

STORAGE NAME: h4263a.ca

DATE: April 21, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 4263

RELATING TO: Charlotte County/Shell & Prairie Creeks

SPONSOR(S): Representative Harrington

COMPANION BILL(S): SB 2572 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 8 NAYS 0
 - (2) ENVIRONMENTAL PROTECTION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill declares that the waters of and tributaries of Shell Creek and Prairie Creeks, from their headwaters to the dam of the waterworks system of the City of Punta Gorda is a public water supply and reservoir. The bill expands the declaration of protection and preservation of the creeks to include activities posing a significant threat of pollution. The bill expands the current list of prohibited acts to include a prohibition against dumping petroleum products or toxic wastes. The bill prohibits the construction, reconstruction, extension, or alteration of any petroleum products pipeline or storage tank within 200 feet of the creeks or their tributaries.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1965, the Legislature passed chapter 65-1367, Laws of Florida, creating an act relating to the protection of Shell and Prairie creeks. The act declared the protection and preservation of the creeks from various types of pollution. Specifically, the act prohibits the following:

- Dumping, depositing, and discharging of sewage and industrial wastes into the creeks or tributaries; or
- Construction, reconstruction, extension or alteration of any privy, cess pool, septic tank, drain field, or other sewerage disposal device within 200 feet of the creeks or their tributaries; or
- Construction, reconstruction, extension or increasing of the capacity or volume of any sewerage disposal or treatment plant with effluent discharge directly or indirectly into the creeks or their tributaries.

Violation of this chapter can result in a fine not exceeding \$500, or imprisonment for a term not exceeding 6 months, or both. Each day any violation continues constitute a separate offense.

In 1967, the Legislature passed chapter 67-1957, Laws of Florida, amending the previous act to permit individual household septic tanks subject to certain restrictions and conditions.

Section 775.08, Florida Statutes:

Section 775.08, Florida Statutes, defines the various classes of offenses. A crime is an offense that is either a misdemeanor or a felony as defined by section 775.08 (1) and (2), Florida Statutes. Subsection 775.08(2), Florida Statutes, defines a misdemeanor as a punishable criminal offense, subject to a term of imprisonment not to exceed 1 year in a county correctional facility.

Shell Creek and Prairie Creek:

According to the City of Punta Gorda, Florida, Shell and Prairie creeks are part of the surface watershed that provides all of the potable water for Punta Gorda residents and numerous city utility customers outside the city limits.

Pipeline Construction:

Southwest Florida Pipeline Company, a subsidiary of GATX, has proposed a jet petroleum pipeline that would run through Charlotte and DeSoto counties. The proposed pipeline would connect the Port of Tampa with the Southwest Florida International Airport in Fort Myers. The proposed pipeline will cross Myrtle Slough and Prairie creek and pass by the north side of Shell creek.

B. EFFECT OF PROPOSED CHANGES:

This bill **expands** the declaration of protection and preservation of the creeks to include acts “posing a significant threat of pollution” to the waters and parts of the creeks and their tributaries.

This bill **expands** the current list of acts identified as detrimental and dangerous to the public health and safety and which constitute a nuisance to the creeks and their tributaries to include dumping, depositing, and discharging of “petroleum products” or “toxic wastes” into the waters of the creeks and their tributaries. In addition, this bill also identifies the construction, reconstruction, extension or alteration of “any petroleum pipeline or storage tank, or any pipeline or storage tank for toxic wastes” within 200 feet of the creeks their tributaries, as acts which are detrimental and dangerous to the public health and safety and which constitute a nuisance.

This bill **expands** unlawful acts to include the dumping, depositing, or discharging of “petroleum products, or toxic wastes” into the creates or their tributaries. In addition, this bill **also prohibits** the construction, reconstruction, extension, or alteration of “any petroleum products pipeline or storage tank, or any pipeline or storage tank for toxic wastes” within 200 feet of the creeks or their tributaries.

This bill changes the penalties section from a noncriminal offense resulting in a fine to a **criminal offense**, classified as a **misdemeanor**, subject to fine, imprisonment not to exceed 1 year, or both.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 65-1367, Laws of Florida;
Chapter 67-1957, Laws of Florida.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Currently, subject to all appropriate environmental permits, construction of oil pipelines in the watershed area would be allowed. This bill would make construction, reconstruction, extension or alteration of any petroleum pipeline or storage tank or any pipeline or storage tank for toxic wastes, within 200 feet of Shell Creek or Prairie Creek (as defined in the bill) a criminal offense and misdemeanor.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends sections 1 through 6 of chapter 65-1357, as amended by chapter 67-1957, Laws of Florida. The substantive changes are as follows:

Section 1: Adds to the declaration of protection and preservation of Shell and Prairie creeks protection from acts “posing a significant threat of pollution” to the creeks and their tributaries.

Section 2: Adds to the list of acts which are considered “detrimental and dangerous to public health and safety and constitutes a nuisance,” as follows:

- Dumping, depositing, and discharging of “petroleum products, or toxic wastes”; or
- Construction, reconstruction, extension, or alteration of “any petroleum pipeline or storage tank, or any pipeline or any storage tank for toxic wastes” within 200 feet, measured from the nearest mean highwater mark of the creeks, from their headwaters to the dam of the waterworks system of the City of Punta Gorda, or their tributaries.

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Section 3: Adds to the list of unlawful activities for any person, firm, corporation, or public body to do or commit the following within Charlotte County:

- Dumping, depositing, or discharging "petroleum products, or toxic wastes" into the waters of Shell or Prairie creeks or their tributaries, from their headwaters to the dam of the waterworks system of the City of Punta Gorda; or
- Construction, reconstruction, extension, or alteration of "any petroleum products pipeline or storage tank, or any pipeline or storage tank for toxic wastes," within 200 feet of the Shell and Prairie creeks and their tributaries, measured from the nearest mean high water mark, from their headwaters to the dam of the waterworks system of the City of Punta Gorda.

Section 5: Makes the violation of any provision of section 3 a "criminal offense and misdemeanor within the meaning of s. 775.08, Florida Statutes," and must be punished as provided by general law.

Section 2: Provides a repeal of all laws or parts of laws in conflict with this bill.

Section 3: Provide that the bill will take effect upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 14, 1998

WHERE? Charlotte County, Florida; *Sarasota Herald-Tribune (Charlotte/Englewood AM Editions)*

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The Department of Environmental Protection: The Florida Department of Environmental Protection supports this bill.

The City of Punta Gorda: The City of Punta Gorda supports this bill.

GATX Corporation: The GATX Corporation does not support this bill and provides, the following statement, in part:

Southwest Florida is a rapidly growing area of the state. Its residents use petroleum products, as do all Florida citizen and visitors. These products, including fuel for automobiles and aircraft, have to be transported to the southwest Florida market. It is necessary that some go to and through Charlotte County. The roads which already cross these creeks and tributaries are used by tanker trucks which carry thousands of gallons of petroleum products daily. The net effect of this bill is to assure that only tanker trucks will provide this transportation, even though these trucks are a source of air pollution, deposit pollutants on the roads which are washed by rain into those same creeks, cause maintenance impacts on state funded infrastructure and are a source of spills of petroleum products at the present time.

There are specific regulatory schemes already in place which govern the construction, operation and maintenance of petroleum pipelines and storage tanks. The United States Safety Act, 49 USC §60101 *et. seq.* to protect the public safety and the environment. The Florida Department of Environmental Protection, through its environmental resource permitting program, must permit the construction of any such pipeline and assure that state water quality standards will not be affected by its construction.

Definitions of terms used in this research statement:

- **Watershed:** "The land area which contributes to the flow of water into a receiving body of water." s. 373.403(9), *Florida Statutes*.
- **Headwaters:** "The waters that form the source of a river." *Webster's II New Riverside Dictionary* 323 (1984).
- **Potable water:** "[W]ater suitable for human consumption and approvable by the county health unit." 40C-3.021(23), *Florida Administrative Code*.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 21, 1998, the Committee on Community Affairs adopted a technical amendment which clarifies that the repealer language applies only to "special laws."

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:
Prepared by:

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