

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281  
SPONSOR(S): Fitzgerald  
TIED BILLS:

Myakka River

IDEN./SIM. BILLS: SB 2346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Environmental Protection</u>	<u>7 Y, 0 N</u>	<u>Deslatte</u>	<u>Kliner</u>
2) <u>Environment &amp; Natural Resources Council</u>	<u></u>	<u>Deslatte</u>	<u>Hamby</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill expands the Wild and Scenic River designation of the 34-mile stretch of the Myakka River to encompass the entire navigable portion of the river from the beginning of the river to the mouth of the river at Charlotte Harbor.

The bill requires Charlotte and Manatee County to amend their comprehensive plans to conform with the requirements of the Myakka River Wild and Scenic Designation and Preservation Act and the management plan and agreements required by the Act. In addition, the bill requires that within one year after the Department of Environmental Protection (DEP) and the Department of Community Affairs (DCA) adopt, with the affected city and counties, agreements for regulating activities in the wild and scenic protection zone, Charlotte and Manatee County to amend or adopt local ordinances and land development regulations as necessary to ensure conformance with the Act, the river management plan and the agreements.

This bill has a potentially negative fiscal impact on DEP and the affected local governments. (See Fiscal Comments Section)

The bill has an effective date of July 1, 2007.

**HB 1281 has one amendment traveling with the bill. For a description of the amendment, please refer to Section IV. (Amendment/Council Substitute Changes).**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill would designate the beginning of the Myakka River to the mouth of the river at Charlotte Harbor as a Wild and Scenic River. Consequently, the bill would require DEP and the affected local governments to regulate the entire length of the river.

Secondly the bill requires Charlotte County and Manatee County to amend their comprehensive plans, local ordinances, and land development regulations to conform with s. 258.501, F.S., the river management plan and the agreements.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act<sup>1</sup> was enacted in 1968. The Act addresses the protection of the water flows of designated rivers, both expressly and by implication. The Act declares it to be the policy of the United States that certain rivers that possess outstanding values shall be preserved in "free-flowing condition," and that it is the purpose of the Act to implement that policy. Rivers may be designated by Congress, or, in some instances, be nominated by a Governor and approved by the Secretary of the Interior. Designation provides certain protections from development and from the adverse effects of water resources projects.<sup>2</sup>

In 1985, the Florida Legislature designated a 34-mile portion of the Myakka River as wild and scenic, giving the river a higher degree of environmental protection under state rules. The part of the river designated wild and scenic lies in Sarasota County. The Myakka River is one of only two rivers in Florida with the wild and scenic designation.

##### Myakka River Management Coordinating Council

The Myakka River Management Coordinating Council (council), formed in 1985, is a 29-member council made up of state, county and local agencies and governments, and independent interests. The council, with the DEP, is responsible for developing and maintaining the management plan for the segment of the Myakka River designated as a Wild and Scenic River.

The management plan includes but is not limited to:

- Permanent protection and enhancement of ecological, fish and wildlife, and recreational value of the designated segment of the river.
- Continuation of land uses and development of private lands, on the designated segment of the river, that existed on January 1, 1986.
- Periodic studies to determine the quality of recreational and other public uses.
- Regulation and control of public access to enhance and protect the resource value of the designated segment of the river.
- Restriction of motorized vehicles, both land and water vehicles, where necessary to protect the resource value of the designated segment of the river.
- Monitoring existing water quality.
- Review and regulation of all activities conducted or proposed to be conducted within the river area that will or may have an adverse impact on any resource value of the designated segment of the river.

---

<sup>1</sup> 15 USC 1271-1287

<sup>2</sup> CRS Report for Congress, January 2001; <http://www.ncseonline.org/nle/crsreports/public/pub-16.cfm>

The council must also review and make recommendations on all proposals or amendments to existing rule that protects the Myakka River wild and scenic designation. Following this provision in s. 258.501, F.S., the council has recommended the wild and scenic designation for the entire Myakka River.

### Outstanding Florida Waters (OFW)

The 14-mile segment of the Myakka River that flows through the Myakka State Park has been designated as an Outstanding Florida Waterway. Section 403.061 (27), F.S., grants DEP the power to establish rules which provide for a special category of water bodies within the state referred to as "Outstanding Florida Waters," which are worthy of special protection because of their natural attributes. All state water quality standards are approved by the Environmental Regulation Commission for use by the DEP. The Environmental Regulation Commission is a seven-member citizens' body appointed by the Governor.

Requirements for a "Special Water" OFW Designation include:

1. Rulemaking procedures pursuant to Chapter 120, F.S., shall be followed;
2. At least one fact-finding workshop shall be held in the affected area;
3. All local county or municipal governments and state legislators whose districts or jurisdictions include all or part of a water body proposed for Special Water designation shall be notified at least 60 days prior to the workshop in writing by the Secretary of DEP;
4. A prominent public notice shall be placed in a newspaper of general circulation in the area of the proposed Special Water at least 60 days prior to the workshop;
5. An economic impact analysis, consistent with Chapter 120, shall be prepared which provides a general analysis of the impacts on planned or potential industrial, agricultural or other development or expansion; and
6. The Environmental Regulation Commission may designate a water of the State as a Special Water after making a finding that the waters are of exceptional recreational or ecological significance and a finding that the environmental, social, and economic benefits of the action outweigh the environmental, social, and economic costs (Rule 62-302.700 (5), F.A.C.).

In general, DEP cannot issue permits for direct pollutant discharges to OFWs which would lower ambient (existing) water quality or indirect discharges which would significantly degrade the Outstanding Florida Water. Permits for new dredging and filling must be clearly in the public interest, taking into consideration:

1. Whether the activity will adversely affect the public health, safety, or welfare or property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling.
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061 F.S.; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity (s. 373.414(1)(a), F.S.).

<b>"Special Waters" OFWs include 41 of Florida's 1700 rivers, several lakes and lake chains, several estuarine areas, and the Florida Keys:</b>	
Apalachicola River	Lochloosa Lake
Aucilla River	Myakka River (lower part)
Blackwater River	Ochlocknee River
Butler Chain of Lakes	Oklawaha River
Chassahowitzka River System	Orange Lake, River Styx, and Cross Creek
Chipola River	Perdido River
Choctawhatchee River	Rainbow River
Clermont Chain of Lakes	St. Marks River
Crooked Lake	Santa Fe River System
Crystal River	Sarasota Bay Estuarine System
Estero Bay Tributaries	Shoal River
Econlockhatchee River System	Silver River
Florida Keys	Spruce Creek
Hillsborough River	Suwanee River
Homosassa River System	Tomoka River
Kingsley Lake & Black Creek (North Fork)	Wacissa River
Lake Disston	Wakulla River
Lake Powell	Weekiwachee Riverine System
Lemon Bay Estuarine System	Wekiva River
Little Manatee River	Wiggins Pass Estuarine System

## **Proposed Changes**

### **Myakka River**

The bill expands the Wild and Scenic River designation of the 34-mile stretch of the Myakka River to encompass the entire navigable portion of the river from the beginning of the river to the mouth of the river at Charlotte Harbor, together with a corridor including the maximum upland extent of wetlands vegetation as determined by the former Department of Environmental Regulation pursuant to chapter 403, F.S., and chapters 17-3 and 17-312, FAC.

### **Comprehensive Plans**

Currently, the Myakka River's wild and scenic designation lies only in Sarasota County. The bill expands that designation to the entire length of the river which runs through Manatee and Charlotte County. The bill requires Manatee County, Charlotte County, Sarasota County, and the City of North Port to manage the expanded Myakka River wild and scenic protection area in conformance with section.258.501, F.S. The bill requires Charlotte and Manatee County to amend their comprehensive plans to conform with the requirements of the Myakka River Wild and Scenic Designation and Preservation Act and the management plan and agreements required by the Act

Furthermore, the bill requires that within one year after the Department of Environmental Protection (DEP) and the Department of Community Affairs (DCA) adopt, with the affected counties and city, agreements for regulating activities in the wild and scenic protection zone, Charlotte and Manatee Counties to amend or adopt local ordinances and land development regulations necessary to ensure conformance with s. 258.501, F.S., the river management plan and the agreements.

C. SECTION DIRECTORY:

Section 1: Amends s. 258.501, F.S., to extend the Wild and Scenic River designation of the Myakka River.

Section 2: The bill shall take effect July 1, 2007

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Manatee and Charlotte Counties may be impacted by passage of the bill. The bill would require that both counties review and amend their comprehensive plans and adopt or amend, within one year of establishment of a wild and scenic river management plan, or amend, local ordinances and land development regulations necessary to conform to the requirements of s. 258.501, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private land owners on the Myakka River, in Manatee and Charlotte Counties may be impacted by a change in the counties' comprehensive plans, local ordinances and land development regulations. Any development on those lands may require a review by the Myakka River Management Coordinating Council and the local governments for compliance with s. 258.501, F.S.

D. FISCAL COMMENTS:

This bill has a potentially negative fiscal impact on DEP. The bill would require the agency to manage the entire length of the river as opposed to one segment as provided in current law. The hiring of new staff and equipment would be needed to coincide with the new responsibilities. The existing management plan and rule would have to be rewritten to accommodate the new areas.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities. The bill requires Manatee and Charlotte Counties to amend their comprehensive plans, local ordinances and land development regulations as necessary to conform to the requirements of s. 258.501, F.S.

As such, the bill requires counties to take action requiring the expenditure of funds. It is unknown whether the amount of expenditure is insignificant and therefore exempt.

In the absence of an applicable exemption or exception, Article VII, section 18(a) of the state constitution provides that counties or municipalities shall not be bound by laws requiring them to spend funds or take actions requiring them to spend funds unless the legislature determines that the law fulfills an important state interest and the law is passed by 2/3 of the membership of each house of the legislature.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

The bill authorizes DEP to adopt rules to regulate activities within the river area which have adverse impacts on resource values as adopted by the coordinating council within the river area. The bill also authorizes DEP to coordinate all activities related to rule adoption and enforcement with the regulatory and management programs of other agencies in order to avoid conflicts. Furthermore the bill requires DEP and DCA to enter into agreements with the City of North Port, Charlotte County, Manatee County, and Sarasota County to provide for guiding and monitoring the regulation of activities by the city and counties.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**D. STATEMENT OF THE SPONSOR**

No sponsor statement submitted

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 28, 2007 a strike all amendment was adopted and the bill was reported favorably with amendment by the Committee on Environmental Protection.

The strike all amendment requires the Myakka River Management Coordinating Council to provide a report recommending the expansion of the Florida Wild and Scenic River Designation for the entire Myakka River to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The amendment also requires a public hearing to be held in Manatee County and Charlotte County during the development of the report.