

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Comprehensive Everglades Restoration Program

The Florida Everglades covers about 3,480 square miles and is recognized as an ecosystem of regional and international importance. The Everglades ecosystem includes Lake Okeechobee and its tributary areas and a corridor of wetlands about 50 miles wide and 130 miles long, extending from Lake Okeechobee to the Southern tip of the Florida peninsula at Florida Bay. Much of the Everglades has been drained for agricultural purposes and urban development, leaving about half of the Everglade's original wetlands.

The Everglades serves many functions, including supporting a significant outdoor sports and eco-tourism industry, providing recharge to the Biscayne Aquifer which provides drinking water for the entire South Florida region, and providing a nursery area for many economically important marine species that support large commercial and recreational fisheries.

The U.S. Army Corps of Engineers constructed the Central and Southern Florida Flood Control project from 1949 to 1969 for the purpose of achieving the objectives of flood control, land drainage, and water supply. In 1992, Florida asked Congress to "restudy" this project after recognizing the project's unintended adverse effects. The U.S Army Corps of Engineers completed the "restudy" in 1999. As a result, in 2000, the U.S. Congress approved the Comprehensive Everglades Restoration Plan (CERP) which is a joint state and federal restoration program requiring a series of ecological and water system improvements to be implemented over the next 30 years or so. These projects are intended to restore more natural flows of water and improve the water quality within the remaining areas of wetlands in the Everglades.

The overall cost of implementing the CERP is estimated to be about \$8 billion with an additional \$182 million annually to operate, maintain, and monitor the plan. In general, the federal government and Florida will evenly share the cost of the CERP. The SFWMD and the U.S. Army Corps of Engineers are jointly implementing the overall restoration programs in the Everglades.

Land Acquisition and Eminent Domain

Section 373.1501(3) declares that certain projects related to the CERP are in the public interest, for a public purpose, and necessary for the public health and welfare. As such, the South Florida Water Management District (SFWMD) is empowered and authorized to acquire fee title or easement by eminent domain for the limited purposes of implementing certain projects, including the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, the Southern Corkscrew Regional Ecosystem Watershed Project, the Pal-Mar Project, and the C-111 Project. Subsection (3) also states that any acquisition of real property, including by eminent domain, constitutes a public purpose for which it is in the public interest to expend public funds.

Included among the many projects for the CERP is the Biscayne Bay Coastal Wetlands Project. The purpose of this project is to rehydrate wetlands and reduce point source discharge to Biscayne Bay. The proposed project will replace lost overland water flow and partially compensate for the reduction in groundwater seepage by redistributing, through a spreader system, available water entering the area

from regional canals. The project includes pump stations, spreader swales, stormwater treatment areas, flowways, levees, culverts, and backfilling canals located in southwest Miami-Dade County. The project covers about 13,600 acres. Two essential components of the project are the design and construction of the Deering Estates Flow-Way and the Cutler Wetlands.

Another restoration project is the CERP C-111 Spreader Canal Project which will reestablish water sheet flow and hydrologic connectivity between natural areas in the Southern Everglades and lands of South Dade County. Specific components of this project include the establishment of a stormwater treatment area, enlarging the capacity of existing water pump stations, extending an original spreader canal, and installing new water culverts.

Small Businesses

Part IV of chapter 288, F.S., relates to small and minority businesses. Section 288.703(1), F.S., defines a small business as an independently owned and operated business that employs 200 or fewer permanent full-time employees and has a net worth of no more than \$5 million. Section 288.703(2), F.S., defines a minority business enterprise as any small business which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender group of people. Section 788.703(3), F.S., defines a minority person as a person who is African-American, an Hispanic-American, an Asian-American, a Native American, or an American woman.

Section 288.706, F.S. provides for the creation of the Florida Minority Business Loan Mobilization Program. Subsection (1) states that it is the intent of the Legislature to promote diversity in state contracting by eliminating barriers to minority business enterprises providing goods and services to the state. The goal of the FMBLM Program is to assist minority businesses by facilitating working capital to minority businesses that are vendors of state agency contract.

Section 287.09451, F.S., establishes the Office of Supplier Diversity (OSD) within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction to state government. In establishing the office, the Legislature found evidence of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority businesses in the state procurement system. As part of the Governor's One Florida Initiative, the principal focus of the OSD is to aggressively recruit minority businesses and to facilitate relationships between the businesses and state agencies. The OSD also manages a program for certifying minority businesses. Based upon its FY 2002-2003 Annual Report, OSD reports that as of June 30, 2003, about 36% of all vendors registered by the OSD were minority and women business enterprises, of which about half were certified.

OSD is also responsible for monitoring state agencies' compliance with statutory requirements related to minority business enterprises. For example, OSD is responsible for reviewing and approving state agencies' minority business enterprise utilization plans requires under s. 287.09451(6), F.S., and for ensuring compliance with the plans. OSA also does outreach and advocacy on behalf of minority and women businesses. OSD participates and meets with a wide number of organizations and agencies throughout the state, including meeting with water management districts.

According to the U.S. Small Business Administration, Florida had a total of about 426,000 employer small businesses of which 98.9 percent were small firms. Nearly 26 percent of all small businesses in Florida are women-owned businesses. Nearly 21 percent of all small businesses in Florida were minority-owned businesses.

As part of the CERP, emphasis has been placed upon community and minority outreach activities both in terms of education the public on restoration projects and goals, but also on implementing programs designed to educate, engage and empower minority and women business enterprises in SFWMD and U.S. Army Corps of Engineers' contracting opportunities and procurement opportunities.

In addition, water management districts have also implemented programs which attempt to provide equal access for all businesses, including include minority and women business enterprises, for contracting and procurement opportunities.

For example, according to a quarterly publication by the St. Johns Water Management District (Stream Lines, Summer 2003), the district proactively sought out minority and women-owned businesses for contracting and procurement opportunities.

Another example is the South Florida Water Management District (SFWMD) which according to a March 2005 Fact Sheet, has increased opportunities for and spending with small and minority businesses. According to the fact sheet, since 2000, the district has more than tripled its expenditures to small and minority business firms from about \$12.5 million in 2000 about \$41 million in 2004. Of the \$41 million, \$4.3 million was expended to Asian-American businesses, \$9.7 to African-American businesses, and \$13.2 million to women-owned businesses. In 2004, of the 35 different firms contracted for engineering services in the district, ten of the primary contractors are minority owned firms and the remaining 25 firms include 30 percent or more minority participation as part of the contract.

According to staff from the SFWMD, the district recently ended its minority business enterprises program as a result of litigation in Miami-Dade County. Like Miami-Dade County, SFWMD had a minority and women business enterprise program. The county's program was challenged in terms of whether the establishment of "participation goals" for minority and women business enterprises in awarding architecture and engineering contracts violated the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. Sec. 1983 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000d.

A decision by a federal court in *Hershell Gill Consulting Engineers, Inc. v. Miami Dade County, Florida* (Case No. 98-2300-CIV-JORDON), found that the county's program was unconstitutional as it applied to contracts for architecture and engineering services. The court permanently enjoined the county from using, or requiring the use of gender, racial, or ethnic criteria in determining responsiveness to a request for proposal or award of a contract under such a request for proposal. The court further ruled that county commissioners were immune from damages with respect to votes cast to adopt the program, but were not immune for votes cast with respect to architecture and engineering contracts presented to the commission, since they were acting in their administrative capacities.

Since the SFWMD had a similar minority business enterprise program, its board in January 2005 decided to end the program based upon the Miami-Dade County court case decision. However, according to district staff, emphasis is continually placed upon providing equal access for all businesses for contracting and procurement purposes.

Effect of Proposed Changes

Comprehensive Everglades Restoration Program

HB 1445 adds the Biscayne Bay Coastal Wetlands-Phase 1 Project-C-1 Cutler Wetlands Component and the C-111 Spreader Canal Project to the list of projects for which the South Florida Water Management District may use eminent domain to acquire fee title or easements as part of the Comprehensive Everglades Restoration Project.

Small Business Program

HB 1445 authorizes each water management district to implement a small business program designed to assist small businesses, including businesses owned by women and minorities, in their participation in district procurement and contract activities. The bill states that the purpose of the program is to enhance economic development and support small businesses, including women and minority-owned businesses, to successfully expand in the marketplace.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends s. 373.1501, F.S., to provide that the Biscayne Bay Coastal Wetlands-Phase 1 Project-C-1 Cutler Wetlands Component and the C-111 Spreader Canal Project are added to the list of projects for which the South Florida Water Management District may use eminent domain in land acquisition for CERP.

Section 2: Creates s. 373.1135, F.S., to provide that water management districts are authorized to implement a small business program designed to assist small businesses, including businesses owned by women and minorities, in their participation in district procurement and contract activities.

Section 3: The act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides for no expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities and counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires water management districts to promulgate rules for the small business assistance program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES