

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1389 Water Storage and Water Quality Improvements

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Perman

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Deslatte	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Helpling	Massengale
3) State Affairs Committee	15 Y, 0 N	Deslatte	Hamby

### SUMMARY ANALYSIS

Current law encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

However, owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill also specifies that when an agreement is entered into between a water management district or the Department of Environmental Protection (DEP) and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S. The baseline condition documented in the agreement must be considered the extent of the wetlands and other surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

The bill could provide a savings in state and local government expenditures for water supply development and water quality improvements, but are indeterminate as the number, size, and nature of agreements with private land owners are unknown.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 373.4595(1)(n), F.S., encourages and supports the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed. During periods of abnormally high rainfall, agricultural lands in normal production can provide temporary water storage that protects urban areas from flooding. In many regions of South Florida, significant areas of agricultural lands lie fallow during a large part of the wet season. In these areas, the fields alleviate flood conditions. Also, ranch areas containing both improved and unimproved pasturelands may provide flood protection to urban areas by retaining water on these lands as part of normal farming operations. The ability to hold floodwaters on agricultural lands for longer periods than water can be held in an urban setting also assists the overall hydrologic system in maintaining recharge rates over more extended periods of time.<sup>1</sup>

Since 2005, the South Florida Water Management District has been working with a number of agencies, including the DEP and the Department of Agriculture and Consumer Services (DACS), along with ranchers to store excess surface water on private, public, and tribal lands. The Dispersed Water Management Program encourages property owners to retain water on their land rather than drain it, accept and detain regional runoff, or do both. Management of the water reduces the amount of water delivered into Lake Okeechobee during the wet season and discharged to coastal estuaries for flood protection. Dispersed water is defined as shallow water distributed across parcel landscapes using simple structures. Private landowner involvement typically includes cost-share cooperative projects, easements or payment for environmental services.<sup>2</sup> Owners of agricultural lands are hesitant to provide their land for water storage or water quality improvements that create wetlands or other surface waters on their property, however, for fear that once the agreement expires, they may be required to mitigate impacts to these created wetlands or surface waters, or that they may be precluded altogether from carrying out other activities on their land in the future that may impact these created wetlands or surface waters.

Since October, 2011, 131,500 acre-feet of water retention/storage has been made available through a combination of public and private projects. There are more than 100 participating landowners providing water retention or storage ranging from 1 acre-foot to 30,000 acre-feet.<sup>3</sup>

##### **Effect of Proposed Changes**

The bill creates s. 373.4591, F.S., to specify that the Legislature encourages public-private partnerships to accomplish water storage and water quality improvements on private agricultural land. The bill specifies that when an agreement is entered into between a water management district or the DEP and a private landowner to establish such partnerships, a baseline condition determining the extent of wetlands and other surface waters on the property must be established and documented in the agreement before improvements are constructed. The determination for the baseline condition must be conducted using the methods set forth in the rules adopted pursuant to s. 373.421, F.S.<sup>4</sup> The baseline condition documented in the agreement must be considered the extent of the wetlands and other

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<sup>1</sup> Department of Agriculture and Consumer Services website, [www.floridaaqwaterpolicy.com/PDF/Florida\\_Agricultural\\_Water\\_Policy\\_Report.pdf](http://www.floridaaqwaterpolicy.com/PDF/Florida_Agricultural_Water_Policy_Report.pdf) - 2006-09-19

<sup>2</sup> South Florida Water Management District's Dispersed Water Management Program Fact Sheet, [www.sfwmd.gov/portal/page/portal/.../jtf\\_dispersed\\_water\\_mgmt.pdf](http://www.sfwmd.gov/portal/page/portal/.../jtf_dispersed_water_mgmt.pdf)

<sup>3</sup> *Id*

<sup>4</sup> Section 373.421, F.S., establishes criteria for adopting a unified statewide methodology for the delineation of wetlands in the state. Chapter 62-340, F.A.C., was adopted to implement this statute.

surface waters on the property for the purpose of regulation under chapter 373, F.S., for the duration of the agreement and after its expiration.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 373.4591, F.S., requiring a specified determination as a condition of an agreement for water storage and water quality improvements on private agricultural lands; providing a methodology for such determination; providing for regulation of such lands after expiration of the agreement.

Section 2. Provides an effective date of July 1, 2012.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

According to the DEP, the bill could provide a savings in state expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

According to the DEP, the bill could provide a savings in local expenditures for water supply development and water quality improvements. However, potential savings will depend on the number, size, and nature of the agreements eventually entered into to use private property for water storage and water quality improvements, and at this time are indeterminate.

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

The bill could provide some economic benefit to agricultural landowners by increasing their ability to store water and provide water quality benefits on their land without incurring the permitting restrictions associated with creating wetlands.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill provides sufficient guidance to the DEP for adopting rules establishing how to determine the baseline condition of the extent of wetlands and other surface waters.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 24, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 1389 as a committee substitute (CS). The CS provides that the public-private partnerships can be used on any private agricultural land in the state, as opposed to only in the Lake Okeechobee watershed as provided in the original bill.

This analysis is drawn to CS/HB1389.