



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill extends the authorized issuance and maturity of Everglades restoration bonds, which are deposited into the Save Our Everglades Trust Fund, by an additional ten years. The bill authorizes the Legislature to issue an additional amount of bonds not to exceed \$50 million per fiscal year, for no more than 4 fiscal years, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

In 2007, the Florida Legislature passed SB 392, which changed the Lake Okeechobee Protection Program to the Northern Everglades and Estuaries Protection Program. Legislative findings were revised to reflect:

- Reflect the expansion of the program;
- Economic, natural habitat and biodiversity functions of the system;
- The effects of loss of surface water storage;
- The significance of pollutants other than phosphorous to water quality;
- The use of total maximum daily load requirements to address water quality; and
- The need to expeditiously implement the program to improve the quality, quantity, timing, and distribution of water in the Northern Everglades ecosystem.

The bill expanded the program to include protection of the Lake Okeechobee Watershed and the Caloosahatchee & St. Lucie Rivers Watersheds; provided for the Lake Okeechobee and Caloosahatchee and St. Lucie River Watershed Protection Program, which includes a Protection Plan, Construction Project, Watershed Pollutant Control Program, and Research, Water Quality, and Habitat Monitoring Program; and provided new or revised definitions for "Caloosahatchee River Watershed," "Lake Okeechobee Watershed," "Northern Everglades," "River Watershed Protection Plans," and "St. Lucie River Watershed." The bill provided for implementation and evaluation within the Protection Plans, and for protection permits; required the Department of Environmental Protection (DEP) to develop total maximum daily loads for the Caloosahatchee River and estuary and basin management action plans for the Lake Okeechobee Watershed and estuaries; and revised requirements relating to the annual progress report of the South Florida Water Management District (SFWMD).

The bill required that a modified Phase II technical plan of the Lake Okeechobee Water Construction Project be submitted to the Legislature for ratification during the 2008 regular session, and required the River Watershed Protection Plans to be submitted to the Legislature for ratification during the 2009 session. The bill provided that if the Legislature takes no action on the Phase II technical plan during the 2008 Legislative session, it is deemed approved and may be implemented.

In February 2008, the SFWMD submitted the required Lake Okeechobee Watershed Construction Project Phase II Technical Plan. The Plan identifies construction projects, along with on-site measures that prevent or reduce pollution at its source such as agricultural and urban best management practices (BMPs), needed to achieve water quality targets for the lake. In addition, it includes other projects for increasing water storage north of Lake Okeechobee to achieve healthier lake levels and reduce harmful discharges to the Caloosahatchee and St. Lucie estuaries. Components of the multi-phase preferred Plan include:

- Implementing agricultural management practices on more than 1.7 million acres of farmland;

- Adopting new regulations that will reduce the impacts of development on water quality and flow;
- Building treatment wetlands to clean water flowing into the lake;
- Using other innovative “green” nutrient control technologies to reduce phosphorus loads from the watershed; and
- Creating between 900,000 and 1.3 million acre-feet of water storage north of the lake through a combination of above-ground reservoirs, underground storage and alternative water storage projects on public and private lands.

Comprised of local and regional projects, the preferred Plan consolidates, builds upon and dovetails with many on-going restoration activities. In addition to augmenting and enhancing efforts under way in the remnant Everglades south of Lake Okeechobee, it builds upon environmental improvements currently being implemented north of the lake as a part of the state-federal Comprehensive Everglades Restoration Plan (CERP). It also consolidates the numerous initiatives currently under way through Florida’s Lake Okeechobee Protection Plan (LOPP) and Lake Okeechobee and Estuary Recovery Plan (LOER).

The proposed implementation schedule calls for a phased approach-designed to provide progressive water quality and quantity improvements to benefit the lake and downstream estuaries. Initial measures outlined by the preferred Plan call for an additional investment of up to \$320 million beyond the State’s 50 percent cost-share for land acquisition and construction projects as part of CERP. While the cost of non-CERP features will be primarily borne by the SFWMD and the State, CERP investments are eligible for up to a 50% cost share with the federal government.

Furthermore, the bill provided for the expanded uses of bonds issued for Everglades restoration to include the Lake Okeechobee Watershed Protection Plan and the River Watershed Protection Plans. The bill also expanded the use of Save Our Everglades Trust Fund appropriations through Fiscal Year 2019-2020 to be used for the Lake Okeechobee Protection Plan and Caloosahatchee and St. Lucie River Watershed Protection Plans. In addition, the bill extended the SFWMD’s match requirements for the life of the trust fund; allowed funds to be distributed for implementation of the River Watershed Protection Plans, including a local match requirement for Lee and Martin counties; and allowed funds to be distributed to the Department of Agriculture and Consumer Services for implementation of agricultural nonpoint source controls.

Currently, Everglades restoration bonds, except refunding bonds, may only be issued through 2009-2010 and may not be issued in an amount exceeding \$100 million per fiscal year. The maturity of the bonds must mature by December 31, 2030.

### Keys Wastewater Plan

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs (DCA), and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development.

Under current law, the area of critical state concern designation for the Florida Keys will be removed as of October 1, 2009, unless the Florida Administration Commission finds that substantial progress toward achieving specified goals – including wastewater treatment requirements -- has not been achieved. After removal of the designation as an area of critical state concern, DCA is required to

review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, for compliance with the following:

- Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.
- Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.

In the 1990s, concerns were raised about nutrients from sewage entering the nearshore waters of the Florida Keys from both onsite sewage treatment and disposal systems (septic tanks and cesspits) and from central wastewater treatment facilities. In order to address these concerns, the 1999 Legislature established uniform sewage treatment and disposal standards in the Keys for both onsite sewage treatment and disposal systems (OSTDS), which are permitted by the Department of Health (DOH), and wastewater treatment plants, which are permitted by the DEP.

Ch. 99-395, L.O.F., required that each OSTDS either cease discharging or comply with the stringent effluent water quality standards provided by law and the rules of the DEP or the DOH, as applicable, by 2010. For central wastewater treatment facilities, the treatment standards were strengthened by: eliminating all surface water discharges by the year 2006; requiring proper operation, maintenance and performance monitoring of all sewage treatment systems; and requiring the upgrading of all systems to meet the enhanced sewage treatment requirements specified in the bill by the year 2010.

In the Annual Assessment Report for the Florida Keys Area of Critical State Concern covering the time period of July 13, 2006, to July 12, 2007, the DCA recommended to the Administration Commission that it make a finding that Monroe County has not made substantial progress toward completion of Year 10 of the Work Program. The recommendation was based on the Department of Environmental Protection's June 2007 report, "Report to the Department of Community Affairs – 10-Year Work Program for Monroe County Florida Keys Wastewater Improvements." The report concluded that:

While progress has been made in upgrading and building new wastewater infrastructure in the Keys, there is a long way to go and a tremendous amount of work to be done. There are indications, at least in some areas, that progress has slowed. It is clear from both on-site inspection and the information provided by local governments - both in terms of the progress to date and the uncertainty of many of the completion schedules - that not all facilities will meet the July 1, 2010 deadline.

During the 2007 Legislative Session, concerns were expressed regarding the lack of specific plans and estimated costs associated with meeting the wastewater requirements established in ch. 99-395, L.O.F. Due in part to these concerns, the Legislature did not appropriate funds to assist local governments in the Keys with the construction of wastewater systems necessary to meet the 2010 deadline.

During the 2007 Legislative Interim, the House Environment & Natural Resources Council conducted an interim project to develop a plan to address the wastewater needs of the Florida Keys in the most cost effective and efficient manner. The goal of the project was to work with the DEP to facilitate the establishment, through interlocal agreements or other means, of a single local government entity responsible for coordinating with the state throughout the life of the project. This local government entity selected to serve this role was the Monroe County Board of County Commissioners. The coordinated entity was expected to provide the following items:

- A single comprehensive plan identifying existing and proposed projects, including a priority of sequencing projects, needed to meet the comprehensive wastewater needs in the Keys.

- The status of existing and proposed projects and whether they are expected to meet the 2010 deadline.
- A listing of the projected and actual project costs associated with completed and proposed projects.
- A listing of existing and proposed sources and amount of funds needed to complete the necessary projects.

In addition, policy options were developed and analyzed to provide assistance in funding the expedited implementation of the comprehensive wastewater plan contingent upon receipt of the information listed above.

After a series of meetings and ongoing conversations, Monroe County submitted a Keys Wastewater Plan on December 4, 2007, that, with subsequent addendums, addresses the above requirements. The Board of County Commissioners is currently negotiating an inter local agreement with the several local wastewater entities in Monroe County.

The Keys Wastewater Plan provides a comprehensive summary of county-wide progress toward achieving compliance with the 2010 wastewater effluent standards. The plan includes background information for each local government and utility responsible for installation of wastewater treatment facilities. The plan also includes costs associated with completed and remaining projects, which is provided on a county-wide basis, as well as for each wastewater project. A summary of unfunded costs per year was compiled based on information submitted by each wastewater entity.

Implementation of the Keys Wastewater Plan is estimated to cost \$939 million through completion. Approximately \$264 million will have been spent through the end of September 2008 to retrofit Monroe County with 2010 compliant wastewater treatment. Approximately \$50 million of this cost has been funded through grants from the State of Florida. The remaining cost to implement the Keys Wastewater Plan is estimated at \$675 million. The funding gap between project costs and available funding is \$336 million.

### **Effect of Proposed Changes**

The bill extends the authorized issuance and maturity of Everglades restoration bonds, which are deposited into the Save Our Everglades Trust Fund, by an additional ten years. The bill expands the issuance of Everglades restoration bonds to include costs associated with the Florida Keys Area of Critical State Concern protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Key's Wastewater Plan dated November 2007. The bill authorizes, subject to future Legislative authorization, an additional amount of bonds not to exceed \$50 million per fiscal year, for no more than 4 fiscal years, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program. Subject to specific appropriation, the DEP shall use moneys from the Save Our Everglades Trust Fund to fund projects identified in the Keys Wastewater Plan. The DEP may establish requirements, through grant agreements or other contractual arrangements, to ensure the timely construction of projects and expenditure of appropriated funds by the local governments in Monroe County, including, but not limited to, project implementation deadlines, local matching requirements, fair and competitive procurement requirements, and financial tracking requirements.

The bill defines the "Keys Wastewater Plan" as the plan prepared by the Monroe County Engineering Division dated November 2007 and submitted to the Florida House of Representatives on December 4, 2007.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 215.619, F.S., authorizing the issuance of additional Everglades restoration bonds to implement the Florida Keys Area of Critical State Concern protection program; extends the period during which Everglades Restoration bonds may be issued; authorizes

the issuance of an additional amount of bonds for a specified time period specifically to fund the Florida Keys Area of Critical State Concern protection program.

**Section 2.** Amends s. 373.470, F.S., defining the term “Keys Wastewater Plan”; authorizes funds deposited into the Save Our Everglades Trust Fund to be used to implement the Keys Wastewater Plan.

**Section 3.** Amends s. 373.472, F.S., authorizing the Department of Environmental Protection, subject to specific appropriation, to use moneys from the Save Our Everglades Trust Fund to fund projects identified in the Keys Wastewater Plan; deletes an obsolete provision terminating the Save Our Everglades Trust Fund.

**Section 4.** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill has no direct impact on local government revenues. However, if a future Legislature authorized the issuance of bonds to fund the Keys Wastewater Plan as allowed by this bill, additional revenues would be available to assist in the implementation of the plan.

#### 2. Expenditures:

See Fiscal Comments

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Contractors and other business activities associated with the Comprehensive Everglades Restoration Plan, the Lake Okeechobee Watershed Plan, the Caloosahatchee and St. Lucie Rivers Protection Plans, and the Keys Wastewater Plan may see an increase in business opportunities as a result of an increase in bonding and funding.

### D. FISCAL COMMENTS:

The bill extends the authorized issuance and maturity of Everglades restoration bonds, which are deposited into the Save Our Everglades Trust Fund, by an additional ten years. The bill expands the issuance of Everglades restoration bonds to include the Florida Keys Area of Critical State Concern protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Key’s Wastewater Plan” dated November 2007. The bill authorizes an additional amount of bonds not to exceed \$50 million per fiscal year, for no more than 4 fiscal years, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program. Subject to specific appropriation, the DEP shall use moneys from the Save Our Everglades Trust Fund to fund projects identified in the Keys Wastewater Plan. The DEP may establish requirements, through grant agreements or other contractual arrangements, to ensure the timely construction of projects and expenditure of appropriated funds by the local governments in Monroe County, including, but not limited to, project implementation deadlines, local matching requirements, fair and competitive procurement requirements, and financial

tracking requirements. The issuance of a series of Everglades restoration bonds may not be issued unless an amount equal to the debt service coming due in the year of issuance has been appropriated by the Legislature.

According to the SFWMD, the total cost to complete Lake Okeechobee and Caloosahatchee and St. Lucie Rivers Protection Plans is as follows:

Lake Okeechobee	\$2.1 billion
Caloosahatchee River	\$300 million
St. Lucie River	\$300 million

The costs will be shared on a 50/50 basis between the state and the water management districts. The districts share would include funds generated from local governments.<sup>1</sup>

The 2007 State Debt Affordability Study, presented at the January 2008 Cabinet meeting, indicated that although there is \$12.6 billion in available debt capacity within the targeted 6 percent capacity over the next ten years, no debt service capacity is available over the next three years.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, 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.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

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

None

#### D. STATEMENT OF THE SPONSOR

No Sponsor Statement Submitted

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 9, 2008, the Environment & Natural Resources Council amended and adopted HB 1135 favorably as a committee substitute (CS).

The CS does not increase the maximum annual cap on the issuance of Everglades restoration bonds from \$100 to \$200 million as did the original filed bill. The CS expands the issuance of Everglades restoration bonds to include the costs associated with the Florida Keys Area of Critical State Concern protection program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Keys Wastewater Plan. The CS authorizes an additional amount of bonds not to exceed \$50 million per fiscal year, for no

---

<sup>1</sup> s. 373.470, F.S.

more than 4 fiscal years, specifically for the purpose of funding the Florida Keys Area of Critical State Concern protection program. Subject to specific appropriation, the DEP shall use moneys from the Save Our Everglades Trust Fund to fund projects identified in the Keys Wastewater Plan. The CS provides that the DEP may establish requirements, through grant agreements or other contractual arrangements, to ensure the timely construction of projects and expenditure of appropriated funds by the local governments in Monroe County, including, but not limited to, project implementation deadlines, local matching requirements, fair and competitive procurement requirements, and financial tracking requirements.