

STORAGE NAME: h1603.ric.doc
DATE: April 16, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: HB 1603

RELATING TO: Comprehensive Everglades Restoration Plan

SPONSOR(S): Representative(s) Mayfield, Attkisson, Diaz-Balart, Cantens, Lacasa, and others

TIED BILL(S):

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
 - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 12 NAYS 0
 - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 17 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The bill provides for expedited permitting of project components that are included in the Comprehensive Everglades Restoration Plan (CERP) resulting from the Comprehensive Review, or Restudy, of the Central and Southern Florida Project. It also establishes an administrative procedure that allows for interim construction, operation, or maintenance of a CERP project component while a permit is under administrative challenge.

The bill also requires the South Florida Water Management District (District) to report on the estimated costs of CERP project components once they are approved by the Department of Environmental Protection (Department). The Joint Legislative Committee on Everglades Oversight is given the responsibility of reviewing requests for state funds needed to implement CERP project components and to make recommendations to the appropriations and substantive legislative committees with jurisdiction over the Department. The bill also changes from November 30 to January 31 the date on which an annual CERP progress report must be submitted.

The bill also adjusts the existing boundaries of the Miami-Dade County Lake Belt Area to remove a small area that is currently designated for "non-mining land uses" in the Phase II Lake Belt plan.

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

On March 4, 2001, the Committee on Natural Resources and Environmental Protection adopted a "strike everything" amendment to HB 1603. The amendment, which is traveling with the bill, is explained in the "Amendments or Committee Substitute Changes" section of the analysis.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. 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 the 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 struck Miami and Lake Okeechobee that was responsible for 200 deaths and 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.

Due to the sequential experiences of extreme drought and extreme flooding, coupled with increasing saltwater intrusion and growing concerns regarding water supply, the need for more comprehensive water management strategies became apparent. The Corps completed a flood control plan 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 South Florida Water Management District (District), to serve as the local sponsor for the C&SF Project.

The Restudy and the Comprehensive Everglades Restoration Plan (CERP). 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 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. In July 1999, the feasibility phase of the Restudy was completed with submission of the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement" to the U.S. Congress. The final feasibility included a recommended comprehensive plan that was designated in the 2000 Water Resources and Development Act as the Comprehensive Everglades Restoration Plan (CERP).

State Oversight of the Restudy. The 1999 Legislature enacted Ch. 99-143, Laws of Florida, to support and facilitate the District's efforts in the Restudy, to ensure effective state oversight of project components resulting from the Restudy, and to ensure that implementation of these project components is consistent with state law. Among the specific provisions of Ch. 99-143, L.O.F.:

- The District is specifically authorized to serve as local sponsor for the Restudy;
- Restudy project components are subject to approval by the Department, and as part of the approval process, the Department of Environmental Protection (Department) reviews project components to determine if the District has met specified requirements in developing the components. These requirements relate to: comprehensively addressing applicable water resource issues; efficiency and cost-effectiveness; permissibility; assurances regarding water supply, flood protection, and meeting the needs of the restored natural environment; and coordinating with existing utilities and public infrastructure;
- The Department must submit project components needing state funding as part of the agency budget request to be considered by the Legislature.

The 2000 Legislature enacted the "Everglades Restoration Investment Act" to provide funding to implement the CERP. In order to provide enhanced oversight and accountability, the District and the Department are required to submit by November 30th of each year an annual report that provides detailed information regarding CERP funding and implementation.

Expedited Permitting of South Florida Restoration Projects. Beginning with passage of the Everglades Forever Act (s. 373.4592, F.S.) in 1994, the Legislature has provided for expedited permitting of projects contributing to the restoration of the south Florida ecosystem. Section 373.4592, F.S., provides for a single permit, in lieu of other permits required under Chapters 373 and 403, for projects constructed as part of the Everglades Construction Project (ECP), and that construction on such projects may begin prior to final agency action on the permit application. In 1999, amid concerns that a third party challenge could delay initiation of the operation of an ECP project, the Legislature enacted Ch. 99-11, Laws of Florida to allow for interim construction, operation, or maintenance of an ECP project while a permit is under administrative challenge. The 2000 Legislature created the Lake Okeechobee Protection Program (s. 373.4592, F.S.) and provided for single permits for projects implemented as part of that program; in addition, like ECP projects, construction on these projects may begin prior to final agency action on the permit application.

Miami-Dade County Lake Belt Area. Section 373.4149(3), F.S., delineates the boundaries of the Dade-County Lake Belt Area, an area comprising approximately 77.5 square miles on the western edge of Miami-Dade County. Approximately 50 percent of the land within the area is owned by the mining industry, 25 percent is owned by government agencies, and the remaining 25 percent is owned by non-mining private landowners. Rock mined from the area provides one-half of the limestone used annually in the state. In addition, it is an environmentally sensitive area that buffers the Everglades from the potentially adverse impacts of urban development. It is also the location of the Miami-Dade Northwest Wellfield. In recognition of these attributes, the Legislature established

the Lake Belt Committee to develop a long-term plan for the area. The plan is intended to provide for continued mining, appropriate mitigation for adverse impacts to wetlands, water supply protection, and water management for Everglades restoration through implementation of CERP project components planned for the area.

C. EFFECT OF PROPOSED CHANGES:

CERP Permitting. The bill creates the "Comprehensive Everglades Restoration Plan Regulation Act," providing for expedited permitting of CERP project components. 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, F.S., and identified in the CERP, unless the project component is otherwise subject to ss. 373.4592, F.S. (Everglades Forever Act), 373.4595, F.S. (Lake Okeechobee Protection program), or the Department's rules on reuse of reclaimed water. Permits issued through this new process 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 Department 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 Department is the entity responsible for the construction, operation, modification, or maintenance of any individual project component, the District 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 of CERP project components to be initiated upon submission of a permit application and completion of the approval process 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 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 the permit.

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. Permits may be modified upon review and approval by the DEP or SFWMD, as appropriate.

Interim Construction, Operation, and Maintenance of CERP Project Components. The bill would also allow for interim construction, operation, or maintenance of a CERP project component or Lake Okeechobee Protection Program project while a permit is under administrative challenge. It provides for issuance of an administrative order authorizing the interim activity if an administrative law judge determines that the permit is likely to be issued and the environment will not be harmed.

Legislative Oversight of CERP Funding. The bill requires the District to provide to the Joint Legislative Committee on Everglades Oversight (Joint Committee) information on the schedule and costs of CERP project components approved by the Department. The information is to include a schedule for implementing the project component, its total estimated cost, any existing federal or nonfederal credits, the estimated remaining federal and nonfederal share of costs, and estimate of state funding needed. It also provides a technical clarification as to which lands can be acquired for CERP purposes prior to approval of individual project components.

The bill also requires the Joint Committee to review any request for state funding to implement a CERP project component and provide appropriate recommendations to the fiscal and substantive legislative committees with jurisdiction over the Department. In addition, the bill changes from November 30 to January 31 the date on which an annual CERP progress report is due.

Miami-Dade County Lake Belt Area. The bill makes a minor change to the boundaries of the Lake Belt Area, which has the effect of removing a small area of land. The area to be removed is located on the outer boundary and consists of lands that are privately owned and designated for "non-mining land uses" in the Phase II Lake Belt Plan.

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

D. SECTION-BY-SECTION ANALYSIS:

Please see "Effect of Proposed Changes".

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

III. 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 expend funds, nor does it require counties or municipalities to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties have to raise revenues in the aggregate.

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

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 2001, the Committee on Natural Resources and Environmental Protection adopted a "strike everything" amendment to HB 1603. The amendment conforms the CERP permitting provisions to the Senate bill (SB 1524); modifies the language related to the Joint Committee's review of CERP budget requests to make it clear that it is not an approval process, that recommendations are discretionary, and that it does not modify or delay the legislative budget process; and clarifies permit requirements for Lake Okeechobee protection permits and related exemptions. The Committee then passed HB 1603 as amended.

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VI. SIGNATURES:

COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

W. Ray Scott

Wayne Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Lynn Dixon

Lynn Dixon

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

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