

STORAGE NAME: h1699s1.gg

DATE: April 12, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1699

RELATING TO: Water resources

SPONSOR(S): Committee on General Government Appropriations and Representatives Putnam, Dockery, and Alexander

COMPANION BILL(S): CS/SB 1672 by the Committee on Natural Resources and Senator Laurent

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

- (1) ENVIRONMENTAL PROTECTION YEAS 9 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 13 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1699 authorizes the South Florida Water Management District (District) to participate as local sponsor for the Comprehensive Review, or Restudy, of the Central and Southern Florida (C&SF) Project. Legislative intent is provided that the Restudy project components be implemented in a manner consistent with Chapter 373, F.S. The District is specifically authorized to exercise eminent domain authority in acquiring lands necessary for the Kissimmee River Restoration Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project; in the absence of willing sellers, such lands must be acquired using state condemnation law. The bill also provides specific requirements for the design and development of project components resulting from the Restudy. The District and the Department of Environmental Protection (Department) are directed to expeditiously pursue currently authorized projects and to coordinate project components with previously authorized projects. The Department is required to approve, or approve with amendments, all project components, with such approval based upon a determination that the District has complied with the specified requirements for the design and development of project components. It also requires that requests for any state funding needed for a project component be submitted to the Department for inclusion in the Department's budget request.

The bill provides that the act will take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Background: The Central and Southern Florida Project for Flood Control and Other Purposes.

The C&SF 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 C&SF Project was the culmination of earlier U.S. Army Corps of Engineers (Corps) efforts in South Florida, principally for flood protection.

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. The 1929 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, and 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 C&SF 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, the predecessor to the District, to serve as the local sponsor for the C&SF Project.

Subsequent modifications have been made to the C&SF 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.

The Restudy: Although modifications have been made to the C&SF Project over the last 50 years, the Restudy is perhaps the first effort to fundamentally reevaluate the overall design of the C&SF Project since inception of the project. The estimated cost of the Restudy through 2002 is \$20 million, with the District and the Corps each contributing \$10 million. Of the District' share, \$5 million is in the form of cash contributions and \$5 million is in the form of in-kind services, principally staff time. The current estimated cost for implementing all Restudy project components is \$7.8 billion: as local sponsor for the Restudy, the District 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 \$165 million.

In the 1992 Water Resources Development Act (WRDA 1992), the U.S. Congress authorized the Restudy. The purpose of the Restudy is to develop modifications to the C&SF 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:

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- ▶ 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 District are the primary participants and are jointly funding the effort. Other principal participants in the Restudy effort include:

- ▶ Federal
 - ▶ Environmental Protection Agency (EPA)
 - ▶ National Park Service
 - ▶ National Marine Fisheries Service
 - ▶ Natural 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.

Restudy Process. 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 C&SF 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 District and the Corps must enter into a Project Cooperation Agreement (PCA) for the design, construction, and operation of any authorized project components. Once the PCA is executed and prior to initiation of construction, Congress must specifically appropriate funds for the authorized project components.

1998 Restudy Oversight Legislation. During the 1998 Regular Session, legislation commonly referred to as the "Restudy Bill" was considered in order to enhance legislative oversight of the Restudy. This legislation, CS/CS/HB 4141, would have authorized participation by the South Florida Water Management District (District) as local sponsor for the Restudy. Legislative intent was provided that the Legislature support and facilitate the District's role as local sponsor to ensure that all projects and operational changes resulting from the Restudy are implemented in a manner consistent with Ch. 373, F.S. -- more specifically, with the Everglades Program pursuant to s. 373.4592, F.S., and the state's water resources policy as provided by s. 373.016, F.S. To accomplish the Legislature's stated intent, the Joint Legislative Committee on Everglades Oversight (Joint Committee) was assigned responsibility for monitoring all funding and expenditures for projects and operational changes resulting from the Restudy.

Under the Restudy Bill, the Joint Committee would have reviewed the Restudy as an interim project, held at least two public hearings on the proposed Comprehensive Plan, and provided written comments to the Corps and the District during the public comment period for the proposed Comprehensive Plan. In its written comments, the Joint Committee would have been required to address:

- ▶ The extent to which the proposed Comprehensive Plan is consistent with the goals and objectives of Ch. 373, F.S.;
- ▶ The extent to which the proposed Comprehensive Plan considers all competing policy needs provided by s. 373.016, F.S.; and
- ▶ The extent to which the proposed Comprehensive Plan considers all competing water uses.

In addition, the bill required the District to submit certain information and obtain legislative authorization, which could be by a general appropriation, prior to executing a Project Cooperation Agreement (PCA) 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 operational change, the District would be allowed to proceed with executing a PCA, provided the District could meet its financial responsibility without the need for future legislative appropriations.

CS/CS/HB 4141 passed both the House and the Senate by substantial margins. However, the bill was subsequently vetoed by the Governor and failed to become law. In his veto message, the Governor stated that the requirements of the bill "extend well beyond traditional concepts of legislative oversight" and maintained that the Joint Committee's existing statutory authority was sufficient to undertake a review of the Restudy.

Interim Project. During the 1998 Interim, the Joint Committee reviewed the Restudy. The goal of the review was to enhance the Joint Committee's role as it pertains to the Restudy and to help ensure that all project components are implemented in a manner consistent with the Everglades Program and current Florida water policy.

In its report, the Joint Committee identified no particular inconsistencies between the Draft Comprehensive Plan and either current state water policy or the Everglades Program, but did report that concerns exist regarding the "balance" between ecosystem restoration and future water needs. A particular concern is that existing legal users may experience a reduction in the availability of water from traditional sources with no assurance that new sources of supply will be available to offset such losses. Additional concerns have been expressed regarding levels of service for flood control and protection of private property rights.

The Joint Committee also raised issues regarding the implementation of Restudy project components. According to its report:

It should be recognized that implementation of the Restudy is an open-ended proposition at this time. The sequencing and scheduling of components will obviously be affected by technical and cost uncertainties as described [in the report], but it also appears that institutional constraints will be a major factor. Among these institutional constraints are the actions of the U.S. Congress and the financial capability of the district.

There is widespread interest in providing a role for the state in the Restudy process that will enable the state and federal government to be full partners in the implementation of Restudy project components. In addition, because substantial state funding may be needed for such implementation, there is also broad interest in providing enhanced state oversight of the district's activities as local sponsor of the C&SF Project, particularly in regard to future expenditures.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1699 provides a Legislative finding stating the importance of the Restudy for sustaining the environment, economy, and social well-being of South Florida. Legislative intent is provided to support and facilitate the Restudy through a process concurrent with Federal Government review and congressional authorization. Additional intent is provided that the Restudy project components be implemented in a manner consistent with Chapter 373, F.S.

In the bill, the District is given specific eminent domain authority to acquire lands necessary for the Kissimmee River Restoration Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project. The bill also requires that such lands be acquired from unwilling sellers in accordance with state condemnation law.

The bill authorizes the District to act as local sponsor for the C&SF Project. The District is specifically authorized to:

- ▶ Act as local sponsor for previously authorized project features;
- ▶ Continue various research, planning, and development activities necessary for the design of project components resulting from the Restudy;
- ▶ Construct necessary pilot project; and
- ▶ Act as local sponsor for project components.

CS/HB 1699 provides that the district, in its role as local sponsor, must comply with its responsibilities under Chapter 373, F.S. It also provides that in the design and development of project components, the District must:

- ▶ Comprehensively analyze and evaluate all needs to be met and consider all applicable water resource issues;
- ▶ Determine with reasonable certainty that all project components are technically feasible;
- ▶ Determine with reasonable certainty that project components are the most efficient and cost-effective of feasible alternatives or combination of alternatives, and are consistent with the purposes of the Restudy, the implementation of other structural and operational changes resulting from the Restudy, and the operation of the Central and Southern Florida Project;
- ▶ Determine with reasonable certainty that project components are consistent with applicable legal requirements, and can be permitted and operated as proposed;
- ▶ Consistent with Chapter 373, F.S., and any applicable federal law, provide reasonable assurances that implementation of project components will not adversely affect water supply availability, that flood protection will not be diminished outside the geographic area of a project component, and that water management practices will be changed as necessary to maintain the restored natural environment; and
- ▶ Ensure that the implementation of components is coordinated with existing utilities and public infrastructure.

The District and the Department are directed to expeditiously pursue currently authorized projects, including the Everglades Construction Project. They are further directed to coordinate project components with any project modifications previously authorized.

CS/HB 1699 specifically preserves the authority of the Department and the District to prevent harm to the water resources as provided by Chapter 373, F.S., notwithstanding any other provision of s. 373.1501, F.S., which the bill creates.

The bill requires the Department to collaborate with the District in the Restudy to ensure that all project components move forward as planned. Before a project component is submitted to Congress for authorization or receives an appropriation of state funds, the Department is responsible for approving the project component. Approvals must be made within 60 days following formal submittal of a project component to the Department and may include amendments. Department approval is to be based upon a determination by the Department that the District has complied with the requirements for the design and development of project components, as provided in the newly created s. 373.1501(5), F.S. Department approval will constitute final agency action in regard to project components, and any District action related to the design and development of project components shall not be considered final agency action. Finally, Department approval will not affect the District's ability to acquire lands for any project within the District's approved 5-year plan of acquisition.

Any request for an appropriation of state funds needed for an approved project component must be submitted to the Department, and the Department must include such requests in its annual budget request to the Governor. Finally, pursuant to s. 373.536(5), F.S., the Executive Office of the Governor is required to review all proposed expenditures for project components contained in the District's budget.

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?

Additional responsibilities are assigned to the District and the Department. (See "Effects of Proposed Changes" above.)

(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?
No.

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?

No.

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:

Creates s. 373.150, F.S. and amends s. 373.026, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 373.1501, F.S., providing legislative findings; authorizing the District's participation as local sponsor for the Restudy; specifying requirements for the design and development of project components resulting from the Restudy; and providing duties for the District and the Department.

Section 2: Amends s. 373.026, F.S., requiring the Department to approve, or approve with amendments, project components resulting from the Restudy; providing for any necessary state funding to be included in the Department's annual budget request; authorizing the District to acquire certain lands; and requiring the review by the Executive Office of the Governor of proposed expenditures for project components.

Section 3: Provides that the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department has indicated that it can implement its responsibilities under HB 1699 through a combination of existing staff and one additional FTE. Its estimate of the annual cost of salary and benefits, expenses, and clerical support is \$110,000.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See 2. above

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:

The private sector will benefit to the extent that the required assurances regarding water supply and flood protection result in the reduction or elimination of adverse impacts that might otherwise have occurred.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

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

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

CS/HB 1699 requires the Department to approve a project component before it is submitted to Congress. Because the U.S. Army Corps of Engineers (Corps) is responsible for submitting project components to Congress, this requirement is not a condition for such submission, but rather a requirement for the Department to take action prior to such submission. The bill does not specify any consequence resulting from the Department's failure to take such action. It is anticipated that the Corps will submit to Congress on July 1, 1999, an initial set of project components for authorization. Concerns have been raised as to whether the Department will be able to provide the required approval before the Corps submits these initial project components, and what effect, if any, there would be if the Department did not provide the required approval.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 30, 1999, the Committee on Environmental Protection adopted a "strike everything" amendment to HB 1699. As compared to the original bill, the amendment:

- ▶ Added definitions;
- ▶ Authorized acquisition by eminent domain of properties for the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 Project;
- ▶ Required, in the absence of willing sellers, that lands needed for Restudy project components be acquired pursuant to state condemnation law;
- ▶ Replaced project development criteria with specific actions that must be taken by the District in developing project components;
- ▶ Specifically preserved the authority of both the Department and the District to prevent harm to the water resources as provided by Chapter 373;
- ▶ Provided that Department approval constitutes final agency action in regard to the development of project components; and
- ▶ Changed the effective date to provide that the act would take effect July 1, 1999.

The Committee then passed the bill as amended.

On April 9, 1999, the Committee on General Government Appropriations adopted ten amendments to the "strike everything" amendment adopted by the Committee on Environmental Protection. Four of the amendments were technical. The remaining amendments:

- ▶ Changed a reference to "endangered species" to "threatened and endangered species;"
- ▶ Clarified language regarding the inclusion of specified funding requests in the Department's budget request;
- ▶ Limited the requirement for the use of state condemnation law to apply only to land needed for the Kissimmee River Restoration Project, the Ten Mile Creek Project, the Water Preserve Areas, and the C-111 project;
- ▶ Changed the effective date to provide that the act will take effect upon becoming law;
- ▶ Clarified that assurances related to water users, flood control, and the needs of the restored natural environment are to be provided consistent with Chapter 373, F.S., and federal law; and
- ▶ Authorized the District, in its role as local sponsor, to participate in pre-construction engineering and design documents.

The Committee then adopted HB 1699 as a committee substitute, incorporating the "strike everything" amendment as amended.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

W. Ray Scott

Staff Director:

Wayne S. Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Cynthia P. Kelly

Staff Director:

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