

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 1858

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Water Storage and Water Quality Improvements

DATE: January 30, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Yeatman	EP	Fav/CS
2.			AG	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS specifies legislative intent to encourage public-private partnerships for water storage and water quality improvements on agricultural lands throughout the state. The CS specifies that any agreement must include a baseline condition to determine the extent of wetlands and other surface waters on a property. Lastly, the CS specifies that during and after expiration of any agreement the extent of the wetlands and other surface waters on the property is the original baseline condition.

This CS creates s. 373.4591 of the Florida Statutes.

II. Present Situation:

Dispersed Water Storage

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 pasture lands 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 and limiting runoff.

Since 2005, the South Florida Water Management District (SFWMD) has been working with a number of agencies, environmental organizations and private land holders to store excess surface water on private, public and tribal lands.¹ The Dispersed Water Management Program encourages property owners to retain water on their lands 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. The SFWMD defines “dispersed water” as shallow water distributed across parcel landscapes using simple structures.² Private landowner involvement typically includes cost-share cooperative projects, easements or payment for environmental services. However, owners of agricultural lands are hesitant to provide their lands for water storage or water quality improvements that create wetlands or other surface waters on their property due to the 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 lands in the future that may impact these created wetlands or surface waters.

As of October 2011, 131,500 acre-feet of water retention or 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. An additional 230,000 acre-feet of storage has been assessed for planned dispersed water projects.³

There are many benefits to dispersed water storage. Nutrients, especially phosphorous, are polluting Lake Okeechobee and the Everglades. Dispersed storage retains more water on the land during the wet season to avoid agricultural runoff containing heavy nutrient loads from entering sensitive water bodies. In addition, it limits large volumes of water from being discharged into Lake Okeechobee and subsequent discharges to downstream estuaries. Lastly, by allowing more natural hydrology, dispersed storage enhances aquifer recharge and rehydrates former wetlands.⁴

Wetland Delineation in Florida

Wetlands are lands that are neither dry nor covered by open water but continually influenced by water. At times wetlands may be dry for months or even years, or they may be covered with

¹ South Florida Water Management District, *Dispersed Water Management Program* (Oct. 2011), available at http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/jtf_dispersed_water_mgmt.pdf (last visited Jan. 25, 2012).

² *Id.*

³ *Id.*

⁴ *Id.*

water the majority of the time, only drying out for short periods.⁵ They can be difficult to identify and delineate due to their varying nature. The delineation of wetlands is governed by s. 373.421, F.S., and rule 62-340.300 of the Florida Administrative Code (F.A.C.).

Trained professionals can identify and delineate wetlands from uplands by looking for unique traits found only in wetlands. Certain plants and plant adaptations, surface and subsurface soil characteristics and physical markings in the environment, such as water staining, are all indicators of wetlands.⁶ The methodology and vegetation list outlined in rule 62-340.300, F.A.C., are used by all state and local government entities in Florida.⁷

III. Effect of Proposed Changes:

Section 1 creates s. 373.4591, F.S., encouraging public-private partnerships to accomplish water storage and water quality improvements on private agricultural lands throughout the state. The CS directs that when agreements are entered into between the DEP or a WMD and a private entity, a baseline condition of the extent of wetlands and other surface waters prior to any constructed improvements must be included in the agreement. The baseline condition determination must be completed pursuant to s. 373.421, F.S., relating to the delineation of wetlands. During and at the expiration of an agreement, the baseline condition contained in the agreement is the extent of the wetlands or other surface waters for the purpose of regulation.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵ Dep't of Environmental Protection, *Florida State of the Environment – Wetlands: A Guide to Living with Florida's Wetlands*, available at <http://www.dep.state.fl.us/water/wetlands/docs/erp/fsewet.pdf> (last visited Jan. 25, 2012).

⁶ *Id.* at 1-2.

⁷ Rule 62-340, F.A.C., was ratified by the Florida legislature in 1994 as s. 373.4211, F.S., to ensure all statewide agencies could use this method.

B. Private Sector Impact:

The CS may allow agricultural landowners by to increase water storage and enhance water quality on their lands without incurring additional wetland regulation. In addition some landowners may be paid for the environmental services they are providing to the state for the environmental benefits that come from holding more water on the land.

C. Government Sector Impact:

Environmental restoration is extremely expensive. The least costly method to achieve environmental benefits is prevention. By encouraging private land owners to store water, the CS may result in significant savings to agencies responsible for environmental protection and restoration by limiting fresh water discharges and pollutants contained in runoff. In addition, dispersed water storage results in increased shallow groundwater recharge which may minimize the need for costly alternative water supply development projects in some areas. The total impact of the CS is dependent on how many additional acre-feet of water storage are created. Therefore, the impact is indeterminate but may be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Environmental Preservation and Conservation on January 30, 2012:**

- Authorizes the program statewide instead of only in the Lake Okeechobee watershed;
- Clarifies the DEP and WMDs are the entities that may contract with private landowners; and
- Specifies the baseline condition applies during and after expiration of an agreement.

B. Amendments:

None.