

STORAGE NAME: h1989z.ca

****FAILED TO PASS THE LEGISLATURE****

DATE: May 8, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: HB 1989

RELATING TO: Miami River Improvement Act

SPONSOR(S): Representative Diaz de la Portilla

TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
 - (2) WATER & RESOURCE MANAGEMENT (RLC) (W/D)
 - (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS (FRC)
(W/D)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates the Miami River Improvement Act.

This bill recognizes the Federal Government's eighty percent contribution for environmental clean-up and navigational purposes, and encourages a coordinated effort between the city, county, Legislature, and the Department of Environmental Protection regarding the remaining twenty percent.

This bill requires that appropriate state and regional agencies aid the Miami River Commission.

This bill cites existing statute as guiding authority for considering the adoption of an urban refill and redevelopment plan.

Under this bill, \$150,000 is appropriated from General Revenue for Fiscal Year 2000-2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill explicitly requires all state and regional agencies to provide all available assistance to the Miami River Commission.

B. PRESENT SITUATION:

The Miami River Commission

The Miami River is a river of historical, commercial, environmental and aesthetic significance. It flows through downtown, historic neighborhoods, public parks and a wide variety of commercial activity. There are 32 privately owned shipping terminals along the Miami River. As the fifth largest seaport in Florida, it handled about \$4 billion in cargo in 1997. Because trade with the Caribbean and Central and South America is projected to increase at a steady rate and the location of the Miami River is ideal for capturing that portion of trade originating in ports such as Caredenas, Mariel, Isabela, and Trinidad, Miami could benefit from increased trade and with that rising numbers of jobs. The Miami River also is the largest tributary to Biscayne Bay, and thus threatens the ecosystem of the bay by carrying high concentrations of pollutants.

At least 36 different agencies, in four different levels of government (federal, state, county, and municipal) have some jurisdiction over the Miami River. The lack of unification results in management obstacles. In 1991, the Dade County Grand Jury conducted a study of the Miami River which focused on governance and accountability, sources of pollution, and dredging of the Miami River. The Grand Jury recommended that the entire operational and environmental integrity of the river be addressed. In its conclusion, the Grand Jury stated ". . . more aggressive action needs to be taken. Action, not more studying of the river's problems, needs to occur today. The Miami River needs its priority status increased at all levels within the public and private sector."

In 1997, the Florida Legislature created the Miami River Study Commission to "conduct a comprehensive study and review of the restoration and enhancement of the Miami River and Biscayne Bay." Once again, the recommendations called for specific actions. One of those recommendations was for the creation of the Miami River Commission (Commission).

The Commission was created in 1998 through chapter 98-402, Laws of Florida, and is codified in chapters 163.06 and 163.061, Florida Statutes. The Commission was established to serve as the official clearinghouse for all public policy and projects relating to the Miami River to unite all governmental agencies, businesses, and residents in the

area to speak with one voice on river issues. This establishment of the Commission did not affect or supersede the regulatory authority of any governmental agency or any local government and any responsibilities of any governmental entity relating to the Miami River will stay with such entity. However, any governmental entity may delegate specifically defined authority to the Commission, and the Commission may accept that authority. The Commission is authorized to seek and receive funding to implement river improvement projects of the Commission.

The Commission has a managing director who has the responsibility to implement plans and programs and a working group consisting of all governmental agencies that have jurisdiction in the Miami River area, as well as representatives from business and civic associations. There is also a policy committee comprised of the Governor, the chair of the Dade County legislative delegation, the chair of the governing board of the South Florida Water Management District, the Miami-Dade County State Attorney, the Mayor of Miami, the Mayor of Miami-Dade County, a commissioner of the City of Miami Commission, a commissioner of the Miami-Dade County Commission, the chair of the Miami River Marine Group, the chair of the Marine Council, the Executive Director of the Downtown Development Authority, and the chair of the Greater Miami Chamber of Commerce; two representatives, selected from the Spring Garden Neighborhood Association, the Grove Park Neighborhood Association, and the Miami River Neighborhood Enhancement Corporation, one appointed by the city commission and one appointed by the county commission, selected from a list of three names submitted by each such organization; one representative from an environmental or civic association, appointed by the Governor; and three members-at-large, who shall be persons who have a demonstrated history of involvement on the Miami River through business, residence, or volunteer activity, one appointed by the Governor, one appointed by the city commission, and one appointed by the county commission. All members shall be voting members.

The policy committee also includes a member of the United States Congressional delegation and the Captain of the Port of Miami as a representative of the United States Coast Guard, as nonvoting, ex-officio members. The policy committee has specific powers and duties, including, but not limited to:

- consolidating existing programs into a coordinated strategic plan for the improvement of the Miami River, addressing environmental, economic, social, recreational, and aesthetic issues. The committee is to monitor and regularly revise the plan.
- preparing an integrated financial plan to be modeled after the South Florida Ecosystem Restoration Working Group.
- providing technical assistance and political support for implementing each element of the strategic and financial plans.
- accepting any specifically defined authority delegated to the committee by any level of government.
- publicizing a semiannual report.

Through these duties, the committee serves to unite all the different governmental agencies, businesses and residents in the area and will provide a leader in Miami River projects.

There are two significant limitations on the ability of the Commission to set policy relating to the Miami River. First, the Commission is prohibited from taking any action or policy position that impacts or diminishes the level of currently permitted commercial activity on the Miami River or its riverfront properties unless passed by a unanimous vote of the appointed members of the commission then in office. The second limitation restricts the Commission in a similar fashion. The Commission shall not adopt any policy position or take any action to suggest or promote additional fees, taxes, charges, or other financial obligation on owners of riverfront properties or shipping companies or operators unless passed by a unanimous vote of all appointed members of the commission then in office.

The Commission ceases to exist on July 1, 2003, unless the Legislature, after review of the effectiveness of the commission, determines that it should be continued and reenacts provisions to do so.

The Growth Policy Act

Sections 163.2511-163.163.2526, Florida Statutes, titled the "Growth Policy Act," address urban infill and redevelopment. Section 163.2511, Florida Statutes, provides, among other things, the following legislative intent:

- (f) Infill development and redevelopment are recognized to be important components and useful mechanisms for promoting and sustaining urban cores. State and regional entities and local governments should provide incentives to promote urban infill and redevelopment. Existing programs and incentives should be integrated to the extent possible to promote urban infill and redevelopment and to achieve the goals of the state urban policy.

Section 163.2514, Florida Statutes, provides that a local government can declare an area as an urban infill and redevelopment area as including the following:

- (e) The area includes or is adjacent to community redevelopment areas, brownfields, enterprise zones, or Main Street programs, or has been designated by the state or Federal Government as an urban redevelopment, revitalization, or infill area under empowerment zone, enterprise community, or brownfield showcase community programs or similar programs.

Section 163.2517, Florida Statutes, describes the detailed process of drafting an urban infill and redevelopment plan. Alternatively, a local government may adopt an existing neighborhood plan.

Section 163.2520 (1) and (2), Florida Statutes, grants a local government authority to issue revenue bonds, utilize tax increment financing and levy special assessments when it adopts an urban infill and redevelopment plan.

Designated urban infill and redevelopment areas are allotted increased priority for infrastructure funding, cost reimbursement, grants, and loans from certain state agencies, such as the Department of Environmental Protection, the Department of Community Affairs, the Florida Housing Finance Corporation, and the Department of Transportation pursuant to section 163.2520 (3), Florida Statutes. These areas are also given priority for state-issued private activity bonds. Section 163.2520 (4), Florida Statutes, provides that areas designated by a local government as urban infill and redevelopment areas shall be given a

priority in the allocation of private activity bonds from the state pool pursuant to section 159.807, Florida Statutes.

Florida Water Advisory Panel

The Florida Water Advisory Panel (Panel) was created by Executive Order 99-288 on November 19, 1999. The initial members of the Panel were 10 appointees designated by the Speaker of the House and the President of the Senate on October 6, 1999, and the 5 appointees designated by the Governor on November 3, 1999. These 15 members shall remain members until June 30, 2000, unless removed. Subsequent appointments to the Panel are to be made by June 30 of each year and shall take effect on July 1 for a term of one year. The Speaker of the House, the President of the Senate, and the Governor shall each make 5 appointments. The Governor shall name the chairperson.

The Panel is required to meet at least 3 times per year, at times and places designated by the chair, act by a vote of the majority, and have a quorum of at least 8 members for an act of the Panel to have effect.

The Panel members serve at the pleasure of the officer appointing them and may be removed at will by that officer at any time. Vacancies in the Panel shall be filled by whomever made the appointment that resulted in the vacancy. In addition, the Panel members shall receive no compensation, but shall be entitled to per diem and travel expenses while attending meetings of the Panel, to the extent allowed by Section 112.061, Florida Statutes. Per diem and travel expenses shall, to the extent available, be paid by the Department of Environmental Protection for the Governor's appointees, by the House of Representatives for the Speaker of the House's appointees, and by the Senate for the President of the Senate's appointees. The Panel shall be staffed through the Department of Environmental Protection.

The process for submitting projects to the Panel shall be as follows:

Application forms for surface water restoration projects and wastewater projects may be obtained, on or after August 1, from the Governor's Office of Policy and Budget, the Legislature, the Department of Environmental Protection Division of Water Resource Management, or a water management district.

Each project must be sponsored by a local governmental entity, including, but not limited to, a city, county, water and sewer district, or a water management district.

Project applications, with documentation showing applicable threshold criteria are met, must be submitted by September 15, except applications to be reviewed by the panel for this Legislative session had to be submitted no later than December 30, 1999. Completed project applications and supporting documentation must be submitted to the Panel through the Department of Environmental Protection.

The process for Panel review, listing, and submission of projects to the Governor and the Legislature for funding consideration shall be as follows:

1. The Panel shall not accept project applications submitted after the application deadline, but may review completed project applications prior to that time.
2. The Panel shall review projects with completed applications to determine whether they contain the required documentation and meet the applicable set of threshold

criteria in Section 3. In conducting its review, the Panel may allow presentations by the project sponsors and may take public comment.

3. The Panel may recommend to the Legislature a reduction in the applicable match requirement, based on a demonstration by the project sponsor of an inability to provide the match, to the satisfaction of the Panel. The Panel shall take into account:
 - The sources and amounts of local, state, and federal matching funds secured, anticipated, or being pursued for the project;
 - The identified sources of local and other funding that have not been pursued; and
 - The reasons that identified sources of local or other funding were not pursued or not secured.

The Panel shall submit to the Governor and the Legislature, by March 1, 2000, and in subsequent years by January 15, a list of surface water restoration projects and a list of wastewater projects that meet the applicable set of threshold criteria, for funding consideration. The Panel may group projects involving the same water body for funding consideration by the Legislature, provided each project in the group meets the applicable set of threshold criteria.

The Panel may also submit comments regarding any of the listed projects. In listing the wastewater projects that meet the applicable set of threshold criteria, the Panel shall identify those projects that address an area to be served with a population of less than 7,500 and a median household income of less than the statewide median household income, and shall request that the Legislature and the Governor give priority funding consideration to those projects. For projects that do not meet the applicable set of threshold criteria, the Panel shall specify which individual criteria were not met. Subsequent to the review of water projects for each fiscal year, the Panel may recommend to the Governor, President of the Senate, and Speaker of the House of Representatives, changes to the application process, review process, threshold criteria, and any matter pertinent to the Panel's authority.

The Water Advisory Panel shall apply the following threshold criteria in developing its list of surface water restoration projects for funding by the Legislature:

1. A primary purpose of the project must be surface water restoration.
2. The project must have quantifiable restoration targets, when appropriate.
3. The project must meet at least one of the following:
 - Help resolve a documented recurring violation of state water quality standards in the project area;
 - Help implement activities consistent with any applicable Total Maximum Daily Loads;
 - Help resolve recurring drainage and flood control problems in the named surface water body; or

- Help resolve violations involving consent orders.
4. The project must be identified in an approved local, water management district, or Department of Environmental Protection water management plan as part of a surface water restoration effort. In addition, stormwater-related restoration projects that have a flood protection component must be identified in a stormwater master plan and have quantifiable flood protection targets.
 5. The project must be sponsored by a local governmental entity (including a city, county, water and sewer district, or WMD), which will administer the state funds.
 6. The project must have a schedule for completion and a funding plan adequate to complete, operate, and maintain the project, including an identified funding source for recurring operating costs. This provision shall not require that all the funds necessary to complete the project be set aside prior to actual cash flow requirements of the project or commencement of the project.
 7. The project sponsor or grant recipient must provide for at least a 50-percent match of the total project cost, where it relates to surface water. Matches may include funds from other local, state, and federal sources and in-kind contributions. Reductions in the match requirement may be considered, based on a demonstration by the project sponsor of an inability to provide the match, to the satisfaction of the panel. The panel shall take into account the information provided above. The Water Advisory Panel shall apply the following threshold criteria in developing its list of wastewater projects for funding by the Legislature:
 - a. The project must meet at least one of the following:
 - Resolve or help resolve a documented recurring violation of state water quality standards in the project area;
 - Resolve or help resolve a substantiated public health threat;
 - Reduce discharges of pollutants to an impaired waterbody on the Department of Environmental Protection 303(d) list, that resulted in the listing of the waterbody; or
 - Reduce documented discharges of contaminants to ground water supplies.
 - b. The project must be sponsored by a local governmental entity (including a city, county, water and sewer district, or WMD), which will administer the state funds.
 - c. Priority funding consideration shall be given to projects addressing an area to be served with a population of less than 7,500 and a median household income of less than the statewide median household income. (Population data may be based on the most recent decennial census published by the U.S. Dept. Of Commerce or other verifiable data; median household income of the project service area shall be provided by the applicant and be based on the most recent decennial census published by the U.S. Dept. Of Commerce.)

- d. The project sponsor or grant recipient must have or agree to adopt a mandatory-hookup ordinance for the service area. Such ordinance may allow for mandatory hookup upon failure of individual systems.
- e. The project must have a schedule for completion and a funding plan adequate to complete, operate, and maintain the project, including an identified funding source for recurring operating costs. This provision shall not require that all the funds necessary to complete the project be set aside prior to actual cash flow requirements of the project or commencement of the project.
- f. The project sponsor or grant recipient must provide for at least a 25-percent match of the total project cost where it relates to wastewater. Matches may include funds from other local, state, and federal sources and in-kind contributions. Reductions in the match requirement may be considered, based on a demonstration by the project sponsor of an inability to provide the match, to the satisfaction of the panel. The panel shall take into account the information provided pursuant to the above criteria.

The Department of Environmental Protection (DEP) and the Water Management Districts assist project applicants in completing the application forms, if requested by the applicants. DEP provides the technical assistance necessary to allow the Panel to determine whether projects submitted to the Panel meet the applicable set of threshold criteria. DEP may obtain help in providing technical assistance from any appropriate government entity, including but not limited to the Water Management Districts, the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and the Department of Agriculture and Consumer Services.

It is unclear if the cleanup of the Miami River qualifies for matching funds under this program.

C. EFFECT OF PROPOSED CHANGES:

The bill codifies findings and purposes of the Commission.

The legislation requires all state and regional agencies to aid the Commission in the conduct of its activities.

The bill provides that the Commission shall consider the merits of developing and adopting an urban infill and redevelopment plan, under sections 163.2511 - 163.2526, Florida Statutes. The bill requires participating state and regional agencies to review the proposed plan for the purposes of consistency with applicable law.

The Commission is appropriated \$150,000 from General Revenue for Fiscal Year 2000-2001, to carry out the purposes of the act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates Section 163.065, Florida Statutes:

- (1) Titles this act the Miami River Improvement Act.
- (2) Provides findings and purpose that the Miami River Commission (Commission) serves as the clearinghouse for all public policy and projects impacting the Miami

River; provides that the United States government contributed eighty percent to the Miami River for environmental and navigational purposes; stipulates that the remaining twenty percent is subject to negotiation among the City of Miami, Miami-Dade County, the Florida Legislature, and the Florida Department of Environmental Protection; clarifies that successful urban redevelopment requires cultural, recreational, economic and transportation considerations; encourages federal, state, regional and local effort.

- (3) Requires that all state and regional agencies provide all available assistance to the Commission.
- (4) Provides that the Commission shall consider the merits of developing and adopting an urban infill and redevelopment plan, under section 163.2511 - 163.2526, Florida Statutes; requires participating state and regional agencies to review the proposed plan for the purposes of consistency with applicable law.

Section 2: Appropriates \$150,000 in General Revenue for Fiscal Year 2000-2001 to the Commission to execute the duties of this act.

Section 3: Provides for an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appropriates \$150,000 in General Revenue to carry out the purpose of this act during Fiscal Year 2000-2001.

2. Expenditures:

The bill requires an undetermined amount of resources from *all* state and regional agencies which are required to provide *all* available assistance.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This legislation appears to have no impact on local government revenues.

2. Expenditures:

This legislation could impact local government expenditures to the extent a local government supports a state or regional agency assisting the Commission or reviewing the Commission's plan, if drafted.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The appears to be no direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

This bill does not reduce the amount of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill imposes additional duties on all state and local agencies; the bill, however, provides no clear direction to agencies to assist the Miami River Commission in its endeavors.

C. OTHER COMMENTS:

A representative from the Department of Community Affairs expresses the following:

It appears that this bill may create a conflict between its mandate that "All state and regional agencies shall provide all available assistance to the Miami River Commission in the conduct of its activities" and the provisions of Section 163.2523, Florida Statutes, which creates a competitive grant program to provide funds for urban infill and redevelopment assistance.

A representative from The Trust For Public Land supports this bill and offers the following regarding the Miami River:

The commission's immediate priority is to get the river dredged and thereby purge it of dangerous pollutants and return the navigable channel to its original depth. Without dredging, true cleanup of the river and Biscayne Bay cannot happen, and ship traffic can proceed only at high tide. Although most channels in port areas are dredged routinely, the Miami River has not been dredged since 1933. With each passing year, as sediment builds, problems of both pollution and navigability only worsen.

In late September 1999, President Clinton signed into law the first \$5 million to dredge the Miami River. That happened because, the preceding spring, the U.S. Army Corps of Engineers determined that the federal government fund 80 percent of the cost of dredging the river, with the city, county and state paying for the rest. Dredging the river will take five years.

A representative from the Department of Environmental Protection states that they are neutral on the funding of the Commission and the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Three amendments were adopted by the Committee on Community Affairs on April 19, 2000. The first amendment is a technical amendment which corrects a typographical error. The second amendment clarifies the level of assistance state and regional agencies are to provide to the Commission. The third amendment adds the development of a greenway/riverwalk and blueway for consideration by the Commission.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Cindy M. Brown, J.D./Kyle V. Mitchell

Staff Director:

Joan Highsmith-Smith

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Kyle V. Mitchell

Staff Director:

Joan Highsmith-Smith