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 54A

SPONSOR: Natural Resources Committee and Senator Dockery

SUBJECT: Environmental and Conservation Lands

DATE: May 20, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.				
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I. Summary:

This bill simplifies land acquisition and land management responsibilities for state and water management district lands purchased and managed under the state's land acquisition programs. Revisions are made to appraisal requirements when the value of a proposed acquisition exceeds $1 million. A 10-year land management planning process for conservation lands, and a 10-year land use planning process for non-conservation lands are established.

The bill authorizes the Division of State Lands (Division) at the Department of Environmental Protection (DEP) to determine the sale price of surplus lands, taking the appraised value of the lands into consideration. Provisions requiring that surplus lands can be purchased by other units of government at no more than the original amount paid by the state or a water management district are eliminated.

The bill requires that the division, with assistance from counties, begin preparing a state inventory identifying all federal lands, and all lands titled in the name of the state, a state agency, a water management district, or a local government on a county-by-county basis. In counties where more than 50 percent of the lands within the county boundary are federal lands, and lands titled in the name of the state, a state agency, or a water management district, lands titled in the name of the state, a state agency, or a water management district may be made available for purchase under certain conditions.

The bill creates a new process to expedite surplus land requests made by local governments, and a new process for the exchange of donated state lands to local governments, including a requirement that the exchange provides an equal conservation benefit to the state. Finally, the bill requires that the Board of Trustees of the Internal Improvement Trust Fund (Board) execute land exchange agreements under certain conditions.

The bill reaffirms the state's commitment to funding Everglades restoration by reenacting provisions of law enacted during the 2002 Regular Session authorizing the issuance of bonds for Everglades restoration.

Finally, this bill revises the Everglades Forever Act, which was amended during the 2003 Regular Session, when chapter 2003-12, Laws of Florida, was enacted, to remove all references to the phrases "earliest practicable date" and "maximum extent practicable", and to clarify that moderating provisions, if adopted in the phosphorus rule, will not extend beyond the 2016 deadline for implementing the initial phase of the Long-Term Plan.

This bill substantially amends ss. 253.025, 253.034, 253.042, 253.7823, 259.032, 259.0322, 259.036, 259.041, 373.089, 373.139, 373.59, 373.5905, 260.016, and 373.4592, Florida Statutes. This bill reenacts ss. 201.15 (1), (2)(a), (11) and (12); 215.619; 373.470 (4), (5), and (6); and 373.472(1), Florida Statutes. This bill creates s. 253.0341, Florida Statutes, and repeals ss. 253.84, and 259.0345, Florida Statutes. This bill reenacts s. 6 of chapter 2002-261, Laws of Florida.

II. Present Situation:

Chapter 253, F.S.

Chapter 253, F.S., is entitled "State Lands" and establishes that pursuant to the provisions of s. 7, Art. II, and s. 11, Art. X, of the State Constitution, all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund are held in trust for the use and benefit of the people of the state. The Department of Environmental Protection (department) is required to perform staff duties and functions related to the acquisition, administration, and disposition of state lands. This responsibility is assigned by the department to the Division of State Lands.

Restrictions on the sale, transfer, or disposal of state lands are established in Chapter 253, F.S. Land acquisition procedures for voluntary negotiated acquisitions are provided, including appraisal requirements, evidence of marketability of title, public records exemptions, conveyance requirements, and the authority of the Board to deed state-owned property to other state agencies such as the Department of Agriculture & Consumer Services, the Department of Corrections, or the Department of Juvenile Justice.

Chapter 253, F.S., also provides for the emergency acquisition of lands, and establishes provisions relating to the administration, management, and disposition of state-owned lands, as well as the use of state-owned lands. Requirements governing the disposal of conservation and nonconservation state-owned lands through the state's surplus lands process are provided in s. 253.034, F.S.

Chapter 253, F.S., contains requirements for land management plans for state agencies or managing entities of state-owned lands. For conservation lands, management plans must be submitted at least every 5 years, and must be approved by the Board after review by the Acquisition & Restoration Council and the division.

Chapter 259, F.S.

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation". This chapter contains Florida's nationally known land acquisition programs, the Conservation and Recreation Lands Program (CARL), the Preservation 2000 Program (P2000), and the Florida Forever Program.

Chapter 259, F.S., establishes the purposes for which state-owned lands will be managed including providing the greatest benefit to the public, providing outdoor recreational opportunities, and especially, management for the purposes for which the land was acquired. The Board must adopt a management prospectus for each acquisition project, and can designate an agency or agencies as the lead manager. Advisory groups to assist in the development of management plans authorized in chapter 253, F.S., are created in chapter 259, F.S. The distribution of funds provided for land management purposes are restricted for agencies with overdue land management plans.

The Florida Forever Advisory Council is created in chapter 259, F.S., and consists of seven residents appointed by the Governor, with the responsibility of making recommendations on the distribution of funds under the Florida Forever Program. The report must be submitted to the Secretary of the department, who must in turn forward it to the Board for approval.

The Acquisition & Restoration Council is also created in chapter 259, F.S., and consists of nine voting members, four of whom are appointed by the Governor, and five of whom are designees of the state agencies receiving funds under the state's land acquisition programs. The council provides the Board with assistance in reviewing land management plans, but the primary purpose of the Council is to competitively evaluate, select, and rank projects eligible for funding under CARL, P2000 or Florida Forever.

The department is authorized to create regional land management review teams to determine if conservation lands are being managed and used for the purposes for which they were acquired. The review is submitted to the managing agency, to the division, to the Land Acquisition and Management Advisory Council, or its successor, and must be used by the managing agency in finalizing the 5-year update to a land management plan authorized in chapter 253, F.S. The Land Management Uniform Accounting Council is created within the department with the purpose of reporting on agency's land management expenditures, as provided in chapter 253, F.S.

Requirements for voluntary negotiated acquisitions for conservation, preservation, and recreation lands purchased by the state are created in chapter 259, F.S., and mirror the acquisition requirements of chapter 253, F.S.

History of the Everglades

When Florida became a state in 1845, the Everglades covered approximately four million acres of the state. Massive sheets of fresh water moved from Orlando to the tip of the Keys. Now, more than half of the Everglades have disappeared. Water which should have gone into the Everglades has been diverted and removed. The Everglades has been drained, diked, channeled,

filled, farmed and homesteaded.[1] From Palm Beach County south through Miami, the once pristine "River of Grass" is now home to the largest portion of Florida's population. Immediately south of Lake Okeechobee is the Everglades Agricultural Area with more than 400,000 acres in production.

The EAA was created in 1948 by the Central & Southern Flood Control Project authorized to provide flood control for 700,000 acres of lands. The project, a system of more than 1,700 miles of canals and levees with sixteen major pumping stations, severely disrupted the flow of water into the Everglades.[2] The EAA is home to Florida's sugar industry and produces 40 percent of the winter vegetable crop for the entire country[3]. Historically, runoff from the EAA contained high concentrations of phosphorus, but rapid urban growth on the east and west coasts of the state are additional sources of pollution.

Case No. 88-1886 (United States v South Florida Water Management District)

In 1988, the U.S. Attorney for the Southern District of Florida sued the South Florida Water Management District and the State of Florida for violating state water quality standards in the Everglades National Park and the Loxahatchee National Wildlife Refuge. The suit was the result of water discharges from agricultural and urban areas that contained high levels of nutrients, especially phosphorus. In 1992, all parties to the lawsuit entered into a Settlement Agreement which the Court consented.

The "Marjorie Stoneman Douglas Act" a/k/a Everglades Protection Act (1991)

The "Marjorie Stoneman Douglas Everglades Protection Act", Chapter 91-80, Laws of Florida, was enacted during the 1991 Regular Session. The purpose of the Act was to provide for an Everglades Surface Water Improvement and Management (SWIM) Plan, and to provide strategies, programs, and projects for the restoration and protection of water quality in the Everglades.

The SFWMD was required to adopt an Everglades SWIM Plan that included the following:

1. Strategies for developing programs and projects to bring facilities into compliance with applicable water quality standards.
2. Restore the Everglades hydroperiod.
3. Identify and acquire lands for the purpose of water treatment or the implementation of stormwater management systems.
4. Develop funding mechanisms.
5. Develop a water discharge permitting system.

The governing board of the SFWMD was given eminent domain authority to acquire lands or easements for the limited purpose of implementing stormwater management systems. The District was provided with the ability to adopt stormwater utility fees, and the authority to levy a per acre ad valorem assessment in the Everglades Agricultural Area. Both the District and DEP were required to develop a permitting program. The District was required to apply for 5-year

[1] Final Bill Analysis & Economic Impact Statements for CS/CS/SB 1350, prepared by the Committee on Natural Resources, Florida House of Representatives, April 1994

[2] *"Who Drained the Everglades? The Same Folks Who Are Now Restoring Them"*, Landry, Clay J., March 2002

[3] "Everglades Agricultural Area", www.nova.edu/ocean/eglades/sum00/eaa2.html

interim permits for the construction, operation, and maintenance of stormwater management areas for district structures discharging into or within the Everglades Protection Area.

Federal Settlement Agreement (1992)

The federal Settlement Agreement provided interim and long-term phosphorus concentration limits for the Everglades National Park and the Loxahatchee National Wildlife Refuge. The Agreement required that inflows to the Refuge must result in compliance with Class III water quality criteria, or long-term concentration levels, whichever were lower, by July 1, 2002. The Agreement required that research and monitoring must be performed to interpret what phosphorus concentration levels did comply with Class III water quality criteria. The Agreement provided that the Stormwater Treatment Areas and best management practices programs were to be designed to limit discharge concentration flow to the Refuge to a long-term average of 50 parts per billion.

If interim limits were not being met at the appropriate effective dates, the Florida Department of Environmental Regulation (now DEP) was directed to require compliance. If the long-term limits were not being met, the department was required to enforce more stringent discharge limits. The quantity, distribution, and timing of water flow to the Park and the Refuge had to be sufficient for maintaining and restoring the full abundance and diversity of the native flora and faunal communities throughout the Park and Refuge.

The South Florida Water Management District committed to purchasing, designing, and constructing four Stormwater Treatment Areas on 32,600 treatment acres of lands with the primary strategy of removing nutrients from agricultural runoff. Primary agricultural drainage canals would flow directly to the Areas where large scale wetland treatment systems would process it for removal of nutrients.

The Regulatory Program created in the Settlement Agreement established a goal of reducing phosphorus loads from the EAA to each Stormwater Treatment Area by at least 25 percent by February 1996. An interim target goal of 10 percent had to be reached by February 1994. The SFWMD had to adopt rules to implement the Regulatory Program by April 1992, and the rules were scheduled to be effective in May 1992. In the Consent to the Settlement, the Judge determined that the Settlement Agreement was not self-executing but was subject to the state's Administrative Procedures Act, providing access for any person with interests that were or could be substantially affected by agency action.

Statement of Principles (1993)[4]

In July of 1993, the United States Department of the Interior; the SFWMD; US Sugar Corporation; South Bay Growers, Inc.; and Flo-Sun, Inc., executed a Statement of Principles in which all parties pledged to "inaugurate an unprecedented new partnership, joining the Federal and State governments with the agricultural industry of South Florida, to restore natural values to the Everglades while also maintaining agriculture as part of a robust regional economy."

The parties agreed to the following **Management Principles**:

[4] *Statement of Principles"*, July 1993 (http://exchange.law.miami.edu/everglades/litigation/state_agency/state_administrative/doc)

1. Continued discussions on a Technical Plan developed by experts to improve the quality of water reaching the Everglades, and to address sheet flow and hydroperiod restoration.
2. A commitment to implement the Technical Plan through the acquisition and establishment of flow-through filtration marshes, construction of works, and other activities to immediately reduce phosphorus entering the Refuge and portions of the Miccosukee Indians' tribal lands.
3. Reduced phosphorus outputs achieved through best management practices implemented over a 20-year period, and based on performance as well as the development of new technology to improve effectiveness.

The parties also agreed to the following **Financial Principles**:

1. All parties contemplated financial contributions, and committed to seeking legislative approval where necessary.
2. Agriculture in the EAA agreed to contribute $322 million over 20 years to fund the construction, research, monitoring, operation and maintenance, and other incidental costs. Credits against contributions were provided for reaching targeted phosphorus reduction goals with a 30 percent reduction in the first year, a 45 percent reduction in year 13 and thereafter. In any case, the financial contribution would not fall below $11.625 million in any year.
3. The State of Florida, through DEP, committed to pursuing state funding through P2000 ($33 million), the State Land Exchange proceeds ($30 million), and the FPL mitigation fund ($14 million).
4. The SFWMD agreed to vote on increasing the millage rate in the Okeechobee Basin to .10 mill to generate just under $22 million each year.
5. The federal government agreed to pursue the C-51 flood control project, modified to include measures to provide additional water to the Everglades, at a cost of approximately $107 million.

Everglades Forever Act (1994)

The 1994 Legislature enacted the "Everglades Forever Act" as Chapter 94-115, Laws of Florida, in an attempt to end the lawsuits filed as a result of the federal Settlement Agreement, and the administrative appeals filed as a result of the passage of the Everglades Protection Act. It is this Act that established legislative findings that restoration of the Everglades was not proceeding as timely as was necessary, and it is this Act that is the framework of the Everglades restoration efforts today.

The Everglades Forever Act requires the following:

1. Implementation of the Everglades Construction Project by the SFWMD through the construction of six Stormwater Treatment Areas according to a statutory schedule, with a 28 percent increase in the average annual water supply to the Everglades Protection Area.
2. Monitoring and research programs in the EAA conducted by DEP and the District.
3. Research by DEP and the District to propose a numerical Class III phosphorus standard in the EPA, with adoption of a rule by December 31, 2003.
4. A default numerical Class III phosphorus standard of 10 ppb if a rule is not adopted by December 31, 2003**.**
5. Creation of the agricultural privilege tax in the C-139 Basin and the EAA.
6. District use of 30 percent of P2000 funds to implement the Everglades Construction Project, and use of a portion of the Alligator Alley toll proceeds to restore the Everglades.

7. By December 31, 2006, the DEP and the District must take necessary action to ensure that water delivered to the Everglades Protection Area achieves state water quality standards, including phosphorus criterion, in all parts of the Everglades Protection Area.

Modifications to Federal Settlement Agreement (1995)[5]

In 1995, the parties in the federal case asked the Court to modify the Settlement Agreement based on the following issues:

1. The Settlement Agreement was not self-executing because it provided remedial measures for final development, promulgation, and implementation through the state administrative process.
2. On March 12, 1993, the Everglades SWIM Plan, providing Stormwater Treatment Areas as the other major component to restore the Everglades, was approved by the SFWMD, and the permit was issued by DEP.
3. The Settlement Agreement, the SWIM Plan, and the DEP Permit were all challenged. Only the BMP rule challenge was resolved through litigation. The SWIM Plan and the DEP Permit challenges were unresolved until passage of the Everglades Forever Act.
4. The SWIM Plan challenge, started in June of 1992, had fifteen parties. Through a mediation process, the parties developed an enhanced stormwater treatment area program known as the Technical Plan. Although the Statement of Principles was executed in July 1993, mediation broke down later in the year, and the trial was scheduled to start when the Legislature enacted the Everglades Forever Act with a December 31, 2006, deadline.

The Modified Settlement Agreement, approved by an Omnibus Order entered in April 2001[6], included these two primary issues:

1. The establishment of two additional Stormwater Treatment Areas by the District, and an extension of the 2002 deadline to reach long-term phosphorus concentration limits in the Refuge and the Park to December 31, 2006.
2. A commitment by the federal government to secure funding for a portion of the construction costs of STA 1E, to be completed in conjunction with the C-51 flood control project.

Approval of the modified settlement was delayed due to an action filed by the Miccosukee Tribe to enforce the original settlement agreement.

DEP's Current Surface Water Quality Standards (chapter 62-302, F.A.C.)

Chapter 62-302, F.A.C., contains the current rules that govern surface water quality in Florida, and establishes that department rules regarding water quality standards are designed to protect the public health or welfare, and enhance the quality of the waters of the state. All surface waters have been classified according to designated uses. Class I surface waters are designated for potable water supply. Class II waters are classified for shellfish propagation or harvesting. Class III surface waters are designed for recreation, and propagation and maintenance of a healthy, well-balanced population of fish and wildlife. The Everglades Protection Area contains both Class II and Class III waters.

[5] United States v. SFWMD, No. 88-1886, Memorandum in Support of the Settling Parties' Joint Motion for Approval of Modifications to the Settlement Agreement Entered As a Consent Decree (1995)
[6] United States v. SFWMD, Omnibus Order (2001)

Surface water quality criteria are both numeric and narrative, except within zones of mixing. **In 62-302.530, F.A.C., the criteria for nutrients, which includes phosphorus, is a "narrative" criteria: "In no case shall nutrient concentrations of a water body be altered so as to cause an imbalance in natural populations of aquatic flora or fauna."** However, pursuant to statutory requirements, the department is proposing a rule for adoption by the Environmental Regulation Commission that contains a **numeric criterion** for phosphorus limits in Class III waters.

DEP's Proposed Rule to Establish A Long-Term Geometric Numeric Phosphorus Criterion of 10 ppb for Class III waters in the EPA

In July 2001, the DEP published a Notice of Proposed Rule Development to implement statutory requirements that the department establish a numeric phosphorus criterion for Class III waters in the Everglades Protection Area. The rule proposed by the DEP, to be adopted by the Environmental Regulation Commission, established a long-term geometric mean of 10 ppb as the numeric phosphorus criterion for Class III waters in the EPA.[7]

The proposed rule also contained the following:

1. Findings that BMPs reduced phosphorus loads from the EAA to the EPA by more than twice the amount required by existing rules; that the STAs reduced phosphorus concentrations to less than 35 ppb, **exceeding the 50 ppb goal established in the Everglades Forever Act and the federal Settlement Agreement;** and that further efforts are necessary to achieve phosphorus reduction criteria.
2. Conclusions by the DEP that optimization of the existing STAs and BMPs is currently the most cost-effective and environmentally preferable means to achieve further phosphorus reduction in the EFA, **and should be exhausted before expanding the size of the STAs.**
3. Implementation of **Best Available Phosphorus Reduction Technology (BAPRT) will result in net improvement in the impacted areas of the EPA.**
4. CERP contains projects affecting the flows and phosphorus levels entering the EPA, and the DEP and the District are coordinating water quality improvement measures with CERP projects.
5. Moderating provisions for discharges into or within the EPA for measures such as net improvement in impacted areas and hydro pattern restoration.
6. The use of BAPRT to achieve and maintain compliance with numeric criterion, and to develop and implement maximum incremental phosphorus reduction measures. Implementation of BAPRT was recommended for an initial phase through 2016, and a second phase through 2026.
7. Requirements for Long-Term Compliance Permits for phosphorus discharges into the EPA.

The proposed rule was scheduled for adoption by the Commission on April 24-25, 2003, but has been postponed until the 2003 Regular Session has been concluded.

[7] Proposed Rulemaking "Water Quality Standards Within the Everglades Protection Area (EPA),", at 62-302.540, F.A.C. (March 2003)

Miccosukee Tribe Water Quality Standards

Pursuant to the Clean Water Act and corresponding federal regulations, the Miccosukee Tribe established its own water quality standards, including a numeric criterion for phosphorus, ruling that total phosphorus must not exceed 10 ppb.[8] The US Environmental Protection Agency approved the Tribe standards in 1998, and specifically concluded that the phosphorus criterion was not overly protective, met Clean Water Act requirements, and was scientifically defensible.[9] However, the 10 ppb standard does not apply on all tribal lands and on those where it does apply, moderating provisions also apply. On some agriculture, commercial, and residential developments, the Tribe adopted a narrative criterion for phosphorus.[10]

2003 Everglades Consolidated Report

On January 1, 2003, the SFWMD released the "2003 Everglades Consolidated Report" developed to provide updated information on the programs and permits which make up the Everglades Forever Act. The Report indicates that the Everglades water quality generally meets the state numeric criteria, and the recovery from the 2000-2001 drought resulted in lower phosphorus concentrations over much of the EPA. Phosphorus loads from the EAA have been reduced to a greater extent than what is required in the Everglades Forever Act. Four of the six Stormwater Treatment Areas are fully operational, and the remaining two will be completed by October 2003. Together, BMPs and the STAs have prevented more than 1,300 metric tons of phosphorus from entering the Everglades Protection Area.[11]

With regard to phosphorus criterion, the 2003 Report states that "a numeric phosphorus criterion of 10 ppb measured as a long-term geometric mean would be protective of the natural flora and fauna of the Everglades" and that "adoption of a 10 ppb phosphorus criterion is further supported by the comprehensive literature review conducted by the United States EPA during its evaluation of the Miccosukee Tribe's proposed 10 ppb criterion." The Report goes on to say that "the Department's evaluation of the results of the Duke University Wetland Center Everglades dosing study clearly indicates that the center's recommended 15.6 ppb criterion would not be adequately protective of the natural flora and fauna".[12]

In Chapter 5: Development of Numeric P Criterion, the Report goes on to say that phosphorus criterion is achieved if "the annual geometric mean of measured total phosphorus concentrations for that station during the year does not exceed 15 ppb, and the arithmetic average of the annual geometric mean…. during the five-year period encompassing that year and the previous four years is maintained at or below 10 ppb criterion."[13] The upper annual concentration limit of 15 ppb takes into account uncontrollable factors such as water depth, rainfall, sediment type, vegetation type, hydrology, fire, and climate changes.

[8] Miccosukee Tribe of Indians of Florida, Water Quality Standards (Adopted December 19, 1997)
[9] Dan Schedit, Memorandum to Robert McGhee entitled "Numeric phosphorus water quality criterion for the Everglades as adopted by the Miccosukee Tribe of Indians of Florida for Class II-A Waters." (May 20, 1999)
[10] Rizzardi, Keith, "*Translating Science Into Law: Phosphorus Standards in the Everglades"*, Journal of Land Use & Environmental Law, Vol. 17, Fall 2001, No. 1
[11] 2003 Everglades Consolidated Report 2, 3
[12] 2003 Everglades Consolidated Report, 19
[13] 2003 Everglades Consolidated Report, 5-3

Final Report of the Peer Review Panel Concerning the Draft 2003 Everglades Consolidated Report (submitted October 2002)[14]

The Everglades Consolidated Report is reviewed by a Peer Review Panel with the task of determining if appropriate scientific models and applications were used, along with all relevant data, and to determine if the Report presented a logical consequence of science and data. For the 2003 Report, the Peer Review Panel determined the following:

1. While scientific evidence supports a 10 ppb standard, it does not support that 10 ppb is the only protective standard. It also does not support that the 10 ppb is appropriate throughout the entire Everglades Protection Area.
2. The application of a uniform phosphorus criterion across the Everglades may not provide necessary patterns of variability.

Long-Term Plan

The "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report," dated March 17, 2003, was prepared by Burns & McDonnell for the South Florida Water Management District. The Conceptual Plan examined the progress made in reducing phosphorus levels discharged into the Everglades Protection Area through implementation of the Everglades Construction Project as mandated in the Everglades Forever Act, and found that while efforts have exceeded expectations, additional work is necessary before the goal of 10 ppb can be reached. The Conceptual Plan recommended a planning horizon from 2003-2016.

On March 12, 2003, the District Governing Board endorsed the Conceptual Plan and the goal of achieving the proposed Everglades phosphorus criterion of 10 ppb consistent with associated natural variability, but made two modifications:

1. The Plan objective was changed to "obtain through optimization, **to the maximum extent practicable,** a predicted long term geometric mean phosphorus concentration in discharges to the Everglades Protection Area that is within the upper annual concentration limit of the criterion as calculated by the Department in the 2003 Everglades Consolidation Report"[15] (15 ppb).
2. The Governing Board directed staff to implement a second 10-year phase (2017-2026) of continuous improvement in phosphorus reduction as necessary to meet the plan objective. No later than December 2013, updated project scopes, cost estimates, and implementation schedules are to be developed to cover the second 10-year phase.

The Governing Board expressed the need for legislative review and ratification of the Conceptual Plan which contains a consensus approach developed by technical representatives of the District, the DEP, the U.S. Department of the Interior, the EAA Environmental Protection District, and other stakeholders.

The Long-Term Plan has three components:

[14] Final Report of the Peer Review Panel Concerning the 2003 Everglades Consolidated Report 10, 33

[15] Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals, Executive Summary 5

1. Pre-2006 Projects: Structural and operational modifications that can be supported by the current scientific and engineering knowledge base, to be implemented wherever practicable, by December 31, 2006, as well as operation, maintenance and monitoring of the STAs. The Board recognized the possibility that the long-term geometric mean total phosphorus concentration of 10 ppb in discharges from the Basins might be met, but also recognized the possibility that it might not.
2. Process Development and Engineering (estimated at $31.2 million): optimizing water quality performance in existing and proposed facilities; integration with CERP, maintaining and improving source controls, and acceleration of the recovery of previously impacted areas in the EPA.
3. Post-2006 (estimated at $36 million): Adaptive implementation of additional water quality improvement measures such as conversion of additional lands to STAs.[16]

Comprehensive Everglades Restoration Plan (CERP)[17]

The CERP is a plan which provides a framework to restore, protect, and preserve the water resources in central and south Florida, including the Everglades, through the capture, storage, and redistribution of water lost to tide, and the regulation of water quality, water quantity, timing and distribution. CERP includes 16 counties, covers more than 18,000 square miles, has at least 60 elements, and is expected to cost at least $8.6 billion over the next 40 years. Major project components include surface water storage reservoirs, water preserve areas, underground water storage, treatment wetlands, wastewater reuse, and improved water conservation.

CERP is funded 50% by the federal government and 50% State and local share. For the first ten years, the State has agreed to provide $100 million annually and the South Florida Water Management District provides funds as the local sponsor for the CERP project.

In the 2002 Regular Session, the Legislature enacted Chapter 2002-261, Laws of Florida, to create a bond program as the funding source to restore the Everglades. Beginning in fiscal year 2002-2003 and continuing for the next seven fiscal years, the Legislature authorized the sale of at least $125 million bonds each year to address specified restoration needs. Bonds may not be issued until debt service has been appropriated, and bond proceeds must be deposited into the Save our Everglades Trust Fund. The SFWMD will continue to use ad valorem revenue to fund the district share, and federal funding is contingent upon congressional appropriations for specific Everglades restoration projects.

Bonds were not sold for the 2002-2003 fiscal year due to lawsuits filed over provisions relating to the administrative procedures act which were amended into the legislation.

"Polluters Pay" Constitutional Provision

In the 1996 General Election, more than 68 percent of persons voting approved the "Polluters Pay" amendment to the State Constitution. The amendment provided that "those in the Everglades Agricultural Area who cause water pollution within the Everglades Protection Area

[16] Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals, Executive Summary 6, 7

[17] Committee Briefing Book, Natural Resources Committee, Florida House of Representatives (Dec. 2002)

or the Everglades Agricultural Area shall be primarily responsible for paying the costs of the abatement of that pollution". (see Art. II, s. 7, Constitution of the State of Florida). The Legislature did not act to implement the provision.

In 1996, then Attorney General Robert Butterworth issued Advisory Opinion 96-92 to the Executive Director of the South Florida Water Management District, which stated that although the Legislature could enact provisions to implement "Polluters Pay", the District had a duty to ensure that polluters in the EAA were primarily responsible for paying the costs of pollution abatement. In March of 1997, then Governor Chiles requested a clarifying Advisory Opinion from the Florida Supreme Court. The Court concluded that the "Polluters Pay" amendment "is not self-executing and cannot be implemented without the aid of legislative enactment because it fails to lay down a sufficient rule of accomplishing its purpose". (Advisory Opinion to the Governor No. 90,042.)

To date, the "Polluters Pay" amendment has not been implemented by the Legislature.

Funding the Everglades Construction Project

The 1994 original project estimates for the Everglades Construction Project were $713 million in revenue from ad valorem taxes, federal, state, and agricultural taxes, with $684.8 million in expenses for construction, operation and maintenance, land acquisition, engineering and federal expenses. The 2002 project estimates are revenues of $863.1 million from agriculture and ad valorem taxes, federal, and state sources, with expenses of $861.1 million. By 2007, expenses will outstrip revenues. The projected shortfall is just over $19 million.

CS/SB 626, 2nd Engrossed (Chapter 2003-12, Laws of Florida)

Chapter 2003-12, Laws of Florida, enacted during the 2003 Regular Session, revised the Everglades Forever Act (EFA). The bill established that the use of a long-term planning process is the best way to ensure that stormwater treatment areas will perform at the optimal levels to achieve the maximum phosphorus reduction practicable.

The bill further established the Legislature's intent that implementation of a long-term plan will be integrated and consistent with the implementation of the Comprehensive Everglades Restoration Program (CERP) to avoid unnecessary and duplicative costs. The use of tax revenues from the Okeechobee Basin ad valorem assessment is expanded, and the agricultural privilege tax in the Everglades Agricultural Area (EAA) was increased from $10 an acre to $25 an acre for a three-year period.

Chapter 2003-12, Laws of Florida, implements the "Polluters Pay" provisions contained in s. 7(b), Art. II, of the State Constitution. The Department of Environmental Protection (DEP) and the South Florida Water Management District (SFWMD) are directed to ensure that discharges of water to the EPA will meet state water quality standards, including phosphorus criterion and moderating provisions, to the maximum extent practicable by December 31, 2006.

The federal government, and other federal agencies in partnership with the state in the Comprehensive Everglades Restoration Plan expressed concerns over the legislation and indicated that the federal funding for CERP, estimated at $4 billion, was in jeopardy.

HB 813, 3rd Engrossed (Chapter 2002-261, Laws of Florida)
During the 2002 Regular Session the Legislature passed and the Governor signed HB 813 (see Chapter 2002-261, Laws of Florida). The legislation had two major provisions.

The first authorized the issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of land, water area, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan, or CERP. These bonds could be issued in fiscal years 2002-03 through 2009-10 and cannot exceed $100 million per fiscal year, unless the DEP has requested additional amounts in order to achieve cost savings or accelerate the purchase of land.

The second provision related to standing under the Administrative Procedures Act and appellate options concerning water management district orders. Specifically the act removed authority from the Florida Land and Water Adjudicatory Commission to review certain orders and rules that have undergone hearings pursuant to the Administrative Procedure Act. With regard to standing, the bill specified that a citizen can only "intervene" in ongoing proceedings. Clarification was further provided to prohibit the initiation of administrative hearings by those individuals whose interests are not substantially affected.

Shortly after becoming law, certain groups challenged the act based on two issues. The first was the potential denial of standing and the other was that the act violated the single subject requirements of the state constitution. A circuit court judge dismissed the petitioners for lack of standing to bring the suit. The court cited that since no denial of standing had occurred, the petitioners were not harmed by the act. The court further found that the act would not violate single subject. The petitioners have since appealed the decision.

Because of the court challenge to the Act, the bonds have not been issued.

III. Effect of Proposed Changes:

Section 1: Amends s. 253.025, F.S., to provide that two appraisals are required when the value of a parcel proposed for acquisition by the state exceeds $1 million. Revises provisions requiring an appraisal by the Division when the parcel being purchased is less than $100,000 to provide that the Division may use a comparable sales analysis or other reasonably prudent process to estimate the value of the parcel so long as the public interest is reasonably protected. Provides that the state is not required to appraise lands and appurtenances being donated to the state.

Section 2: Amends s. 253.034, F.S., to provide that donated state lands are not conservation lands unless they are being managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation purposes under a land management plan approved by the Board. Provides that managers of conservation lands must submit a land management plan every 10 years to the division.

Provides that managers of non-conservation lands must submit a land use plan every 10 years to the Division. Provides that all land use plans must include an analysis of the property to determine if any significant or cultural resources are located on the property. Provides that significant or cultural resources includes archaeological and historic sites, state and federally

listed plant and animal species, and imperiled natural communities with unique natural resources. Provides that land use plans must also detail efforts for the control of invasive non-native plants, and the conservation of soil and water resources, including a plan describing how soil and water contamination will be controlled and prevented.

Authorizes the Division of State Lands to determine the sale price of lands determined to be surplus so long as appraised value is taken into consideration. Deletes provisions requiring that surplus properties be sold to other units of government at no more than the original price paid by the state or a water management district. Authorizes the Board to adopt rules that include procedures for administering surplus land requests, and criteria that allows the Division to approve requests to surplus non-conservation lands.

Requires the Division of State Lands to begin preparing a state inventory of all federal lands, and all lands titled in the name of the state, a state agency, a water management district, or a local government on a county-by-county basis. Requires that counties assist in the development of the state inventory through development of a county inventory identifying all federal lands, and all lands titled in the name of the state, a state agency, a water management district, or a local government.

Provides that in counties where more than 50 percent of the lands within the county boundary are federal lands and lands titled in the name of the state, a state agency, a water management district, or a local government, those lands titled in the name of the state or a state agency may be made available for purchase through the surplusing process at the request of a public or private entity. Provides that lands made available for purchase through this process must not be essential or necessary for conservation purposes. Provides an exemption for rights-of-way for existing, proposed, or anticipated transportation facilities. Provides that priority consideration must be given to purchasers willing to return the property to productive use so long as the property can returned to the ad valorem tax roll. Provides that property purchased with matching funds from a local government cannot be made available for purchase without the consent of the local government.

Section 3: Creates s. 253.0341, F.S., to provide that counties and local governments can submit surplusing requests for state-owned lands directly to the Board of Trustees. Provides that decisions to surplus nonconservation lands may be made by the board without a review or recommendation by the Acquisition and Restoration Council. County and local government requests to surplus nonconservation lands must be considered by the board within 60 days of the Board's receipt of the request.

Provides that county or local government requests to surplus conservation lands are subject to the review of and recommendation by the Acquisition and Restoration Council, and must be considered by the Board within 120 days of the board's receipt of the request to surplus.

Section 4: Amends s. 253.42, F.S., to authorize the Board to exchange all lands titled in the name of the state for lands owned by counties, local governments, individuals, and private or public corporations. Provides that donated nonconservation lands must first be offered to a county or local government if the proposed property use is for a public purpose. In exchanging

conservation lands with a county or local government, the state may request land of equal conservation value but can not request any other consideration.

Provides that when exchanging lands with counties or local governments, other than those which were donated or for which no consideration was paid, the Board may require an exchange of equal value. Provides that equal value can be of equal or greater conservation benefit of the lands being offered for exchange by a county or local government. Provides that such exchanges may include monetary consideration if based on an appropriate measure of value of the state-owned land. Provides that any exchange involving a monetary consideration must also include a determination of a net positive conservation benefit to the state by the Acquisition and Restoration Council.

Section 5: Amends s. 253.7823, F.S., to revise requirements relating to the disposition of former barge canal lands, and to remove obsolete references to payments to counties for barge canal lands.

Section 6: Amends s. 259.032, F.S., to provide that funds not expended for payments-in-lieu of taxes (PILT) may be used by the department for land management instead of land acquisition. Provides that with the assistance of the local government requesting payment-in-lieu of taxes, the state agency that acquired the property is responsible for preparing and submitting application requests for payment to the Department of Revenue.

Section 7: Amends s. 259.0322, F.S., to clarify that the Department of Environmental Protection is authorized to reinstitute payments-in-lieu of taxes to eligible entities if payments had been suspended. Consecutive payments are authorized until the 10-year cap has been reached.

Section 8: Amends. s. 259.036, F.S., to provide that the division must schedule land management reviews at least every 5 years for management areas that exceed 1,000 acres in size. A copy of the review must be provided to the Acquisition & Restoration Council.

Section 9: Amends s. 259.041, F.S., to clarify language establishing the Board's authority to waive requirements or rules relating to the acquisition of state-owned lands for preservation, conservation, or recreation purposes.

Section 10: Amends s. 373.089, F.S., to provide that in any county where more than 50 percent of the lands within the county boundary are federal lands, and lands titled in the name of the state, a state agency, a water management district, or a local government, those lands titled in the name of a water management district which are no longer essential or necessary for conservation purposes may be made eligible for purchase through the water management districts' surplusing process. Provides that priority consideration must be given to public or private buyers willing to return the property to production so long as the property can be returned to the ad valorem tax roll. Provides that property acquired with matching funds from a local government shall not be available for purchase without the consent of the local government.

Section 11: Amends s. 373.139, F.S., to delete obsolete language relating to the acquisition of real property by the water management districts. Revises appraisal requirements to provide that

two appraisals are required when the estimated value of a parcel exceeds $1 million, and provides that for parcels valued at $1 million or less, only one appraisal is required.

Section 12: Amends s. 373.59, F.S., to provide that funds deposited into the Water Management Lands Trust Fund can be used by the water management districts to make PILT payments on property purchased for Everglades restoration, as well as lands purchased under the Preservation 2000 and Florida Forever programs. Provides that with the assistance of the local government requesting payment, the water management district that acquired the land is responsible for preparing and submitting PILT payment application requests to the Department of Revenue.

Section 13: Amends s. 373.5905, F.S., to authorize the water management districts to make additional PILT payments to eligible entities with payments suspended under the current 10-year cap.

Section 14: Amends s. 260.016, F.S., to clarify duties of the department when evaluating lands for the acquisition of greenways and trails to conform with recent rule revisions.

Section 15: Provides that in an exchange of lands contemplated between the Board and a local government, the lands proposed for exchange by the state and the local government are of equal value if the land being offered for exchange by the state is donated property no longer needed for conservation purposes, if the land is no larger than 200 acres, and if the local government and the division have been negotiating a land exchange for at least one year. Provides that the Board must exchange lands with a local government under these provisions no later than August 15, 2003. Provides that the lands conveyed to the local government must be used for a public purpose, or title will revert to the state.

Section 16: Requires that no later than July 1, 2003, the Board of Trustees must complete a land exchange with a private entity for formerly submerged lands, and provides that the exchange satisfies specific public interest requirements because the land is not greater than 200 acres, it is within a rural county of economic concern, it is off that tax roll, the exchange has been negotiated for at least one year, and the land is adjacent to previously sold state lands. Provides that the exchange must be of equal monetary value and that any monetary difference will be provided by the private entity at closing.

Section 17: Repeals s. 253.84, F.S., relating to the acquisition of lands with cattle-dipping vats, and s. 259.0345, F.S., creating the Florida Forever Advisory Council.

Section 18. Amends s. 373.4592, F.S., as amended by chapter 2003-12, Laws of Florida, to remove all references to the phrases "earliest practicable date" and "maximum extent practicable" as they refer to phosphorus reduction. Provides that the DEP will approve revisions to the Long-Term Plan, and propose changes to the Long-Term Plan as science and environmental conditions warrant. Provides that moderating provisions which may be adopted as part of a phosphorus rule shall not be extended beyond 2016 without legislative authorization.

Section 19: Reenacts paragraph (a) of subsection (2), and subsections (1), (11), and (12), of s. 201.15, F.S., to authorize the distribution of documentary stamp tax revenues to pay debt service and other obligations relating to the issuance of Everglades restoration bonds.

Section 20: Reenacts s. 215.619, F.S., to authorize the issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of lands, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Act pursuant to s. 11(e), Art. VII, of the State Constitution.

Section 21: Reenacts subsections (4), (5), and (6), of s. 373.470, F.S., to provide that proceeds of Everglades restoration bonds issued under s. 215.619, F.S., may be deposited into the Save Our Everglades Trust Fund.

Section 22: Reenacts s. 373.472, F.S., to provide that funds in the Save Our Everglades Trust Fund within the DEP can be expended to implement the comprehensive restoration plan and to pay debt service for Everglades restoration bonds.

Section 23: Reenacts s. 6 of chapter 2002-261, Laws of Florida, to restate a legislative finding that issuing Everglades restoration bonds is in the best interest of the state and should be implemented.

Section 24: Provides for statutory construction for any laws amended by this Act that may have also been amended during the 2003 Regular Session.

Section 25: Provides that except as otherwise expressly provided, the bill will take effect July 1, 2003.

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:

C. Government Sector Impact:

The DEP will incur some costs due to the inventory requirements of the bill. The DEP should see some savings as a result of the proposed changes for appraisal requirements. Proceeds from land sales should increase because state lands or water management district lands can be sold to local governments for appraised value instead of the price at which they were purchased by the state or the water management district.

Local governments will incur some costs due to the inventory requirements of the bill. Local governments may also spend more to purchase surplus state lands as the state is no longer required to sell those lands to local governments at a price no higher than the state or water management district's original acquisition price.

Local governments may generate some savings due to provisions of the bill requiring that donated lands must first be offered to local governments at no cost. Local governments may also generate savings due to the expedited land surplus process established in the bill.

Everglades Bonds
Chapter 2002-261, Laws of Florida, authorized the issuance of $100 million of bonds per year, beginning with fiscal year 2002-2003 through 2009-2010. The duration of the bonds could not exceed 20 annual maturities and the bonds were required to mature by December 31, 2030. Debt service for the bond issuance was estimated at $11.345 million per year, with a maximum debt service of $91 million per year when the bond program was fully implemented.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.