

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1672

SPONSOR: Fiscal Policy Committee, Natural Resources Committee and Senator Laurent

SUBJECT: Water Resources

DATE: April 15, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Hendon</u>	<u>Hadi</u>	<u>FP</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides the powers and duties of the South Florida Water Management District (SFWMD) as sponsor of the Central and Southern Florida Project and further powers and duties to study the project, construct pilot projects, and recommend modifications and additions. The bill provides definitions and clarifies the roles of the SFWMD and the Department of Environmental Protection (DEP). It requires the DEP to approve project components before they may be submitted to Congress for approval. The Executive Office of the Governor is directed to review proposed expenditures for project components by the SFWMD.

This bill creates s. 373.1501 and amends s. 373.026 of the Florida Statutes.

II. Present Situation:

The Central and Southern Florida Project for Flood Control and Other Purposes (project), first authorized by Congress in 1948, is a multi-purpose project providing flood control; water supply for agricultural, municipal, and industrial use; prevention of saltwater intrusion; water supply for the Everglades National Park; and protection of fish and wildlife resources. Its primary system components include approximately 1,000 miles each of canals and levees, 150 water control structures, and 16 major pump stations. The project was the culmination of earlier U. S. Army Corps of Engineers (Corps) efforts in south Florida, principally for flood protection.

Initial flood control efforts by the Corps were in response to the hurricanes of 1926 and 1928. In 1926, a hurricane which struck Miami and Lake Okeechobee was responsible for 200 deaths, and also caused widespread damage and financial losses. Two years later, the 1928 hurricane created massive flooding south of Lake Okeechobee, drowning more than 2,000 people in and around Moore Haven and causing substantial property losses. In 1929 the Florida Legislature created the Okeechobee Flood Control District to serve as local sponsor for flood control projects undertaken by the Corps. A Corps plan was developed for floodway channels, control gates, and major

levees, including the Herbert Hoover Dike around the shore of Lake Okeechobee; construction began in 1930.

An extended dry period from 1931 to 1945 resulted in lowered water levels, saltwater intrusion in municipal wells, and widespread muck fires. Ironically, many of the adverse effects of the droughts were exacerbated by earlier drainage and flood control efforts. At this time, greater recognition was given to the relationship between Lake Okeechobee and the water resources of the entire region, the unintended effects of drainage and flood control, and the need for water conservation measures. In 1947, 100 inches of rain fell in south Florida, ending the extended dry period. In a 25-day period that year, two major hurricanes hit southeastern Florida, resulting in 90 percent of the area being flooded and causing \$59 million in property losses.

After the sequential experiences of extreme flooding and extreme drought, coupled with increasing saltwater intrusion and growing concerns regarding water supply, the need for more comprehensive water management strategies became apparent. A flood control plan was completed by the Corps in December 1947. In February 1948, the Governor approved the plan on behalf of the state. The initial phase of the project was authorized by the Flood Control Act of June 30, 1948, for the purposes of flood control, water level control, water conservation, prevention of saltwater intrusion, and preservation of fish and wildlife. The 1949 Legislature created the Central and Southern Florida Flood Control District, predecessor to the SFWMD, to serve as the local sponsor for the project.

Subsequent modifications have been made to the project, including adding measures to increase storage and conservation of water, improve water distribution, and provide flood control for Martin County. Recreation has been added as an additional project purpose. In addition, specific modifications have been made to increase water deliveries to the Everglades National Park and to provide for ecosystem restoration of the Kissimmee River.

Although modifications have been made to the project over the last 50 years, the Central and Southern Florida Project Comprehensive Review Study (Restudy) is perhaps the first effort to fundamentally reevaluate the overall design of the project since its inception. The current estimated cost for implementing all Restudy project components is \$7.8 billion: as local sponsor for the Restudy, the SFWMD will be responsible for 50 percent of the cost, or \$3.9 billion. Annual monitoring costs during the construction period are estimated to be \$10 million and annual operation and maintenance costs, when all Restudy project components are constructed, are estimated to be \$171.4 million.

In the 1992 Water Resources Development Act, the U. S. Congress authorized the Restudy. The purpose of the Restudy is to develop modifications to the project to restore the Everglades and Florida Bay ecosystems while providing for other water-related needs of the region. Goals and associated planning objectives have been developed for the Restudy:

- Goal: Enhance Ecological Values
Planning Objectives:
 - Increase the total spatial extent of natural areas;
 - Improve habitat and functional quality; and
 - Improve native plant and animal species abundance and diversity.

- Goal: Enhance Economic Values and Social Well Being
Planning Objectives:
 - Increase availability of fresh water (agricultural, municipal, and industrial);
 - Reduce flood damages (agricultural, urban);
 - Provide recreational and navigational opportunities; and
 - Protect cultural and archeological resources and values.

Although the Restudy is being developed by an interdisciplinary professional staff representing numerous agencies, the Corps and the SFWMD are the primary participants. Other principal participants in the Restudy effort include:

- Federal
 - Environmental Protection Agency (EPA)
 - National Park Service
 - National Marine Fisheries Service
 - National Resources Conservation Service
 - U. S. Fish and Wildlife
- State
 - Florida Department of Agricultural and Consumer Services
 - Florida Department of Environmental Protection
 - Florida Game and Freshwater Fish Commission
- Tribal
 - Miccosukee Tribe
 - Seminole Tribe

Other agencies, local governments, organizations, universities, and the public have also participated.

The Restudy includes three primary phases:

- Reconnaissance phase. The purpose of the reconnaissance phase was to identify problems and opportunities, formulate a set of initial alternatives, and determine if further detailed studies were warranted. This phase was completed in November 1994 with the issuance of the Central and Southern Florida Project/Reconnaissance Report/Comprehensive Review Study, which included a recommendation to proceed with the Feasibility Phase.
- Feasibility phase. The primary purpose of the feasibility phase is to develop a comprehensive plan for modifying the project. This phase will conclude with submitting to Congress a Final Feasibility Report that includes the recommended comprehensive plan. A draft feasibility report issued October 13, 1998, is to be finalized by April 1999 and submitted to Congress no later than July 1, 1999.
- Implementation phase. Once the final feasibility report is submitted to Congress, several actions must occur before any project components are constructed. First, Congress must specifically authorize project components in the Water Resources Development Act (adopted

in even-numbered years) prior to any additional action. At its discretion, Congress may authorize one or more project components. Once a project component is authorized, a detailed design and environmental impact statement must be completed; in addition, the SFWMD and the Corps must enter into a Project Cooperation Agreement for the design, construction, and operation of any authorized project components. Once the Project Cooperation Agreement is executed and prior to initiation of construction, Congress must specifically appropriate funds for the authorized project components.

(The information presented above was excerpted from a 1998 interim project report by staff of the Joint Legislative Committee on Everglades Oversight entitled “A Review of the Restudy of the Central and Southern Florida Project For Flood Control and Other Purposes”).

During the 1998 Legislative Session, CS/CS/HB 4141 was passed by both houses of the Legislature, in part, to specifically authorize the SFWMD as local sponsor and ensure that all projects and operational changes resulting from the Restudy are implemented in a manner consistent with the Everglades Forever Act (s. 373.4592, F.S.) and water resource policy pursuant to s. 373.016, F.S. In addition, the bill required the SFWMD to submit certain information and obtain legislative authorization, which could be by a general appropriation, prior to executing a Project Cooperation Agreement for any project or operational change resulting from the Restudy. In the event that the Legislature did not approve, reject, or modify the proposed project or operation change, the SFWMD would be allowed to proceed with executing a Project Cooperation Agreement, provided the SFWMD could meet its financial responsibility without the need for future legislative appropriations. This bill was vetoed by the Governor, citing its “inappropriate” requirements for legislative review and approval and noting that “appropriate legislative oversight” is already provided by existing law.

III. Effect of Proposed Changes:

Section 1. Section 373.1501, F.S., is created. The bill provides the following definitions, as used in ss. 373.1501 and 373.026(8), F.S.:

- “C-111 Project” means the project identified in the Central and Southern Florida Flood Control Project, Real Estate Design Memorandum, Canal 111, South Dade County, Florida.
- “Department” means the Department of Environmental Protection.
- “District” means the South Florida Water Management District.
- “Kissimmee River Restoration Project” means that project identified in the Projection Cooperation Agreement between the United States Department of the Army and the South Florida Water Management District, dated March 22, 1994.
- “Project” means the Central and Southern Florida Project.
- “Project Component” means any structural or operational change, resulting from the restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

- “Restudy” means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by this section. The term includes all actions undertaken pursuant to the aforementioned authorizations that will result in recommendations for modifications or additions to the Central and Southern Florida Project.
- “Water Preserve Areas” means those areas located only within Palm Beach and Broward counties that are designated as Water Preserve Areas, as approved by the South Florida Water Management District Governing Board on September 11, 1997.
- “Ten mile Creek Project” means the Ten Mile Creek Water Preserve Area identified in the Central and Southern Florida Ecosystem Critical Project Letter Report, dated April 13, 1998.

This section provides a legislative finding that the Restudy is important for sustaining the environment, economy, and social well-being of south Florida. The Legislature intends to facilitate and support the Restudy through a process concurrent with federal government review and Congressional authorization. The section states that bill is not intended to limit federal agencies or Congress in the exercise of their duties. The Legislature further intends that all project components be implemented through the appropriate processes of ch. 373, F.S., and be consistent with the balanced policies and purposes of ch. 373, F.S., and specifically, s. 373.016, F.S.

This section provides a legislative declaration that the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project are in the public interest, for a public purpose, and are necessary for the public health and welfare. The governing board of the SFWMD is empowered and authorized to acquire fee title or easement by eminent domain for the limited purposes of implementing the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project. Any acquisition of real property, including by eminent domain, for those objectives constitutes a public purpose for which it is in the public interest to expend public funds. Notwithstanding any provision of law to the contrary, such properties shall not be removed from the district’s plan of acquisition and the use of state funds for these properties is authorized.

In the absence of willing sellers, the bill authorizes any land needed for implementation of a project component to be acquired in accordance with state condemnation law.

This section authorizes the SFWMD to act as local sponsor of the project for those project features within the SFWMD, as provided in s. 373.1501(4), F.S., and subject to the oversight of the DEP as provided in s. 373.026, F.S.

The SFWMD may:

- Act as local sponsor for all project features previously authorized by Congress;

- Continue data gathering, analysis, research, and design of project components, participate in pre-construction engineering and design documents, and further refine the Comprehensive Plan of the restudy as a guide and framework for identifying other project components;
- Construct pilot projects that will assist in determining the feasibility of technology included in the Comprehensive Plan of the restudy; and
- Act as local sponsor for project components.

In its role as local sponsor for the project, the SFWMD must comply with its responsibilities under sh. 373, F.S., and implement project components through appropriate provisions of ch. 373, F.S. In the development of project components, the district must:

- Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;
- Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;
- Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination;
 - The SFWMD must convene a preapplication conference with all state and federal agencies with applicable regulatory jurisdiction;
 - State agencies with applicable regulatory jurisdiction must participate in the preapplication conference and provide information necessary for the district's determination; and
 - The SFWMD must request that federal agencies with applicable regulatory jurisdiction participate in the preapplication conference and provide information necessary for the district's determination;
- Provide reasonable assurances that the quantity of water available to existing legal users will not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment, consistent with chapter 373, F.S., and federal law; and
- Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are avoided or minimized.

The DEP and the SFWMD are directed to expeditiously pursue implementation of project modifications previously authorized by Congress or the Legislature, including the Everglades Contruction Project. Project components should complement rather than replace and should not delay project modifications previously authorized.

Notwithstanding any provision of s. 373.1591, F.S., nothing herein shall be construed to modify or supplant the authority of the SFWMD or the DEP to prevent harm to the water resources as provided in ch. 373, F.S.

The bill provides that final agency action with regard to any project component subject to s. 373.026(8), F.S., shall be taken by the department, however, actions taken by the SFWMD pursuant to s. 373.1501(5), F.S., shall not be considered final agency action.

Section 2. Section 373.026, F.S., is amended to require the DEP to collaborate with the SFWMD in the restudy. Before any project component is submitted to Congress for authorization or receives an additional appropriation of state funds, the DEP must approve, or approve with amendments, each project component within 60 days following formal submittal of the project component to the department. The DEP's approval shall be based upon a determination of the district's compliance with s. 373.1501(5), F.S. Once a project component is approved, all requests for an additional appropriation of state funds needed to implement the project component must be submitted to the DEP, which shall include them in the DEP's annual request to the Governor.

The bill requires the Executive Office of the Governor, pursuant to its duties under s. 373.536(5), F.S., to approve or disapprove, in whole or in part, the budget of each water management district, to review all proposed expenditures for project components in the SFWMD's budget.

Finally, the bill provides that the use of state funds for land purchases from willing sellers is authorized for projects within the SFWMD's approved 5-year plan of acquisition pursuant to s. 373.59, F.S.

Section 3. This act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The South Florida region's continued growth and economic well-being depend on managing aquatic systems to hold and release rainfall for environmental, agricultural, industrial, and clean drinking water purposes; to support abundant native fish, wildlife, and plant communities; and to enhance aesthetic and recreational uses.

C. Government Sector Impact:

The DEP is likely to expend additional staff time in reviewing and approving project components. The department reports a need for one environmental administrator position which, with associated expense and OPS clerical support, would require \$110,000. Although the bill imposes specific duties on the SFWMD which may require extra staff time, it is likely that the SFWMD would carry out most of the duties absent the bill.

Additional Comments by Fiscal Policy Committee Staff

The bill specifies the oversight role of the Legislature for the Restudy project and provides additional duties to the DEP. The direct fiscal impact of the bill is based on the new duties of the DEP. The bill specifies the oversight role of the Legislature due to the potential for a significant fiscal impact to the state over the life the Restudy project.

The Restudy project consists of some 60 individual projects to be undertaken over the next 20 years. The current estimate of the total cost of all these projects is \$7.8 billion. Pursuant to the 1996 Federal Water Resources Development Act, the federal government will pay for half of the costs of the Restudy with the other half being the sponsor's responsibility. The sponsor is the SFWMD but the share of the cost will be likely be a combination of the state, SFWDM, and local governments. The need for state assistance is primarily due to the fact that the SFWMD is near its statutory limit of 0.8 mills in levying ad valorem taxes. The constitutional limit for the SFWMD is 1 mill.

The SFWMD's plan estimates that the non-federal share of the annual costs on average will be \$200 million. These annual costs will be highly variable depending on the projects conducted during any given year. The SFWMD estimates that if its taxing authority is raised to its constitutional limit it will be able to devote \$90 million each year to the Restudy. The district's plan also includes a local government participation of \$16 million annually. This could mean annual requirement of up to \$100 million in state funding. In addition, the annual operation and maintenance costs are estimated to be \$171.4 million. The responsibility for operation and maintenance costs has not been established. The funding of these costs are the subject of two other bills before the Legislature, SB 2156 and SB 2158.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
