

STORAGE NAME: h4685.wrm

DATE: April 7, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4685 (formerly PCB WRM 98-03)

RELATING TO: Aquatic plant management

SPONSOR(S): Committee on Water and Resource Management and Rep. Carlton

COMPANION BILL(S):

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 10 NAYS 0
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I. SUMMARY:

HB 4685 (formerly PCB WRM 98-03) transfers the Department of Environmental Protection's aquatic plant management program to the Florida Game and Fresh Water Fish Commission (GFC), effective July 1, 1998.

Thirty-one positions and an estimated \$18 million, including \$6.3 million in fuel taxes statutorily earmarked for aquatic plant management, would be transferred to the GFC.

The program's existing rules remain in effect, until such time as the GFC adopts new rules amending or superseding the Department of Environmental Protection (DEP) rules. Any rules adopted subsequent to the transfer shall be subject to full due process guaranteed by Chapter 120, F.S., the Administrative Procedures Act. Additionally, all existing permits issued by DEP remain in effect; new and renewal permits will be handled by the GFC.

Constitutional concerns about the transfer should be minimal. Section 9, Art. IV, of the state constitution gives the GFC authority to manage wildlife and freshwater fish, and allows the Legislature to pass laws that "aid" in the GFC's mission. Since hydrilla and other aquatic plants primarily pose a threat to the habitat of freshwater fish, a program designed to manage and control the spread of these plants complements GFC's primary mission.

However, the transfer does not result in any streamlining of permits to remove aquatic vegetation. Depending on whether a permit applicant wants to remove aquatic plants on sovereign submerged lands, and the method of removal, the applicant may need to obtain permission from the Board of Trustees of the Internal Improvement Trust Fund (the Governor and Cabinet) and an environmental resource permit from DEP or a water management district. Unaffected by the transfer is the applicant's responsibility to confer with the U.S. Army Corps of Engineers to determine if a federal dredge-and-fill permit is needed.

HB 4685 would take effect on July 1 of the year it is enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Aquatic plants are a vital component of a healthy ecosystem. Hundreds of species of aquatic plants thrive in Florida's 1.5 million acres of waterbodies, and most are beneficial. They provide nursery areas and shelter for small fish and amphibians; are a food source for fish and birds; buffer shorelines from erosion; naturally purify water by emitting oxygen and filtering out pollutants; and provide nesting areas for birds.

But a few non-native, or exotic, aquatic plant species are creating major problems for Florida lakes. Hydrilla and other noxious, exotic aquatic plants infest more than 100,000 acres of lakes and other waterbodies. These plants are crowding out the native vegetation, degrading water quality, restricting recreational activities, reducing waterfront property values, and stripping millions of dollars from local economies.

Hydrilla is the worst exotic aquatic plant in Florida. A native of Sri Lanka, hydrilla is a submerged, vine-like plant infesting more than 75,000 acres in 42 percent of Florida's waterbodies. Hydrilla was imported to Florida in the mid-1950s by a Tampa aquarium dealer, who planted them in a canal behind his business and harvested them like a crop for sale to his customers. The aquarium owner apparently was unaware that the plant could reproduce asexually, let alone know they would quickly spread all over the state in less than a decade. The most common way hydrilla is spread these days is by fragments caught in boat propellers.

Growing in dense canopies on the surface of a waterbody, hydrilla blocks sunlight from reaching native plants and alters the mix and transfer of oxygen in the water. As the native plants die from lack of sunlight, their detritus adds to the muck on the bottom. Beneath the canopy, dissolved oxygen levels in the water are low, which can imperil the health of fish and other aquatic wildlife. Studies are inconclusive about the negative impacts hydrilla has on fish and birds. Up to a point, hydrilla provides the same benefits as native aquatic plants, but depending on its level of coverage and the location of the lake, adverse impacts appear. Some studies indicate that large-mouth bass and other sport fish in hydrilla-infested waters never achieve their prized plumpness because they do not like to enter the dense mats of vegetation to hunt for smaller fish. Also, the spread of hydrilla may be one of the reasons migratory waterfowl populations wintering in Florida have declined in recent years. Dense hydrilla canopies appeal to some waterfowl, but others prefer a more open area in which to hunt or nest.

Not all the costs associated with aquatic plant infestation are environmental. Highlands, Lake, Osceola and other central Florida counties are beginning to see a drop in ad valorem tax revenues from lakefront properties, which abut waterbodies infested with hydrilla. Lake Lochloosa, Orange Lake, and other Central Florida lakes renowned for their bass fishing are attracting fewer high-profile fishing tournaments because of hydrilla infestation -- translating to less money flowing into the communities around the lakes.

Other noxious, exotic aquatic plants are water hyacinth, water lettuce and torpedo grass, all of which are displacing native aquatic vegetation and negatively impacting aquatic habitats for fish and birds.

Herbicides, which can be expensive depending on the brand used and the extent of the infestation, are the most effective method in controlling hydrilla and other noxious, aquatic plants. Many of these plants also can be removed with mechanical harvesters, which are expensive, in high demand, and can clear only about 2 acres a day of infested waters. The Department of Transportation commonly uses mechanical harvesters to remove hydrilla that has washed into rivers and canals and is hampering navigation or putting pressure on bridge supports. A third tool in the fight against aquatic plants is biological controls such as grass carp and predator insects from the plants' native countries. Agencies have experienced mixed success with biological tools, which appear to be most effective in closed, less-densely infested water bodies.

Current framework of responsibility and level of funding

The Department of Environmental Protection (DEP) is the lead state agency for noxious aquatic plant control, under section 369.20, Florida Statutes (F.S.), and it has delegated that responsibility to its Bureau of Aquatic Plant Management. The bureau is responsible for coordinating a complex network of federal, state and local government aquatic plant control grant programs, funded through a combination of revenue sources.

The bureau's total fiscal year (FY) 1997-1998 budget is \$20.63 million. Its standard state funding is \$6.3 million in gas tax revenues; \$2 from each non-commercial vessel registration fee; and 40 percent of the registration fee for commercial vessels. For the current fiscal year it received a one-time, \$6 million appropriation from the Solid Waste Management Trust Fund.

Typically more than half of the budget is earmarked for grants-in-aid to local governments for aquatic plant control programs; \$1 million of that must be spent on melaleuca control and \$2.5 million for floating plant (water hyacinth) control programs. Separate from the grants program is an \$880,000 transfer from the bureau's Aquatic Plant Control Trust Fund to the game commission for its aquatic plant control program.

Other governmental entities are involved in aquatic plant control in Florida.

- o The U.S. Army Corps of Engineers is responsible for aquatic plant control in federal waterways and in Lake Okeechobee. Until 1997, it provided funding to the state in the form of two grants-in-aid programs, but Congress has deleted that funding.
- o The five water management districts also have provided matching funds for aquatic plant control projects in their regions. Particularly in the South Florida and Southwest Florida water management districts, aquatic plant control projects focus on removal of hydrilla in drainage and flood-control canals.
- o Local governments are responsible for maintaining aquatic plant control programs in intercounty lakes.
- o The Florida Game and Fresh Water Fish Commission is responsible for the use of grass carp in aquatic plant management. However, it operates this program with an annual \$880,000 transfer from DEP's appropriation of gas tax and boat registration fees.

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o Although it does not contribute any funding, the state Department of Agriculture and Consumer Services is involved in aquatic plant management to the extent that it regulates nurseries which may grow, import, transport or sell exotic aquatic plants. It also maintains a separate list of prohibited plants; approves the herbicides to be used; and assists in the investigation of certain permit violations related to herbicide misuse. DEP and the Department of Agriculture and Consumer Services coordinate their efforts through a memorandum of understanding.

Background on the GFC

Section 9, Art. IV, of the Florida Constitution delineates the powers of the Game and Fresh Water Fish Commission:

Game and Fresh Water Fish Commission.--There shall be a game and fresh water fish commission, composed of five members appointed by the governor subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, except that all license fees for taking wild animal life and fresh water aquatic life and penalties for violating regulations of the commission shall be prescribed by specific statute. The legislature may enact laws in aid of the commission, not inconsistent with this section. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from such license fees shall be appropriated to the commission by the legislature for the purpose of management, protection and conservation of wild animal life and fresh water aquatic life.

Chapter 372, F.S., establishes the fees for hunting and freshwater fishing licenses, and sets penalties for violations of GFC hunting and fishing violations. It also generally supplements the GFC's constitutional authority.

As a constitutionally created agency which did not require much in the way of implementing statutory language, the GFC occupies a unique position in Florida government. The GFC's position is that its rulemaking authority is not subject to the chapter 120, F.S., Administrative Procedures Act, and a number of court cases have, over the years, supported that view. However, GFC rules can be challenged in court. As a matter of policy, the GFC generally follows the basic tenets of an administrative process for its rulemaking, such as holding workshops on its draft rules and accepting public comment.

As mentioned above, the GFC receives about \$800,000 a year from DEP to finance its aquatic plant management program utilizing grass carp and lake drawdowns.

B. EFFECT OF PROPOSED CHANGES:

HB 4685 would authorize a type two transfer, pursuant to s. 20.06(2), F.S., to transfer all powers, duties, functions, rules, records, personnel and funds of DEP's aquatic plant management program to the GFC.

C. 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?

No.

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

With the transfer, the GFC would assume responsibility for aquatic plant management in Florida. Conversely, DEP would relinquish that responsibility.

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

No.

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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?

No.

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

D. STATUTE(S) AFFECTED:

Sections 206.606, 369.22, 369.25, 369.251, 369.252, 372.074, 581.035 and 581.145, F.S., are amended. Section 369.10, F.S., is created.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Transfers DEP's aquatic plant management program to the GFC via a type two transfer. Specifies that any rules adopted for the program subsequent to the transfer shall be approved by the GFC, but shall be subject to full due process under Chapter 120, F.S., administrative procedures.

Section 2: Amends s. 206.606, F.S., providing for the distribution of moneys deposited in the Fuel Tax Collection Trust Fund. Transfers \$1.25 million to DEP for boating-related activities; transfers \$6.30 million to the GFC for aquatic plant management, boating improvement, and freshwater fisheries management; and requires the GFC to allocate at least \$1 million to the eradication of melaleuca.

Section 3: Amends s. 206.606, F.S., as amended by s. (8) 96-321, L.O.F., effective July 1, 1999, which provides for the distribution of moneys deposited in the Fuel Tax Collection Trust Fund to be used by the DEP for boating-related activities. It also provides transfers to the GFC for aquatic and exotic plant management, boating improvement, and freshwater fisheries management and research.

Section 4: Creates s. 369.10, F.S., to organize all the definitions used in Part I of Chapter 369, F.S., related to aquatic plant management.

Section 5: Amends s. 369.20, F.S., to authorize the Game and Fresh Water Fish Commission to carry out duties relating to the Florida Aquatic Weed Control Act. Specifies that current rules remain in effect until the GFC adopts rules to supersede them. Specifies that rules adopted subsequent to the transfer shall be subject to Chapter 120, F.S. Deletes references to Outstanding Florida Waters in exemption provisions for aquatic plant management permits.

Section 6: Amends s. 369.22, F.S., to authorize the Game and Fresh Water Fish Commission to carry out duties relating to the Florida Nonindigenous Plant Control Act. Deletes definitions.

Section 7: Amends s. 369.25, F.S., defining the powers of the Game and Fresh Water Fish Commission relating to regulation of aquatic plants. Deletes definitions.

Section 8: Amends s. 369.251, F.S., authorizing the Game and Fresh Water Fish Commission to promulgate rules regarding invasive non-native plants.

Section 9: Amends s. 369.252, F.S., authorizing the Game and Fresh Water Fish Commission to establish a program to control invasive exotic plant control on public lands.

Section 10: Amends s. 372.074, F.S., giving GFC the responsibility for aquatic and exotic plant management as part of its Fish and Wildlife Habitat program.

Section 11: Amends s. 581.035, F.S., to correct a cross-reference.

Section 12: Amends s. 581.145, F.S., to correct a cross-reference.

Section 13: Provides that this act shall take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Beginning in fiscal year 1998-1999, DEP would lose upwards of \$20 million in state funding with the transfer of its aquatic plant management program to the GFC. The GFC would gain that amount of money, plus any federal funds that may become available, and 31.5 FTEs.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The substantive provisions of HB 4685 reflect similar language in the House General Government Appropriations Act (HB 4211) and provisions within the budget's implementing bill (HB 4213).

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of HB 4685 because the proposed committee bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 4685 does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 4685 does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

V. COMMENTS:

Transferring DEP's aquatic plant management program to the GFC should not trigger any constitutional concerns, because a clear connection exists between managing freshwater fish habitat and controlling aquatic plants. Similarly, shifting to GFC the responsibility for melaleuca and other upland exotic plant control efforts raises no legal concerns because one of the primary threats posed by these invasive plants is destruction of wildlife habitat.

Questions may be raised, however, as to whether the transfer accomplishes a goal of permit streamlining. Within DEP, the Bureau of Aquatic Plant Management works closely with the Division of State Lands, which is responsible for leasing or overseeing sovereign submerged lands, and the Division of Water Facilities and DEP District Offices, which are responsible for issuing environmental resource permits (ERPs) for dredge-and-fill activities in wetlands and surface waters. In the name of "permit streamlining," the bureau has been trying to reduce the number of permits or approvals needed by a person who wants to spray, remove or otherwise control the spread of aquatic plants. This streamlining approach, however, has

generated a great amount of criticism of the bureau for trying to include in their aquatic plant management permits water quality issues some people contend are best handled by the ERP regulators.

In any event, transferring the aquatic plant management program to the GFC likely will not result in any reduction of permits.

A difference in DEP's and the GFC's approaches to aquatic plant management also should be mentioned, for the long-term implications to the program. DEP has long supported the use of herbicides and, where necessary, mechanical removal of noxious aquatic plants. GFC has traditionally taken a more natural approach, of grass carp or other biological controls, and extensive use of drawdowns. Whether the GFC will retain its current philosophy on aquatic plant management, and whether property owners who typically want immediate results will accept this approach, remain to be seen.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

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