

STORAGE NAME: h0493b.wrm

DATE: February 19, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
WATER & RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HM 493

RELATING TO: Wetland jurisdiction

SPONSOR(S): Representative Ball

COMPANION BILL(S): SB 950 (i) by Senator Bronson

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

- (1) ENVIRONMENTAL PROTECTION YEAS 13 NAYS 0
 - (2) WATER & RESOURCE MANAGEMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HM 493 supports action by the U.S. Congress, Florida's congressional delegation, the U.S. Environmental Protection Agency (EPA), the Secretary of the Army, and the District Engineer for the Jacksonville Division of the U.S. Army Corps of Engineers (Corps) to adopt and use Florida's statewide wetland definition and delineation methodology in their implementation of section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

A strike-everything-after-the-enacting-clause amendment trailing HM 493 only urges the federal agencies to use Florida's statewide wetland definition and delineation methodology.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1993, the Legislature adopted a comprehensive wetland definition and in the subsequent year ratified a wetland delineation methodology to implement the definition. The statewide wetland definition and delineation methodology are required to be used solely and exclusively for delineating wetlands by all levels of government in the state. Both the definition and delineation methodology are Florida-specific and have been published as *The Florida Wetland Delineation Manual* (Florida Manual).

Wetland delineation for purposes of federal wetlands regulation is based upon the 1987 *U.S. Army Corps of Engineers Wetland Delineation Manual* (1987 Manual) and is used nationwide. It provides the definition and delineation methodology for federal wetlands permitting under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The Florida Manual and the 1987 Manual contain very similar definitions of "wetlands." They share the key operational sentence, "those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soils." In addition, each delineation methodology employs wetland plants, hydric soils, and hydrologic characteristics as indicators of wetlands. However, there are two differences that may produce different wetland delineation results when the two methodologies are applied to the same area:

1. Florida's methodology relies upon hydric soil indicators approved by the Natural Resources Conservation Service (NRCS, formerly the Soil Conservation Service) and the federal methodology uses some hydric soil indicators that have not been approved by the NRCS; and
2. Florida's methodology uses slash pine (*Pinus elliottii*) and gallberry (*Ilex glabra*) as indicators of uplands and the federal methodology considers these two species to be positive indicators of wetlands.

Despite these differences, the two methodologies have been field-tested and found to generally produce equivalent results, except when applied to two particular landscape types. Application of the two methodologies to landscapes of improved pasture and some pine flatwoods can produce different delineation results. Generally speaking, these differences result from the specificity of the Florida methodology to the state's somewhat unique ecosystems (large areas of flat landscape, highly concentrated rainfall, and young surficial soil structure) and the much broader applicability (i.e., nationwide) of the federal methodology.

Florida's adoption of the statewide definition and delineation methodology was part of a broader effort to consolidate and streamline wetlands permitting that resulted in the Environmental Resource Permitting (ERP) program. This effort continues as the Department of Environmental Protection (Department) seeks authority from the Corps to administer federal wetlands regulation. The Corps has issued to the Department a State Programmatic General Permit under which the Department's ERP also serves as federal authorization for minor projects with limited wetland impacts. However, the differences

in federal and state wetland delineation are a barrier to the Department assuming additional responsibility for federal wetlands and to further consolidation and streamlining of wetlands permitting.

At the present, there is no pending, formal action related to wetlands definition and delineation methodology used in federal wetlands regulation. However, the Department, the Corps, and the EPA are working on an ongoing basis to resolve differences between the state and federal wetland delineation methodologies that will facilitate the Department assuming additional authority to administer federal wetlands regulation.

B. EFFECT OF PROPOSED CHANGES:

HM 493 will communicate to the Federal government by dispatching copies of the memorial to the President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of Florida's congressional delegation, the state's support of action by the U.S. Congress, Florida's congressional delegation, the EPA, the Secretary of the Army, and the District Engineer for the Jacksonville Division of the Corps to adopt and use Florida's statewide wetland definition and delineation methodology in their implementation of section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. Such communication would provide support to the Department's efforts to work with the EPA and the Corps to resolve the differences between the Florida methodology and the federal methodology for delineating wetlands.

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?

No.

(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?

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:

N/A

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

If the Corps were to begin using Florida's wetlands definitions and delineation methodology, and delegate all wetlands-related permitting to the state, applicants theoretically would save time and money, and reduce other transactional costs associated with the current duplicative permitting process.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HM 493 does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HM 493 does not reduce the authority that municipalities or counties have to raise revenues.

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

HM 493 does not reduce the percentage of state tax shared with counties and municipalities.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1999, the Committee on Environmental Protection adopted a “strike-everything-after-the-enacting-clause” amendment to HM 493. The amendment changes the wording of HM 493 to urge the federal government to accept the use of, rather than adopt and use, Florida’s wetland definition and delineation methodology. The Committee then passed HM 493 as amended.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

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AS REVISED BY THE COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

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