

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1061 Aquatic Preserves

**SPONSOR(S):** State Affairs Committee, Agriculture & Natural Resources Appropriations Subcommittee, Massullo

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	8 Y, 0 N, As CS	White	Pigott
3) State Affairs Committee	22 Y, 0 N, As CS	Melkun	Williamson

### SUMMARY ANALYSIS

The Florida Aquatic Preserve Act of 1975 was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves or sanctuaries for the benefit of future generations. Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.

The bill creates the Nature Coast Aquatic Preserve and specifies the boundaries of the preserve.

The bill does not appear to have a fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Submerged Lands

The federal Submerged Lands Act (SLA), enacted in 1953, provides that a state, upon becoming a member of the United States, acquires title to and ownership of the lands beneath navigable waters within the boundaries of the state<sup>1</sup> and the natural resources within such lands and waters. The state also acquires the right and power to manage, administer, lease, develop, and use such lands and natural resources.<sup>2</sup> Under the SLA, the U.S. retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs.<sup>3</sup>

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high-water line that are beneath navigable fresh water or beneath tidally-influenced waters.<sup>4</sup> Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (BOT), which is comprised of the Governor and Cabinet.<sup>5</sup> BOT is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.<sup>6</sup>

##### Aquatic Preserves

The Florida Aquatic Preserve Act of 1975<sup>7</sup> was created to ensure that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value are set aside as aquatic preserves<sup>8</sup> or sanctuaries for the benefit of future generations.<sup>9</sup> The Office of Resilience and Coastal Protection within the Department of Environmental Protection (DEP) carries out the Aquatic Preserve Program on behalf of BOT.

Currently, Florida has 41 aquatic preserves, encompassing about 2.2 million acres.<sup>10</sup> All but four of these submerged lands are located along Florida's 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers.<sup>11</sup> Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life and providing habitat for shorebirds. Aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.<sup>12</sup>

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<sup>1</sup> 43 U.S.C. §1301 et seq. 43 U.S.C. §1312 designates the seaward boundary of each coastal State as three miles out from its coast line; *U.S. v. Louisiana, et al.*, 363 U.S. 1 (1960), recognizing Florida's seaward boundary into the Gulf of Mexico is three marine leagues (approximately 9-10 miles).

<sup>2</sup> 43 U.S.C. §1301 and §1311(a).

<sup>3</sup> 43 U.S.C. §1314(a).

<sup>4</sup> Rule 18-21.003(65), F.A.C.

<sup>5</sup> DEP, *Submerged Land Management*, available at <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 29, 2020).

<sup>6</sup> Section 253.03, F.S.

<sup>7</sup> Section 258.35, F.S.

<sup>8</sup> Section 258.37(1), F.S., defines the term "aquatic preserve" as an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.

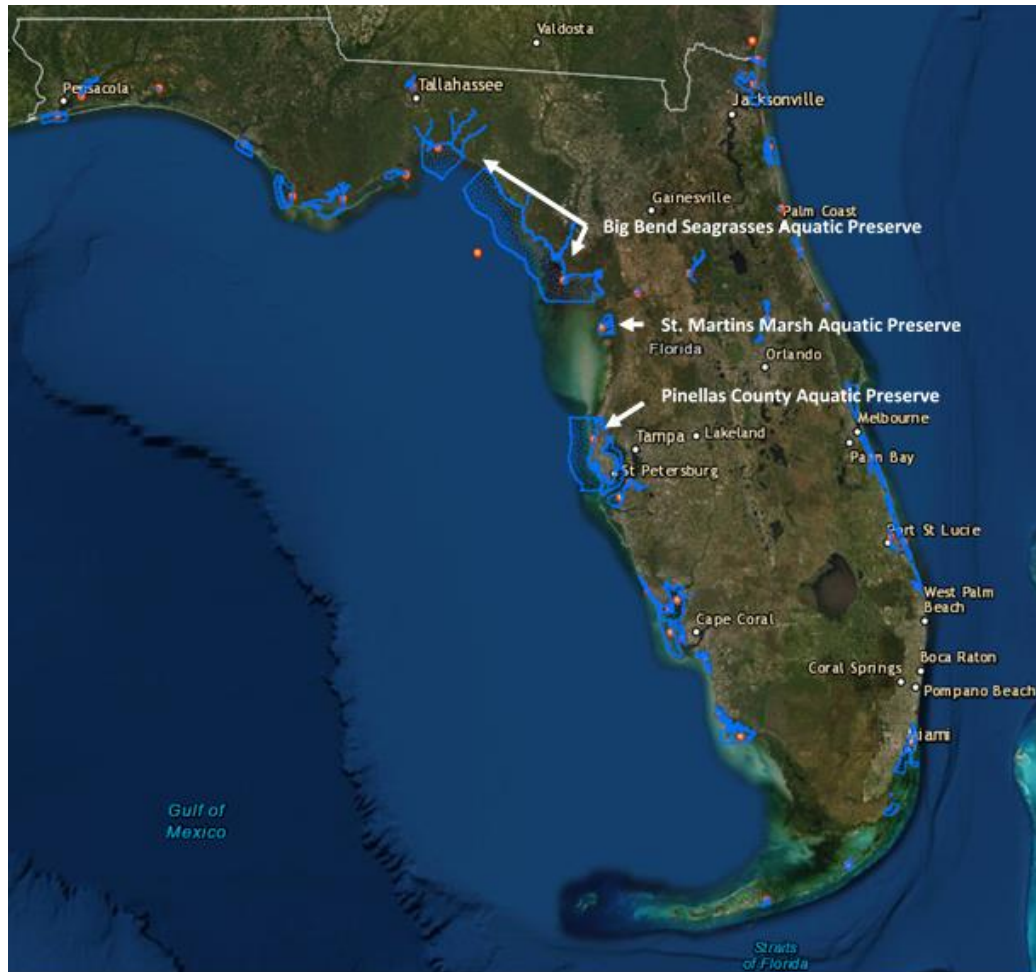
<sup>9</sup> Section 258.36, F.S.

<sup>10</sup> DEP, *Aquatic Preserve Program*, available at <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 29, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

The following figure depicts a map of Florida's aquatic preserves, noting the locations of the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins Marsh Aquatic Preserve.<sup>13</sup>



Current law restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves to conserve their unique biological, aesthetic, and scientific value. BOT must maintain aquatic preserves by prohibiting:

- Further sale, lease, or transfer of sovereign submerged lands unless such sale, lease, or transfer is in the public interest;
- Approval of the waterward relocation or setting of bulkhead lines waterward of the mean high-water line within the preserve unless public road and bridge construction projects have no reasonable alternative and it is shown to not be contrary to the public interest; and
- Further dredging or filling of submerged lands except for certain activities, such as public navigation projects, the creation or maintenance of marinas, or public utility expansion.

The drilling of gas or oil wells and the excavation of minerals are expressly prohibited in aquatic preserves.<sup>14</sup> However, the state is not prohibited from leasing the oil and gas rights of the preserve and permitting drilling from outside the preserve to explore for oil and gas if approved by BOT.

Commercial and residential docking facilities and structures for shore protection are also restricted as to size and location, and waste and effluents may not be discharged into the preserve if they substantially inhibit the accomplishment of the purposes of the Florida Aquatic Preserve Act.<sup>15</sup>

<sup>13</sup> DEP, *Aquatic Preserves of Florida StoryMap Component*, available at <https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 29, 2020).

<sup>14</sup> Section 258.42, F.S. The dredging of dead oyster shells is permitted if approved by DEP.

<sup>15</sup> Section 258.42, F.S.

Fees for leases of sovereign submerged lands are significantly higher within aquatic preserves. A rate of two times the existing rate is applied to aquatic preserve leases if 75 percent or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.<sup>16</sup>

### Nature Coast

“The Nature Coast” is located along Florida’s Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and the City of Dunnellon.<sup>17</sup> This area is a sanctuary to 19 endangered species<sup>18</sup> and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.

### RESTORE Act

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Act of 2012 (RESTORE Act) was passed on June 29, 2012, by Congress and signed into law on July 6, 2012, by President Obama.<sup>19</sup> Under the provisions of the RESTORE Act, 80 percent of all administrative and civil penalties related to the Deepwater Horizon oil spill are distributed to a trust fund. Of the 80 percent, 7 percent is allocated to the 23 counties in Florida most affected by the spill.<sup>20</sup> These funds are then used by the county and state governments to fund projects to restore, improve, and protect water resources.<sup>21</sup>

### **Effect of the Bill**

The bill creates the Nature Coast Aquatic Preserve. The bill provides that it is the intent of the Legislature that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations. The bill describes the boundaries of the preserve and specifies that the Nature Coast Aquatic Preserve boundary does not supersede the boundaries of currently designated Outstanding Florida Waters, state parks, national wildlife refuges, or aquatic preserves.

The bill further specifies that the designation of the Nature Coast Aquatic Preserve may not be construed to impose additional permitting requirements for county or state RESTORE Act projects.

### **B. SECTION DIRECTORY:**

Section 1. Creates s. 258.3991, F.S., establishing the Nature Coast Aquatic Preserve.

Section 2. Provides an effective date of July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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<sup>16</sup> Rule 18-21.011(1)(b)5., F.A.C.

<sup>17</sup> Nature Coast Coalition, *History & Area Information*, available at <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 29, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> DEP, *About the RESTORE Act*, available at <https://floridadep.gov/wra/deepwater-horizon/content/restore> (last visited Feb. 27, 2020).

<sup>20</sup> *Id.*; United States Department of Treasury, *RESTORE Act*, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act> (last visited Feb. 27, 2020).

<sup>21</sup> Gulf Coast Restoration Council, *Comprehensive Plan Update 2016*, 12, available at [https://www.restorethegulf.gov/sites/default/files/CO-PL\\_20161208\\_CompPlanUpdate\\_English.pdf](https://www.restorethegulf.gov/sites/default/files/CO-PL_20161208_CompPlanUpdate_English.pdf) (last visited Feb. 27, 2020).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve may become more expensive.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Agriculture & Natural Resources Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed provisions of the bill that provided directives to BOT related to regulation of the Nature Coast Aquatic Preserve, authorized the Department of Legal Affairs to bring an action for civil penalties, and specified the rights of certain property owners. The strike-all also excluded certain waterbodies from the designation of the preserve and revised the boundaries of the preserve.

On February 27, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment specified the boundaries of the preserve and clarified that the designation of the Nature Coast Aquatic Preserve would not impede projects funded pursuant to the RESTORE Act.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.