, 2012, Governor Scott announced the DEP-issued final permits and consent orders to the SFWMD for the implementation of the “Restoration Strategies Regional Water Quality Plan.”²⁰ The second 12-year phase of the Long-Term Plan identifies a combination of STA expansions, internal construction, conveyance and structure improvements, and features known as “Flow Equalization Basins,” or “FEBs.” Specifically, the plan includes milestones for project completion and enforcement mechanisms to ensure the milestones are achieved. The plan includes 6,500 acres of STAs and approximately 110,000 acre-feet of water storage. The implementation of the Restoration Strategies plan would be consistent with the schedules identified in the consent orders issued in conjunction with the NPDES and EFA permits.²¹

Use Attainability Analysis

The federal Clean Water Act requires states to adopt water quality standards and designate the uses of their navigable waters based on the use and value of the water body. Water quality standards are based on the recreational, agricultural, industrial and navigational uses of the water body, as well as the quality of habitat for wildlife. The standards include the use and value of the water body, protection of wildlife, recreational, agricultural, industrial, and navigational uses. If a state proposes a use designation that does not include the “fishable/swimmable” goals of the Clean Water Act or changes a use that would apply less stringent measures, then a use attainability analysis is required. A use attainability analysis is a scientific assessment of the physical, chemical, biological, and economic conditions affecting a water body.²²

Pursuant to EPA water quality standards, states may change the current use designation if any of the following apply:²³

- Naturally occurring pollutant levels prevent attainment of the use;

¹⁹ *Supra* note 17.

²⁰ Press Release, Florida Department of Environmental Protection, *Governor Scott and DEP Announce Everglades Restoration Projects Will Move Forward* (Sept. 11, 2012), available at <http://content.govdelivery.com/bulletins/gd/FLDEP-516d48> (last visited Mar. 28, 2013).

²¹ *Supra* note 17.

²² See 33 U.S.C s. 1313(c)(2)(A).

²³ See 40 CFR 131.10(g)(1)-(6).

- Natural ephemeral, intermittent, or low flow prevents attainment of the use;
- Human caused pollution prevents attainment of the use and cannot be remedied without causing worse environmental harm;
- Dams, diversions, and other hydrologic modifications prevent attainment of the use and it is not feasible to restore the water or operate the modification in a way that would result in attainment of the use;
- Natural physical features prevent attainment of the use; or
- More stringent controls would be necessary to attain the use and would result in substantial and widespread social and economic hardship.

III. Effect(s) of Proposed Changes:

Section 1 amends s. 373.4592, F.S., to include the Long-Term Plan and the implementation of BMPs as effective nutrient management tools in the Statement of Principles.

The CS includes the SFWMD's Restoration Strategies plan in the definition of "Long-Term Plan" and eliminates obsolete phasing requirements of the Long-Term Plan. The proposed changes would merge the state's existing Long-Term Plan components and the Restoration Strategies plan into a single comprehensive plan for achieving the restoration efforts envisioned under the EFA.

The CS also allows the SFWMD to continue to use ad-valorem funds currently collected in accordance with the EFA for the continued implementation of the Long-Term Plan beyond the initial phase.

The CS directs the SFWMD to conduct a use attainability analysis after all of the projects and improvements in the Long-Term Plan are complete.

The CS extends the agricultural privilege tax for the design, construction, and implementation of the Long-Term Plan as follows:

- \$25 an acre for tax notices mailed November 2014 to November 2026;
- \$20 per acre for tax notices mailed November 2027 to November 2029;
- \$15 per acre for tax notices mailed November 2030 to November 2035; and
- \$10 per acre for tax notices mailed on or after November 2036.

This section also includes conforming changes.

Section 2 creates an unnumbered section of law to appropriate \$12 million in recurring general revenue funds and \$20 million in recurring funds from the Water Management Lands Trust Fund for the Restoration Strategies Regional Water Quality Plan starting in Fiscal Year 2013-2014 and each year thereafter through Fiscal Year 2023-2024 July. This section takes effect July 1, 2013.

Section 3 provides the CS shall take effect upon becoming law unless otherwise provided.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

CS/SB 768 allows the continued collection of up to 0.1 mill in the Okeechobee Basin through completion of the Long-Term Plan.

The agricultural privilege tax is increased and extended for all acreage within the EAA.

B. Private Sector Impact:

CS/SB 768 is estimated to result in the creation of approximately 7,200 on-site construction jobs over the life of the projects.²⁴ The estimate is approximated using data provided by the Associated General Contractors of America.²⁵

CS/SB 768 extends the Everglades agricultural privilege tax which will continue to generate approximately \$10.8 million per year until 2027. Tax revenues will be reduced to approximately \$8.64 million per year for 2027 through 2029. Revenues will be further reduced to approximately \$6.48 million per year for 2030 through 2035 and then to approximately \$4.32 million per year for 2036 and thereafter.²⁶

C. Government Sector Impact:

The DEP and SFWMD have developed a finance plan that does not rely on an increase of existing ad valorem taxes as a mechanism to further implement the state's Long-Term Plan. Funds required for the implementation of the plan are comprised of the SFWMD

²⁴ *Supra* note 17.

²⁵ The Associated General Contractors of America estimates that \$1 billion invested in nonresidential construction creates or sustains 9,405 direct on-site construction jobs. This multiplier was used to extrapolate the number of on-site construction jobs created based on \$766 million of construction costs included in the Long-Term Plan. *See* Ken Simonson, *The Economic Impact of Construction in the United States and California*, (Sep. 27, 2012), available at <http://www.agc.org/galleries/econ/CAstim.pdf> (last visited Mar. 20, 2013).

²⁶ Email from Ernie Barnett, Director of Everglades Policy, South Florida Water Management District, to Stephanie Gudeman, Legislative Analyst, Senate Committee on Environmental Preservation and Conservation (Mar. 24, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

reserves, of which some are specifically accumulated for Everglades restoration purposes, ad valorem taxes generated from new construction within the SFWMD's service area and appropriations from the Legislature over the course of the project schedule. SFWMD cash reserves for use in the construction of project features are expected to be depleted by Fiscal Year 2017. Ad valorem growth is based on conservative new construction estimates of 1 percent through 2017 and 1.5 percent starting in 2018 and continuing through completion of the project schedule. The remainder of the funds necessary for implementing the plan would be sought by the DEP through annual legislative budget requests.²⁷

CS/SB 768 provides \$12 million in recurring general revenue funds and \$20 million in recurring funds from the Water Management Lands Trust Fund for the Restoration Strategies Regional Water Quality Plan starting in Fiscal Year 2013-2014 and each year thereafter through Fiscal Year 2023-2024 July.

Proceeds from the agricultural privilege tax must be used for design, construction, and implementation of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the Long-Term Plan, including the enhancements and operation and maintenance of the Everglades Construction Project.²⁸

Completion of the next phase of the Long-Term Plan is estimated to cost \$880 million.²⁹

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 21, 2013:

The CS includes the Long-Term Plan and the implementation of BMPs as effective nutrient management tools in legislative intent.

The CS directs the SFWMD to conduct a use attainability analysis after all of the projects and improvements in the Long-Term Plan are complete.

²⁷ *Supra* note 17.

²⁸ *Supra* note 17 and the agricultural privilege tax revenues are calculated based on the number of acres in production in 2013.

²⁹ Press Release, South Florida Water Management District, *SFWMD Approves Pump Construction for Everglades Restoration Reservoir* (Sept. 13, 2012), available at http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/nr_2012_0913_l8_pumps_contract_final.pdf (last visited Mar. 19, 2013).

The CS revises and extends the taxing schedule of the agricultural privilege tax for the design, construction, and implementation of the Long-Term Plan.

The CS provides \$12 million in recurring general revenue funds and \$20 million in recurring funds from the Water Management Lands Trust Fund for the Restoration Strategies Regional Water Quality Plan starting in Fiscal Year 2013-2014 and each year thereafter through Fiscal Year 2023-2024 July.

B. Amendments:

None.