

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.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 2544

INTRODUCER: Environmental Preservation Committee and Senator Dockery

SUBJECT: Environmental Protection

DATE: April 11, 2006

REVISED: 04/19/06

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Molloy	Kiger	EP	Fav/CS
2.		GE	
3.		GA	
4.		WM	
5.			
6.			

I. Summary:

The committee substitute revises the Florida Forever program to require that priority consideration be given to the acquisition of lands that protect and buffer military installations. Clarifying revisions are made to the state's alternative water supply program, and matching fund requirements for the surface water improvement and management program are revised to provide an exemption for certain water management districts and financially disadvantaged small local governments.

The committee substitute requires that the Department of Environmental Protection (department) and the water management districts implement a voluntary statewide programmatic general permit for any dredge and fill activity which impacts 10 acres or less of wetlands or waters, including navigable waters, subject to agreement with the U.S. Army Corps of Engineers, and ratifies a department rule modification to the vegetative index used to identify and delineate wetlands to classify slash pine and gallberry as facultative plants.¹

The committee substitute substantially amends ss. 259.105, 373.1961, 373.459, 373.59, 403.891, 373.4414 and 373.4211, F.S.

II. Present Situation:

Florida Forever

The Florida Forever program was created in 1999 as a successor program to P2000, and authorizes the issuance of not more than \$3 billion in bonds for land acquisition, water resource development projects, preservation and restoration of open space and greenways, and for outdoor

¹ Facultative plants have between a 33 and 67 percent chance of being found in wetlands or uplands.

recreation purposes. As part of Florida Forever, the Legislature authorized public land acquisition agencies to focus on acquisitions using alternatives to fee simple acquisition. Under the Florida Forever program, bonds may be issued for more or less than the \$300 million per year authorized under the P2000 program, but the entire program is limited to a total of \$3 billion.

To date, more than \$1.2 billion in bond proceeds and other revenues have been distributed to the entities receiving Florida Forever funding. Outstanding debt service through fiscal year 2030-2031 on all series of Florida Forever bonds issued to date is more \$1.7 billion.²

Chapter 2005-273, Laws of Florida

The 2005 Legislature enacted ch. 2005-273, Laws of Florida, which required the Department of Environmental Protection to develop a strategy to consolidate, to the maximum extent practicable, federal and state wetland permitting and to secure complete authority over dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters, through the environmental resource permitting program established in Part IV of ch. 373, F.S. The department was directed to submit a report to the Legislature by October 1, 2005. The report submitted by the department, entitled “*Consolidation of State and Federal Wetland Permitting Programs, Implementation of HB 759 (Chapter 2005-273, Laws of Florida)*” analyzed two options for streamlining the programs.

The first option, for the department to assume the federal permitting program, will require amendments to the federal Clean Water Act, the Rivers and Harbors Act, and state law. The Clean Water Act will need to be amended to remove provisions which prohibit the states from assuming the entire Section 404 program so that the department could assume the program for wetlands and surface waters throughout the state. The Rivers and Harbors Act will need to be revised to allow the state to assume authority for Section 10 navigation-related permits. Part IV of ch. 373, F.S., will have to be revised to modify, revoke or rescind permits issued by the water management districts so that the department would be the lead state agency for wetland permitting.

The second option suggests that the U.S. Army Corps of Engineers (Corps) may issue a state programmatic general permit to authorize a state to issue Clean Water Act and Rivers and Harbors Act permits in limited circumstances. State programmatic general permits are limited to similar classes of projects with minimal individual and cumulative impacts, and the complexity and physical size of the projects are important considerations. Because the state programmatic general permit authorizes the issuance of federal permits, individual permits with impacts to listed species must be coordinated by the Corps with other federal resource agencies. This consolidation can not be accommodated with the administrative review process established in ch. 120, F.S., therefore actions taken by the state under the programmatic general permit are not final actions and the permit must be elevated to the Corps.

The department recommended pursuing a greatly expanded state programmatic general permit through state and federal legislative actions, but preliminary discussions with the Corps indicated

² Debt service information on outstanding Florida Forever bonds provided by the Legislature's Office of Economic and Demographic Research, and includes refunding bonds.

that a 10-acre upper limit as proposed under HB 759 was unlikely, and that the expanded state programmatic general permit would require that state applicants waive the ability to use ch. 120, F.S., to allow for federal coordination on endangered species.

As part of the effort to coordinate the permits, the department initiated rulemaking to add slash pine³ and gallberry⁴ as “facultative” in the state’s wetlands delineation rule to make the state and federal wetland boundary lines ecologically equivalent. Slash pine and gallberry are wetland indicators on the federal plant list, but are upland indicators on the state list. Therefore, the current state methodology for wetlands delineation is less strict than the federal methodology when using slash pine and gallberry as indicators. The Environmental Regulation Commission approved the rule modification on February 23, 2006, but these changes to the rule must be ratified by the Legislature before taking effect.

Chapter 2005-291, Laws of Florida

Chapter 2005-291, Laws of Florida, was enacted during the 2005 Regular Session to create a funding program for the development of alternative water supplies. The Water Protection and Sustainability Program was established, in part, to provide the water management districts with the ability to provide additional financial assistance to local governments, regional water supply authorities, multi-jurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities for the construction of alternative water supply projects. If a water management district had not completed a regional water supply plan, or if a regional water supply plan did not identify the need for alternative water supplies, the districts were authorized to spend funds on water resource development projects, including springs protection.

The water management districts were authorized to provide up to 40 percent of the total construction costs for a project, including state funds, to qualified applicants for a 40-60 match program, with the applicants providing 60 percent of the costs. To meet their share of the construction costs, the water management districts were authorized to use ad valorem or federal revenues to provide assistance, and were given the ability to offer additional financial assistance to financially disadvantaged small local governments at their discretion.

Funds for surface water improvement and management

Section 373.459, F.S., provides that entities that receive state funding for surface water improvement and management programs must provide a 50-percent match of cash or in-kind services towards the implementation of the project which is being contracted. Surface water improvement and management programs are funded by the transfer of funds from the Water Protection and Sustainability Trust Fund in the Department of Environmental Protection, and the Ecosystem Management and Restoration Trust Fund. The department administers all funds appropriated for surface water improvement and management projects, and funds may not be expended for planning for, or construction or expansion of, domestic or industrial wastewater disposal.

³ Also known as southern pine, yellow slash pine, swamp pine, pitch pine, Cuban pine. Slash pine grows through the southeastern United States, but South Florida slash pine is found only in the southern half of Florida and the Florida Keys.

⁴ Gallberry is a slow growing medium sized evergreen shrub, native to the Florida pine flatwoods, and is an important honey plant.

III. Effect of Proposed Changes:

Section 1. Amends s. 259.105, F.S., to provide that the Legislature recognizes the important role of the state and federal military installations in protecting and preserving the state and its natural resources. Establishes legislative intent that where the goals of the Florida Forever program overlap with the protection needs of military installations, agencies receiving Florida Forever funds shall cooperate with the state's military partners to protect and buffer military installations, including areas identified as clear zones, accident potential zones, air installation compatible use zones, and other buffer zones as delineated by the state's military partners.

Expands the goals of the Florida Forever program to include measuring the percentage and number of acres acquired by the state to protect and buffer military installations. Directs the Department of Environmental Protection and the Acquisition and Restoration Council to give increased priority to acquisitions that protect and buffer military installations

Section 2. Amends s. 373.1961, F.S., to clarify that water management districts that have determined that a regional water supply plan is not necessary have the ability to use alternative water supply funds for water resource development projects, including springs protection. Clarifies that the state's share of financial assistance provided for the construction of alternative water supply projects is limited to 20 percent of the total project construction costs.

Section 3. Amends s. 373.459, F.S., to exempt the Suwannee River Water Management District, the Northwest Florida Water Management District, and financially disadvantaged small local governments from the matching fund requirements of the surface water improvement and management program.

Section 4. Amends s. 373.59, F.S., to provide that funds deposited into the Water Management Lands Trust Fund which are not needed to meet current obligations shall be transferred to the Water Protection and Sustainability Program Trust Fund for the purpose of supplementing revenues deposited to that trust fund to fund alternative water supply development.

Section 5. Amends s. 403.891, F.S., to provide that funds transferred from the Water Management Lands Trust Fund for deposit into the Water Protection and Sustainability Program Trust Fund may only be used to fund alternative water supply projects.

Section 6. Amends s. 373.4144(1), F.S., to require the department and the water management districts to implement a statewide voluntary programmatic general permit (SVPGP) for dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, subject to agreement by the U.S. Army Corps of Engineers, under the following conditions:

- The applicant seeking the general permit consents to the department or the district applying the landward-most delineation of wetland jurisdiction applicable under Part IV of chapter 373, F.S., or the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss.1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.
- In implementing the 1987 Corps of Engineers Wetlands Manual Technical Report (Y 87-11), the department or water management district must equate high organic matter in the surface

horizon in accordance with criteria for hydric soils⁵ of the National Resources Conservation Service.

- The department must ensure statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to the statewide permit, by providing training and guidance to department staff and to the water management districts in implementing the permit.
- Applicants who seek to use the SVPGP may be subject to applicable substantive federal wetland regulatory criteria authorized under the Clean Water Act or the Rivers and Harbors Act of 1899.

Section 7. Amends s. 373.4211(19), F.S., to ratify proposed changes to Rule 17-340.450(3), of the Florida Administrative Code, by modifying the vegetative index used to identify and delineated wetlands to include slash pine (*pinus elliotti*) and gallberry (*Ilex global*) as facultative.

Provides that notwithstanding the rule ratification:

- Surface water and wetland delineations identified and approved by a permit issued under rules adopted prior to the effective date of the SVPGP are valid until the permit expires.
- For surface water and wetland delineations which were not identified and approved under an appropriate permit, delineations within a geographical area to which a permit applies, and modifications to a permit issued under appropriately adopted rules and which do not constitute a substantial modification, shall be determined according to the rules in place at the time the permit was issued.

Defines “identified and approved” to mean a field-verified delineation by the permitting agency where such verification was surveyed as part of the permit application review process, and where the delineation was field-verified by the permitting agency and approved pursuant to the permit.

Any declaratory statement issued by the department under s. 403.194, 1984 Supplement to the Florida Statutes 1983, as amended, pursuant to rules adopted thereunder, or by the department or a water management district under s. 373.421, F.S., providing for wetland delineation methods, in response to a petition filed prior to the effective date of the statewide programmatic general permit being created in s. 373.4144, F.S., shall continue to be valid for the length of the declaratory statement.

Exempts the following from modifications to the vegetative index which add slash pine and gallberry as facultative:

- Activities proposed within the boundaries of a valid declaratory statement issued as a result of a petition filed by the department or a water management district on or before the effective date of the SVPGP.
- A revalidated jurisdictional determination made prior to the expiration of the SVPGP.
- Dredge and fill permits.
- Permits for other activities which are pending on or before the effective date of the SVPGP.

⁵ The National Resources Conservation Service defines “hydric soil” as “a soil that formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part. The concept of hydric soils includes soils developed under sufficiently wet conditions to support the growth and regeneration of hydrophytic vegetation, and soils sufficiently wet because of artificial measures.

- Activities associated with phosphate land reclamation which are included in a conceptual reclamation plan.
- An application to modify an existing reclamation plan which is submitted on or before the effective date of the SVPGP.
- Declaratory statements pending on or before the effective date of the SVPGP.

Section 8. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Environmental Protection, in the bill analysis for HB 1343, the companion to SB 2544, noted that the bill is unnecessary as the Corps could delegate a state programmatic general permit to the department without any legislative action.

VIII. Summary of Amendments:

None.

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