

By Senator Kirkpatrick

5-1637-98

1 A bill to be entitled
 2 An act relating to Everglades pollution
 3 abatement funding; creating s. 373.45928, F.S.;
 4 providing legislative findings and intent;
 5 requiring the Joint Legislative Committee on
 6 Everglades Oversight to recommend a funding
 7 mechanism for any additional water quality
 8 improvements developed under ss. 373.4592 and
 9 373.45928, F.S.; requiring the South Florida
 10 Water Management District, in coordination with
 11 the Department of Environmental Protection to
 12 assist the joint committee by conducting
 13 specified analyses; providing for public
 14 workshops and hearings; requiring the Joint
 15 Legislative Committee on Everglades Oversight
 16 to prepare and submit its report and funding
 17 recommendations to the Legislature and the
 18 Governor; providing an appropriation; providing
 19 an effective date.

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 21 Be It Enacted by the Legislature of the State of Florida:

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 23 Section 1. Section 373.45928, Florida Statutes, is
 24 created to read:

25 373.45928 Everglades Pollution Abatement Funding.--

26 (1) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
 27 finds and declares the following:

28 (a) In 1996 Amendment 5 to the State Constitution
 29 amended s. 7 of Art. II of the State Constitution by adding a
 30 new subsection (b) to address responsibility of those in the
 31 Everglades Agricultural Area for the costs of abating

1 pollution both in the Everglades Protection Area and the
2 Everglades Agricultural Area. In its 1997 advisory opinion to
3 the Governor, the Florida Supreme Court opined that Amendment
4 5 requires implementing legislation to make it effective. The
5 court did not construe the Everglades Forever Act, s.
6 373.4592, to be enabling legislation for Amendment 5, and also
7 held that there is no inconsistency between Amendment 5 and
8 the Everglades Forever Act. The court further held that the
9 words "primarily responsible" in Amendment 5 require those in
10 the Everglades Agricultural Area who cause water pollution in
11 the Everglades Protection Area or the Everglades Agricultural
12 Area to bear the costs of abating that pollution. In a
13 footnote to its advisory opinion to the Governor, the court
14 recognized that not all of the water pollution within these
15 areas may be caused by polluters within the Everglades
16 Agricultural Area, and thus, while polluters within that area
17 as a group must pay for 100 percent of the cost to abate the
18 pollution they cause, Amendment 5 does not require them to pay
19 for the abatement of such portion of the pollution they do not
20 cause. The Legislature finds and declares that this approach
21 is fair and equitable, and should not be limited to those
22 polluters in the Everglades Agricultural Area but should
23 likewise be applied to all of those who cause pollution in
24 either the Everglades Protection Area or the Everglades
25 Agricultural Area, wherever they might be located.

26 (b) The Legislature finds that a continuation of
27 ongoing research, monitoring, and water-quality-standards
28 evaluation programs as mandated by the Everglades Forever Act
29 is needed to implement Amendment 5. The Legislature therefor
30 reaffirms its mandate to the district to construct the
31 Everglades Construction Project on time and on budget as

1 funded by that act and to follow the science-based Everglades
2 Program established by that act as the basis for further
3 Everglades restoration decisionmaking.

4 (c) The Legislature further finds that it is in the
5 public interest to implement Amendment 5 so that funding
6 mechanisms for any additional Everglades water pollution
7 abatement measures developed under the Everglades Forever Act
8 are consistent with that mandate. Such funding mechanisms
9 shall ensure that those in the Everglades Agricultural Area as
10 well as those outside that area pay their respective shares of
11 the costs of any water-quality-improvement measures needed
12 following construction of the Everglades Construction Project
13 to achieve compliance with state water quality standards in
14 the Everglades Protection Area.

15 (d) The Joint Legislative Committee on Everglades
16 Oversight is an appropriate body to collect information and
17 analyses needed to establish a pollution-abatement funding
18 program consistent with the rationale of Amendment 5, in
19 coordination with and in furtherance of ongoing research in
20 connection with the Everglades Forever Act.

21 (2) DEFINITIONS.--As used in this section: the terms
22 "best management practices", "department", "district",
23 "Everglades Agricultural Area", "Everglades Construction
24 Project", "Everglades Program", and "Everglades Protection
25 Area" have the same meanings set forth in s. 373.4592(2); and
26 the term "pollution" has the same meaning set forth in s.
27 403.031(7).

28 (3) DEVELOPMENT OF A FUNDING PROGRAM.--The joint
29 committee established under s. 11.80, shall recommend to the
30 Legislature a funding program for any additional water quality
31 improvements that are recommended under s. 373.4592 or this

1 section and reviewed in accordance with the process
2 established in the section and that are needed to bring the
3 Everglades Protection Area into compliance with state water
4 quality standards. The district, in coordination with the
5 department, shall assist the joint committee by developing
6 information needed to implement Amendment 5, together with a
7 methodology to be applied to assess pollution abatement costs
8 against those outside the Everglades Agricultural Area who
9 also cause pollution in the Everglades Protection Area and the
10 Everglades Agricultural Area. Specifically, the joint
11 committee shall consider:

12 (a) An analysis of the following:

13 1. The water quality benefits of best management
14 practices and the Everglades Construction Project as
15 implemented and tested.

16 2. Everglades research and monitoring reports,
17 conclusions, and recommendations developed under s.
18 373.4592(4)(d).

19 3. The evaluation, establishment, and application of
20 water quality standards under s. 373.4592(4)(e).

21 4. The alternative costs of reducing phosphorus
22 concentrations in all surface waters entering the Everglades
23 Protection Area to long term annual average phosphorus
24 concentrations of 50 parts per billion, and then to 40 parts
25 per billion, 30 parts per billion, 20 parts per billion, and
26 10 parts per billion, respectively.

27 5. The costs of reducing other water quality
28 constituents of ecological concern to acceptable levels in the
29 Everglades Protection Area.

30 (b) The district shall develop and provide the joint
31 committee estimates, assuming a continuation of best

1 management practices in the Everglades Agricultural Area and
2 implementation of the Everglades Construction Project, of the
3 annual average loads of phosphorus and other water quality
4 constituents of ecological concern, on a percentage of the
5 whole basis, that will enter the Everglades Protection Area
6 and the Everglades Agricultural Area from each of the
7 following sources: atmospheric deposition, Everglades
8 Agricultural Area runoff, water supply releases from Lake
9 Okeechobee, and each other tributary of the Everglades
10 Protection Area and the Everglades Agricultural Area.

11 (c) An analysis of how achieving each surface water
12 quality improvement specified in subparagraphs (a)4. and 5.
13 would affect or be affected by the following: the multiple
14 beneficial uses and integrated water management purposes for
15 which the Central and Southern Florida Flood Control Project
16 was constructed; Everglades hydroperiod restoration and water
17 supply improvement measures; conveyance of water to Stormwater
18 Treatment Areas; and the water management goals of chapter
19 373.

20 (d) A recommended water quality treatment plan, based
21 upon scientific, technical, and economic studies of the most
22 promising alternatives, demonstrating a reasonable
23 relationship between the economic and social costs and the
24 benefits to be obtained.

25 (e) Proposed funding mechanisms that ensure that those
26 in all tributaries of the Everglades Protection Area and the
27 Everglades Agricultural Area identified under this subsection
28 pay the proportional costs that their activities add to the
29 estimated total cost of achieving each of the water quality
30 improvement scenarios listed above. Such funding mechanisms
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1 must be based upon the use of special assessments for those
2 not providing their own treatment.

3 (4) PUBLIC HEARINGS.--The district shall conduct at
4 least two public workshops on the recommended water quality
5 treatment plan and proposed funding mechanisms prior to
6 submitting them to the joint committee. The joint committee
7 shall review the information provided by the district under
8 subsection (3) and conduct at least two public hearings prior
9 to finalizing its own funding recommendations. The joint
10 committee shall by January 1, 1999, submit its initial report
11 regarding implementation of Amendment 5 to the Governor, the
12 President of the Senate, and the Speaker of the House of
13 Representatives. Regarding other reports and recommendations
14 of the joint committee, the joint committee shall, by January
15 1 of the year following preparation of such reports, submit
16 its findings and recommendations to the Governor, the
17 President of the Senate, and the Speaker of the House of
18 Representatives.

19 Section 2. The sum of \$ _____ is appropriated from
20 the General Revenue Fund to the Joint Legislative Committee on
21 Everglades Oversight to administer this act.

22 Section 3. This act shall take effect upon becoming a
23 law.

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26 SENATE SUMMARY

27 Requires the Joint Legislative Committee on Everglades
28 Oversight to conduct analyses and recommend a funding
29 mechanism for additional water quality improvement
developed under ss. 373.4592 and 373.45928, F.S. Provides
an appropriation.

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