

By Senator Latvala

19-1456-98

1 A bill to be entitled
2 An act relating to Everglades restoration;
3 creating s. 373.45928, F.S.; providing a short
4 title; providing legislative findings and
5 intent; defining terms; directing the Joint
6 Committee on Everglades Oversight to recommend
7 to the Legislature a funding program for
8 pollution abatement costs as defined in s.
9 373.4592(2)(b), F.S.; directing the South
10 Florida Water Management District and the
11 Department of Environmental Protection to
12 assist the joint committee; providing
13 information to be considered; directing the
14 South Florida Water Management District to
15 provide the joint committee with specified
16 information; providing requirements for
17 proposed funding mechanisms; directing the
18 South Florida Water Management District to hold
19 public workshops; requiring the joint committee
20 to report to the Governor and Legislature;
21 limiting the transfer or exchange of specified
22 lands; limiting a priority right to lease
23 particular lands; prescribing the content of a
24 report; directing the South Florida Water
25 Management District to develop recommendations
26 for the conversion of the Everglades
27 agricultural privilege tax to a pollution
28 loading assessment; providing standing for
29 specified actions; providing for positions and
30 an appropriation; providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 373.45928, Florida Statutes, is
4 created to read:

5 373.45928 Everglades Pollution Abatement Funding.--

6 (1) SHORT TITLE.--This section may be cited as the
7 "Amendment 5 Implementation Act."

8 (2) LEGISLATIVE FINDINGS AND INTENT.--The Legislature
9 finds and declares the following:

10 (a) In 1996 Amendment 5 to the State Constitution
11 amended s. 7 of Article II of the State Constitution by adding
12 a new subsection (b) to address responsibility of those in the
13 Everglades Agricultural Area for the costs of abating
14 pollution both in the Everglades Protection Area and the
15 Everglades Agricultural Area. In its 1997 advisory opinion to
16 the Governor, the Florida Supreme Court opined that Amendment
17 5 requires implementing legislation to make it effective. The
18 court further held that the words "primarily responsible" in
19 Amendment 5 require those in the Everglades Agricultural Area
20 who cause water pollution in the Everglades Protection Area or
21 Everglades Agricultural Area to bear the costs of abating that
22 pollution. In its advisory opinion to the Governor, the court
23 recognized that not all of the water pollution within these
24 areas may be caused by polluters within the Everglades
25 Agricultural Area, and thus, while polluters within that area
26 as a group must pay for 100 percent of the cost to abate the
27 pollution they cause, Amendment 5 does not require them to pay
28 for the abatement of such portion of the pollution they do not
29 cause. The Legislature finds and declares that this approach
30 is fair and equitable, and should not be limited to those
31 polluters in the Everglades Agricultural Area but should

1 likewise be applied to all of those who cause pollution in
2 either the Everglades Agricultural Area or the Everglades
3 Protection Area, wherever they might be located, who
4 contribute to the costs, as that term is defined in subsection
5 (3), of Everglades pollution abatement needed to achieve
6 compliance with water quality standards in the Everglades
7 Protection Area.

8 (b) The Legislature further finds that it is in the
9 public interest to implement Amendment 5 so that funding
10 mechanisms for Everglades water pollution abatement measures
11 developed under the Everglades Forever Act are consistent with
12 that mandate. Such funding mechanisms shall ensure that those
13 in the Everglades Agricultural Area as well as those outside
14 that area pay their respective shares of the costs, as that
15 term is defined in subsection (3), of Everglades pollution
16 abatement needed to achieve compliance with water quality
17 standards in the Everglades Protection Area.

18 (c) The Joint Legislative Committee on Everglades
19 Oversight is an appropriate body to collect information and
20 analyses needed to establish a pollution-abatement funding
21 program consistent with the rationale of Amendment 5 and to
22 define the terms used in Amendment 5.

23 (3) DEFINITIONS.--As used in this section, the terms
24 "Best management practices," "department," "district,"
25 "Everglades Agricultural Area," "Everglades Construction
26 Project," "Everglades Program," and "Everglades Protection
27 Area" have the same meanings ascribed in s. 373.4592(2); and
28 the terms "water pollution" and "costs" as used under s. 7 of
29 Article II of the State Constitution, have the following
30 meanings:

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1 (a) "Water pollution" means presence in the waters of
2 the state of any substances, contaminants, or manmade or
3 man-induced impairment of waters or alteration of the
4 chemical, physical, biological, or radiological integrity of
5 water in quantities or levels which are or may be potentially
6 harmful or injurious to human health or welfare, animal or
7 plant life, or property or which unreasonably interfere with
8 the enjoyment of life or property, including any nutrient
9 concentration in a body of water that causes an imbalance in
10 natural populations of aquatic flora or fauna.

11 (b) "Costs" means all moneys needed to fund the
12 design, construction, acquisition, research, monitoring,
13 operation, and maintenance of the Everglades Construction
14 Project and the superior technology which must be used, in
15 conjunction with the Everglades Construction Project, to
16 achieve compliance with state water quality standards in the
17 Everglades Protection Area.

18 (4) DEVELOPMENT OF A FUNDING PROGRAM.--The joint
19 committee established under s. 11.80, shall recommend to the
20 Legislature a funding program for those pollution abatement
21 costs, as defined in paragraph 3(b) needed to bring the
22 Everglades Protection Area into compliance with state water
23 quality standards and needed to bring the Everglades Forever
24 Act into compliance with paragraph (b) of s. 7 of Article II
25 of the State Constitution. The district, in coordination with
26 the department, shall assist the joint committee by developing
27 information needed to achieve compliance with paragraph (b) of
28 s. 7 of Article II of the State Constitution, together with a
29 methodology to be applied to assess pollution-abatement costs
30 against those inside and outside the Everglades Agricultural
31 Area who also cause pollution in the Everglades Protection

1 Area and the Everglades Agricultural Area. Specifically, the
2 joint committee shall consider:

3 (a) An analysis of the following:

4 1. The water quality benefits of best management
5 practices and the Everglades Construction Project as
6 implemented and tested.

7 2. Everglades research and monitoring reports,
8 conclusions, and recommendations developed under s.
9 373.4592(4)(d).

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

12 4. The alternative costs of reducing phosphorus
13 concentrations in all surface waters entering the Everglades
14 Protection Area to long term annual average phosphorus
15 concentrations of 20 parts per billion and 10 parts per
16 billion, respectively.

17 5. The costs of reducing other water quality
18 constituents of ecological concern to acceptable levels in the
19 Everglades Protection Area.

20 (b) The district shall develop and provide the joint
21 committee estimates, assuming a continuation of best
22 management practices in the Everglades Agricultural Area and
23 implementation of the Everglades Construction Project, of the
24 annual average loads of phosphorus and other water quality
25 constituents of ecological concern, on a percentage of the
26 whole basis, that will enter the Stormwater Treatment Areas
27 from each of the following sources: Everglades Agricultural
28 Area runoff, water supply releases from Lake Okeechobee, and
29 each other tributary of the Everglades Protection Area whose
30 surface waters will eventually enter the Stormwater Treatment
31 Areas.

1 (c) A recommended water quality treatment plan, based
2 upon scientific, technical, and economic studies of the most
3 promising superior technologies to be used in conjunction with
4 the Stormwater Treatment Areas to achieve compliance with
5 state water quality standards in the Everglades Protection
6 Area.

7 (d) Proposed funding mechanisms must be consistent
8 with paragraph (b) of s. 7 of Article II of the State
9 Constitution and must ensure that those in all tributaries of
10 the Everglades Protection Area and the Everglades Agricultural
11 Area identified under this subsection pay the proportional
12 costs that their activities add to the estimated total costs
13 of achieving each of the water quality improvement scenarios
14 listed above. Such funding mechanisms must be based upon the
15 use of special assessments.

16 (e) The district shall develop and provide the joint
17 committee with a methodology for the use of special
18 assessments as a proposed funding mechanism for the cost of
19 pollution abatement based upon a flow-weighted mean
20 concentration of phosphorus in basins where measurements are
21 taken. Further, the district shall provide the joint committee
22 with any other alternative special assessment methodologies
23 that would raise funds in a manner consistent with paragraph
24 (b) of s. 7 of Article II of the State Constitution which
25 would achieve each of the water quality improvement scenarios
26 listed above.

27 (f) The district shall develop and provide the joint
28 committee with estimates of the amount of revenue the district
29 would be able to raise by special assessment levied under s.
30 373.4592(8) on those property owners who contribute to the
31 need for Stormwater Treatment Areas and superior technologies

1 and the estimates shall be based on the proportional cost that
2 those property owners add to the estimated total cost of
3 achieving the water quality improvement scenarios listed
4 above.

5 (5) PUBLIC HEARINGS.--The district shall conduct at
6 least two public workshops on the recommended water quality
7 treatment plan and proposed funding mechanisms before
8 submitting them to the joint committee. The joint committee
9 shall review the information provided by the district under
10 subsection (3) and conduct at least two public hearings before
11 finalizing its own funding recommendations. The joint
12 committee shall, by March 1, 1999, submit its initial report
13 regarding a funding mechanism to achieve compliance with
14 paragraph (b) of s. 7 of Article II of the State Constitution
15 to the Governor, the President of the Senate, and the Speaker
16 of the House of Representatives. Regarding other reports and
17 recommendations of the joint committee, the joint committee
18 shall, by January 1 of the year following preparation of such
19 reports, submits its findings and recommendations to the
20 Governor, the President of the Senate, and the Speaker of the
21 House of Representatives.

22 (6) ACQUISITION OF TALISMAN PROPERTY.--The acquisition
23 of the parcels of property commonly referred to as the
24 Talisman property located within the Everglades Agricultural
25 Area, for water storage or Everglades restoration purposes, is
26 declared to be in the public interest. Notwithstanding any
27 other provisions of law to the contrary, neither the Board of
28 Trustees of the Internal Improvement Trust Fund nor the
29 district shall trade, exchange, or transfer any Talisman lands
30 south of Township 45, Range 35 E., Sections 25 and 26; and
31 Township 45, Range 36 E., Sections 29 and 30, for other lands;

1 nor shall the board of trustees or the district condition the
2 acquisition of any Talisman property upon the trade, exchange,
3 or transfer of any such lands south of Township 45, Range 35
4 E., Sections 25 and 26; and Township 45, Range 36 E., Sections
5 29 and 30, for other lands. The Board of Trustees of the
6 Internal Improvement Trust Fund or the district may trade,
7 exchange, or transfer Talisman lands north of Township 45,
8 Range 35 E., Sections 25 and 26; and Township 45, Range 36 E.,
9 Sections 29 and 30, for lands located in the Everglades
10 Agricultural Area for water storage or Everglades restoration
11 purposes. Any such Talisman lands shall be traded, exchanged,
12 or transferred for Everglades Agricultural Area lands of equal
13 or greater value to be determined based on historic production
14 levels.

15 (7) TRADING TRANSACTIONS.--If impacted farmers as
16 described in s. 373.4592(5)(a)4. and 5. agree to trade their
17 land holdings in district-designated Stormwater Treatment
18 Areas for other available land owned by the district or the
19 Board of Trustees of the Internal Improvement Trust Fund on a
20 value-for-value basis, then the impacted farmers do not have a
21 priority right to lease particular parcels of available land
22 as otherwise provided by paragraphs (c), (d), and (e) of that
23 section. Any cost savings realized by the district from such
24 trading transactions over funds allocated for acquisition of
25 lands for Stormwater Treatment Areas must be used by the
26 district in other activities necessary for the Everglades
27 Construction Project.

28 (8) ESTIMATE OF COSTS.--In completing the annual
29 report required under s. 373.4592(13), the district shall
30 include an annual good-faith estimate of all costs associated
31 with each planned phase of construction of the Everglades

1 Program. Cost estimates must include all moneys needed to fund
2 the acquisition, design, construction, research, monitoring,
3 operation, and maintenance of the Everglades Program.

4 (9) CONVERSION OF TAX TO ASSESSMENT.--By January 1,
5 1999, the district shall recommend to the 1999 Legislature a
6 methodology for converting the annual Everglades Agricultural
7 Privilege Tax assessed under s. 373.4592(6) to an assessment
8 based on the flow-weighted mean concentration of phosphorus
9 entering the Everglades Protection Area from basins where
10 measures are taken.

11 (10) RELIEF.--The Department of Legal Affairs, any
12 political subdivision or municipality of the state, or a
13 resident of the state may maintain an action for injunctive,
14 declaratory or mandamus relief against any governmental agency
15 or authority charged with the duty of enforcing or complying
16 with this section to compel the governmental authority to
17 enforce or comply with the provisions of paragraph (b) of s. 7
18 of Article II of the State Constitution.

19 Section 2. The sum of \$250,000 is appropriated to the
20 Joint Committee on Everglades Oversight from the General
21 Revenue Fund and 4 positions are authorized to carry out its
22 responsibilities under sections 11.80 and 373.45928, Florida
23 Statutes.

24 Section 3. This act shall take effect upon becoming a
25 law.

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28 SENATE SUMMARY

29 Directs the Joint Committee on Everglades Oversight to
30 recommend to the Legislature a funding program for
31 pollution abatement costs. Directs the South Florida
Water Management District and the Department of
Environmental Protection to assist the joint committee in
its analyses. Provides an appropriation.