

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 1524

SPONSOR: Senator Constantine

SUBJECT: Water Management

DATE: March 28, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the Comprehensive Everglades Restoration Plan Regulation Act (ACT), providing an expedited permitting program for project components of the Comprehensive Everglades Restoration Plan (CERP). The bill authorizes the use of state funds for land purchases contained in the Florida Forever Water Management District Work Plan and revises the due date for the annual comprehensive plan report. It provides standards for permitting of construction, operation, and maintenance of facilities in the South Florida ecosystem.

This bill creates s. 373.1502, F.S., and amends ss. 373.026, 373.470, and 403.088, F.S.

II. Present Situation:

The Comprehensive Everglades Restoration Plan (CERP) is a joint effort by the State of Florida and the U.S. Army Corps of Engineers (Corps) intended to restore, protect, and preserve the water resources of the central and southern Florida ecosystem. The project consists of more than 60 project components intended to be implemented over a period of approximately 40 years. A 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.

Pursuant to s. 373.1501, F.S., South Florida Water Management District (SFWMD) has been designated the local sponsor for the CERP and a process for review and approval of project components was established. The CERP is still somewhat conceptual at this time, although a sequence for implementing project components has been established and may be revised. The SFWMD is concerned that the current procedures for issuance of permits for project components, which allow for interventions by third parties, could delay the sequenced implementation of project components.

In implementing the Everglades Forever Act there was a concern that third party objections to permits for stormwater treatment areas (STAs) could delay the Everglades Construction Project unduly. To prevent this and still maintain environmental protection, the 1999 Legislature enacted s. 403.088(2)(g), F.S., which provides:

The Legislature finds that the restoration of the Everglades Protection Area, including the construction, operation, and maintenance of stormwater treatment areas (STAs) is in the public interest. Accordingly, whenever a facility to be constructed, operated, or maintained in accordance with s. 373.4592 is subjected to permitting requirements pursuant to chapter 373 or this chapter, and the issuance of the initial permit for a new source, a new discharger, or a recommending discharger is subjected to a request for hearing pursuant to s. 120.569 the administrative law judge may, upon motion by the permittee, issue a recommended order to the secretary who, within 5 days, shall issue an order authorizing the interim construction, operation, and maintenance of the facility if it complies with all uncontested conditions of the proposed permit and all other conditions recommended by the administrative law judge during the period until the final agency action on the permit.

1. An order authorizing such interim construction, operation, and maintenance shall be granted if requested by motion and no party opposes it.
2. If a party to the administrative hearing pursuant to ss. 120.569 and 120.57 opposes the motion, the administrative law judge shall issue a recommended order granting the motion if the administrative law judge finds that:
 - a. The facility is likely to receive the permit; and
 - b. The environment will not be irreparably harmed by the construction, operation, or maintenance of the facility pending final agency action on the permit.
3. Prior to granting a contested motion for interim construction, operation, or maintenance of a facility authorized by s. 373.4592 the administrative law judge shall conduct a hearing using the summary hearing process defined in s. 120.574 which shall be mandatory for motions made pursuant to this paragraph. Notwithstanding the provisions of s. 120.574(1) summary hearing proceedings for these facilities shall begin within 30 days of the motion made by the permittee. Within 15 days of the conclusion of the summary proceeding, the administrative law judge shall issue a recommended order either denying or approving interim construction, operation, or maintenance of the facility, which shall be submitted to the secretary who shall within 5 days thereafter, enter an order granting or denying interim construction operation on maintenance of the facility. The order shall remain in effect until final agency action is taken on the permit.

The 2000 Legislature, in order to address similar concerns about permits for construction activities in implementing the Lake Okeechobee Protection Program, enacted s. 373.4595(4)(b), F.S., which permits such construction activities to be initiated prior to final agency action or notice of intended agency action.

III. Effect of Proposed Changes:

Section 1. Section 373.1502, F.S., is created to provide for the “Comprehensive Everglades Restoration Plan Regulation Act” (ACT). The section provides a legislative finding that implementation of the CERP is in the public interest and is necessary for restoring, preserving, and protecting the South Florida ecosystem, providing for the protection of water quality in and the reduction of the loss of fresh water from the Everglades, and providing such features as are necessary to meet the other water-related needs of the region, including flood control, the enhancement of water supplies, and other objectives served by the project. It also provides legislative intent to provide efficient and effective permitting of CERP project components, taking into account all other statutory responsibilities the Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) are required to consider.

The expedited permitting program established pursuant to s. 373.1502(3), F.S., will apply to all project components, as defined in s. 373.1501, identified in the CERP unless the project component is otherwise subject to ss. 373.4592, F.S., 373.4595, F.S., or the DEP’s rules on reuse of reclaimed water. Permits issued under s. 373.1502(3), F.S., are in lieu of all other permits required under chapters 373 and 403, F.S., except for permits issued under any delegated or approved federal program.

These provisions require the DEP to issue a five-year permit for the construction, operation, modification, or maintenance of a project component based on the criteria set forth in s. 373.1502, F.S. If the DEP is the entity responsible for the construction, operation, modification, or maintenance of any individual project component, the SFWMD will issue a five-year permit based on the criteria set forth in s. 373.1502, F.S. The permit application must provide reasonable assurance that:

- The project component will achieve the design objectives set forth in the detailed design documents submitted as part of the application.
- State water quality standards will be met to the maximum extent practicable. Under no circumstances may the project component cause or contribute to violation of state water quality standards.
- Discharges from the project component will not pose a serious danger to public health, safety, or welfare.
- Any impacts to wetlands or threatened or endangered species resulting from implementation of the project component will be avoided or minimized and mitigated as appropriate.

The bill allows construction activities for CERP project components to be initiated upon submission of a permit application and completion of the DEP’s approval under s. 373.1501, F.S., but before final agency action or notice of intended agency action. However, a permit must be obtained before the commencement or modification of operation.

Permits issued under the program must contain reasonable conditions to ensure that water quality resulting from construction and operation of project components is adequately and accurately monitored. Such permits also may:

- Authorize construction, operation, modification, and maintenance of individual or multiple project components under a single permit;
- Include any standard conditions provided by DEP rule which are appropriate and consistent with s. 373.1502(3), F.S.; or
- Establish reporting requirements that are consolidated with other reports if all reporting requirements are met.

The bill requires the permitting entity to charge a processing fee in an amount sufficient to cover the costs of reviewing and acting upon any application for a permit and to cover the costs of surveillance associated with any permit issued under s. 373.1502, F.S.

At least 60 days before the expiration of any permit issued under s. 373.1502(3), F.S., the bill authorizes a permittee to apply for a renewal for an additional 5 years. Such submittals will be considered timely and sufficient under s. 120.60(4), F.S. Such permits may be modified upon review and approval by the DEP or SFWMD, as appropriate.

Section 2. Section 373.026(8)(c), F.S., is amended to authorize the use of state funds for land acquisitions from willing sellers for projects within the SFWMD's approved Florida Forever Water Management District Work Plan, required pursuant to s. 373.199, F.S.

Section 3. Section 373.470(7), F.S., is amended to change the date, from November 30 to January 31, for the annual submission to the Governor and Legislature of a report by the SFWMD and the DEP on activities conducted pursuant to the Everglades Restoration Investment Act.

Section 4. Section 403.088(2)(g), F.S., is amended to expand a Legislative finding that the restoration of the Everglades Protection Area is in the public interest to include the South Florida ecosystem. The changes also include permitting under ss. 373.1501, 373.1502, and 373.4595, F.S., to use the expedited procedures currently available for permits for facilities authorized pursuant to s. 373.4592, F.S., the Everglades Forever Act.

Section 5. The act will take 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:**

The bill requires a permitting entity to charge a processing fee in an amount sufficient to cover the costs of reviewing and acting upon any application for a permit under s. 373.1502, F.S., and to cover the costs of surveillance associated with any permit issued under s. 373.1502, F.S. The amount of such fees cannot be determined at this time, and presumably would vary from one project component to another. Depending on the amount and nature of surveillance, some fees could be quite high. At this time it appears that only governmental entities would be subject to such fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Governmental entities would be subject to permit fees that cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.