

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1246

SPONSOR: Natural Resources Committee and Senator King

SUBJECT: State Reserves

DATE: April 12, 2001                      REVISED: 04/23/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill designates an area in the floodplain of the Oklawaha River in Marion and Putnam counties as the North Florida State Reserve (Reserve) under the supervision of the Department of Environmental Protection (DEP). It authorizes the acquisition of additional land and requires the notification of persons with easements in the recreation area. It requires funds appropriated for construction and sediment studies to be spent only for the specified purposes. A report to the Governor and the Legislature is required.

This bill creates s. 258.166 of the Florida Statutes.

**II. Present Situation:**

Rodman Reservoir was created in 1968 by the construction of the Rodman Dam on the Oklawaha River near Palatka. The 9000 acre reservoir was to play an integral role in the Cross Florida Barge Canal's operation by providing a constant source of water for the locks needed to move the barges though elevation changes. The barge canal project itself was authorized in the early 1930's with construction commencing in 1935. In that year, the Florida Ship Canal Navigation District was created by Chapter 17023, L.O.F. The district would serve as a source of revenue to finance the acquisition of rights-of-way by the authority if the federal government constructed a canal. (In 1961, the district's name was changed to the Cross Florida Canal Navigation District.) Shortly after beginning, however, construction ceased due to lack of funds; construction recommenced in 1964. This U.S. Army Corps of Engineers (Corps) project required the use of both federal and private lands, with the Corps acquiring flowage easements over several thousand acres of private lands. Many of the documents creating the easements contained reversionary clauses providing for the easements to revert to the fee simple owner if the land was

no longer needed for the barge canal. Due to the belief that a completed barge canal would provide substantial economic benefits to the counties along the canal corridor, the counties contributed ad valorem revenues totaling more than \$9.3 million to the effort; with accrued interest, the amount grew to \$32 million until capped in 1985.

As work on the Canal progressed, environmental concerns grew. Particular attention was focused on possible contamination of the Floridan Aquifer and the desirability of preserving the Oklawaha River Valley relative to the questionable economic benefits associated with the canal.

A 1969 lawsuit opposing the continued construction of the project resulted in a preliminary injunction against further construction. Prior to the granting of a permanent injunction, President Nixon, by executive order, suspended further work on the project. Although the executive order was later held to be invalid, the earlier preliminary injunction was made permanent in 1974. Efforts to deauthorize the project continued, culminating with President Bush's signing of P.L. 104-640, deauthorizing the project, on November 28, 1990. On January 22, 1991, Florida's Governor and Cabinet accepted the terms of the federal legislation through a Resolution, thereby officially deauthorizing the Canal project. Major features of the federal deauthorization law required a minimum 300-yard wide greenway corridor to be maintained along the former Canal project lands and required that the corridor counties be reimbursed \$32 million (based on moneys they had contributed for land acquisition, plus interest, up to 1985).

Section 253.7829, F.S., required the Canal Authority to develop a management plan for the retention or disposition of lands acquired for the Cross Florida Barge Canal within two years of the date the canal project was deauthorized under federal law. A twenty-member advisory committee held a total of fifteen meetings, workshops, and public hearings to discuss and take public testimony on options for the management plan. The Governor and Cabinet adopted a recommended management plan for the lands in the former canal corridor on December 15, 1992. They recommended to the Legislature the restoration of the natural functioning ecosystem in the lower Oklawaha River.

During the 1993 Legislative Session, the Senate Natural Resources Committee created a subcommittee to review the management plan proposed for lands in the former canal corridor. The legislation that emerged recognized the management plan as a guidance document and declared that due to limited financial resources it was necessary to implement the Cross Florida Greenway in a conservative fashion. The greenway was to be managed by a special Office of Greenway Management (now the Office of Greenways and Trails), and was designated the Cross Florida Greenways State Recreation and Conservation Area (now the Majorie Harris Carr Cross Florida Greenway).

The most controversial aspect of these considerations is the issue of Rodman Dam (now named the Kirkpatrick Dam) and Reservoir. Since the cessation of the canal project, the focus of concern for environmental groups has been the removal of the dam and the return of the free-flowing Oklawaha River. Among other concerns, they cite as justification the expense of operating the dam and locks, past fish kills, problems with aquatic weeds, the death of at least 10 manatees through interaction with the dam and locks, the value of removing a barrier to migrating fish and wildlife, and a DEP study indicating that the reservoir has a negligible economic impact on the locality.

On the other hand, there are a number of supporters for retaining the reservoir system. After the initial environmental damage was done in constructing the system, the environment adapted to the new lake-type system. Numerous wading birds and migratory waterfowl use the reservoir and several bald eagles have permanent nests in trees located over the water. Bass fishermen believe the reservoir could be managed as one of the state's most productive areas. When the Corps built the reservoir they also built camping and boating facilities to access the open water areas. Local residents believe that the reservoir provides important economic benefits.

Faced with the dilemma in 1993 of deciding whether to restore the Oklawaha River or retain Rodman Reservoir, the Legislature called for more studies to be undertaken to assist in making a decision. Provisions in Chapter 93-213, L.O.F., stated that:

Prior to the final determination of the disposition of the canal works impounding the Oklawaha River at the Rodman Reservoir being made, the Department of Natural Resources shall study the efficacy, both environmental and economic, of complete restoration of the Oklawaha River, partial restoration of the river, total retention of the Rodman Reservoir, and partial retention of the reservoir. The department shall contact the U.S. Army Corps of Engineers to determine what elements of its study would mirror a federal environmental impact statement if required by the Corps before issuing permits regarding the disposition of the canal works. Based on all relevant information, the efficacy of the options for restoring the Oklawaha River, retaining the Rodman Reservoir, and partial restoration or retention shall be summarized and evaluated by the department. The department shall present its findings and recommendations to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by January 1, 1995. The final determination as to the disposition of the Rodman Reservoir shall be made following the submission of these findings and recommendations.

These studies have been completed and presented to the Legislature. The DEP provided a summary document for the approximately 1500 pages of research. The DEP summary document makes the following findings and recommendations:

1. The Oklawaha River should be restored;
2. The duties and functions associated with the restoration of the Oklawaha River should be undertaken by the St. Johns River Water Management District (SJRWMD) as part of the District's SWIM Program;
3. DEP will assist the SJRWMD with the application for the appropriate permits for restoration of the Oklawaha River using the information contained in this study; and
4. Due to the extensive research conducted in this and previous studies addressing the question of whether or not the Oklawaha River should be restored, DEP finds that no further studies are necessary to answer this question.

The DEP studies estimated that under the full retention option for Rodman Reservoir there would be 302,214 recreation user days versus 145,414 recreation user days per year for river restoration. The report estimates the 40-year cumulative costs for full retention to be \$54.7 million versus \$45.6 million for river restoration.

Provisions in subsection (6) of s. 253.7829, F.S., state, **A**The final disposition of the water control structures must be outlined in this management plan as adopted by the Legislature. Such plan shall not be implemented until state legislation specifically directing implementation of the submitted plan or a modified plan, as recommended, becomes effective.**@** Arguably, Chapter 93-213, L.O.F., recognized the proposed management plan but never **A**adopted**@**the plan because, among other things, the plan identified tens of millions= of dollars needed for full implementation. For those financial reasons, the 1993 Legislature considered the plan a **A**guidance document,**@**and stated it that way and did not **A**adopt**@**it as the above quoted law required. A 1996 Attorney General Opinion concluded that the Legislature by its actions did adopt the management plan and DEP has sufficient authority to proceed with disposition of the water control structures and Rodman Reservoir. The DEP has begun the process of obtaining the necessary permits for a partial restoration estimated to cost at least \$13.9 million.

The DEP has asked the Corps to re-activate its dredge and fill permit and has replied to certain technical questions raised by the Corps in 1997. Although the DEP had hoped the Corps would review the draft Environmental Impact Statement (EIS) concurrently with the U.S. Forest Service, the Corps intends to delay action on the federal dredge and fill permit until the DEP has received the required environmental resource permit (ERP) from the SJRWMD. In order to proceed with the recommended restoration, a consumptive use permit (CUP) and an ERP from the SJRWMD are needed. Applications for both permits were filed with the SJRWMD in November 1997. The CUP application is not yet complete; more detailed information has been requested by the SJRWMD regarding the potential effect of the reservoir drawdown on adjacent wells and land uses. The DEP is currently working with the SJRWMD to determine the type of additional analysis and modeling that will be required. Also some additional property ownership information must be submitted to make the CUP application complete.

A special use permit for the Rodman Dam, issued to the state by the U.S. Forest Service in 1994 for the continued use of flooded forestry and other lands (over a square mile of the Ocala National Forest is submerged beneath the reservoir and approximately 40 percent of the Kirkpatrick Dam is on national forest land), expired at the end of 1999 but has been extended pending completion of an EIS by the state. A draft EIS has been submitted, but the U.S. Forest Service has yet to determine it adequate. The extension also was granted to allow the U.S. Forest Service to consult with the U.S. Fish and Wildlife service regarding manatee deaths in the reservoir. At least 10 manatees have been killed by the dam or locks since 1977, according to Florida Marine Research Institute records. The DEP received funding from the 1999 Legislature in the amount of \$600,000 for manatee protection measures at the locks and dam. In addition, the Legislature reappropriated \$1.8 million for closing the lock at Inglis to be used instead for installing a smaller lock and for manatee protection.

The ERP application is complete, but one significant issue remains regarding the ability of the project to meet the criteria for permit issuance. Pursuant to s. 40C-4.301(1), F.A.C., the SJRWMD cannot issue a permit to the DEP if the DEP does not provide reasonable assurance

that the restoration of the Oklawaha River and its floodplain “will not cause adverse water quality impacts to receiving waters...” The DEP reports that since its construction, the Rodman reservoir has served as a “sink” for nutrients, causing them to settle out in the reservoir rather than be transported downstream. While nutrient transport is a natural function of river systems, the inputs of nitrogen to the surface and groundwaters that feed the Oklawaha River have increased due to man’s activities. Therefore, the reservoir has served as a kind of treatment system for pollutants added to the system. There is concern that removal of the reservoir and transport of additional nitrogen downstream to the lower St. Johns River will adversely affect the water quality of the river, which already suffers from excess nutrients. In order for the restoration project to be permitted, the DEP must develop a mitigation plan that will ensure that the design of the restoration project itself, along with supplemental projects undertaken to reduce nitrogen loading to the river, will not cause water quality violations in the lower St. Johns River. It appears that the studies, planning, and actual mitigation will delay restoration efforts for some time.

The DEP advises that while the mitigation plan is being developed, and the permitting for the overall restoration project is being completed, it is possible to begin proactive measures to reduce nitrogen from the Oklawaha River system. Over the years, nutrient laden sediments have collected at the base of the Rodman Dam. These sediments must be dredged, removed from the river to an identified disposal site, and properly treated to ensure that the nutrients do not return to the system via surface water flow or groundwater infiltration. Although the DEP had considered taking these actions, instead it will first conduct studies to identify sources of nitrogen and develop a mitigation plan. The DEP’s legislative budget request contains an \$820,000 appropriation for these purposes.

Several lawsuits have been filed by landowners who gave easements with reverter clauses. They seek judgments of inverse condemnation or damages for trespass. Recently, the DEP has reached settlements in several of these cases by agreeing to acquire the underlying fee in these lands. There are three such suits pending at this time.

### **III. Effect of Proposed Changes:**

**Section 1.** This bill creates the North Florida State Reserve (Reserve), which will include all state-owned lands within the floodplain of the Oklawaha River and those hereafter acquired by the state from Eureka Dam in Marion County to Buckman Lock in Putnam County. The Reserve will be managed by the DEP’s Division of Recreation and Parks (DRP) which must develop multipurpose recreational opportunities at the Reserve and provide for the care, upkeep, maintenance, and beautification of the Reserve including all those dams, locks, and other structures transferred by the federal government to the state.

Public hunting will be allowed in the Reserve as authorized by the Fish and Wildlife Conservation Commission.

The DEP’s Division of State Lands (DSL) is authorized to acquire any additional property adjacent or contiguous to the Reserve, from private owners or from the United States Government for improved management and recreational opportunities. Any such acquisitions must be titled in the Board of Trustees of the Internal Improvement Trust Fund (Trustees).

The DSL is also required to identify, contact, and inform all property owners who entered into easements located within the taking line of the Rodman Reservoir of the designation of this area as a State Reserve.

By January 1, 2002, the DSL must submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives which:

- Ⓒ Identifies the entities that have an easement within the taking line of the reservoir.
- Ⓒ Indicates whether the holder of the easement is willing to sell the easement.
- Ⓒ Estimates the cost of acquiring the easements.
- Ⓒ Identifies any additional issues resulting from this designation.

**Section 2.** Subject to appropriations, the DEP is authorized and directed to construct restroom facilities, a paved parking lot, small spectator bleachers, boat ramps, and a covered pavilion by that part of Rodman Reservoir, which is considered to be the old Oklawaha River bed. Funds provided in the General Appropriations Act for FY 2001-2002 shall be used for construction as directed in the section, regardless of whether the George Kilpatrick Dam remains in place and moneys so appropriated may be used only for the purposes expressed in this section. Furthermore, funds made available in the General Appropriations Act for FY 2001-2002 for sediment management and studies at the George Kirkpatrick Dam may only be expended for such purposes if funds made available in the General Appropriations Act for FY 2001-2002 for the construction activities authorized in this section are also expended.

**Section 3.** The act takes effect upon becoming a 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 bill has no immediate fiscal impact, although provisions directing the DSL to determine landowners that desire to sell their easements could provide future benefits, if the DEP should elect to acquire them.

**C. Government Sector Impact:**

Although there is no funding provided in the bill, the DEP is directed to construct restroom facilities, a paved parking lot, small spectator bleachers, boat ramps and a covered pavilion near the old Oklawaha River bed. It appears that SB 2000, the Senate Appropriations Act, contains \$1.5 million for these developments at the Reserve. Senate Bill 2000 is also expected to provide at least \$800,000 for studies relating to the nitrates in sediments at the dam. This bill links the two appropriations, specifying that funds for the sediment studies may only be expended if the construction funding is expended for the purposes set out in the bill.

While the bill charges the DRP with the duty of providing for the development of multipurpose recreational opportunities...and the care, upkeep, maintenance, and beautification of the Reserve, it does not specify the nature or amount of such development. The DEP is concerned that there may be presently unknown costs relating to the reservoir's aging structures. There would also be undetermined costs to the DSL for the required report. While the DRP typically charges entrance fees at its parks, and could do so at the Reserve, revenues from this source cannot be determined at this time.

In researching a recent interim project entitled *Review of Funding Needs For Proper Management of Conservation and Recreation Lands and the Management Practices for All State-Owned Lands* staff determined that land managing agencies have total unmet needs of approximately \$440 million, if adopted management plans were to be fully implemented. This indicates that most, if not all, plans for conservation and recreation lands contain proposed development that is unlikely to be implemented in the short-term, yet the lands are providing significant recreational opportunities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Comprehensive Planning, Local & Military Affairs:

Changes the construction location of restrooms, a paved parking lot, spectator bleachers, boat ramps and a covered pavilion from that part of the Rodman Reservoir that is considered to be the old river bed of the Oklawaha River to that part of Rodman Reservoir that is located on the eastern shore of Lake Oklawaha, between the barge canal channel and the George Kirkpatrick

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Dam. In addition, the sediment management studies authorized by the bill, and any related appropriations, may not be used or expended for the breaching of the George Kirkpatrick Dam. Any drawdowns necessary to carry out the sediment management study must be minimized to the greatest extent possible and the level of the reservoir as it existed prior to any drawdowns must be restored as expeditiously as possible.

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

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