

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1123 Aquatic Preserves
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Kaiser	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1975, Florida enacted the Aquatic Preserve Act to ensure that state-owned submerged lands in areas with exceptional biological, aesthetic, and scientific value would be set aside forever as aquatic preserves for the benefit of future generations. The Department of Environmental Protection (DEP) currently manages 41 aquatic preserves in the state.

The bill creates the Nature Coast Aquatic Preserve (preserve), encompassing state-owned submerged lands, the water column upon those lands, and all publicly-owned islands in certain areas of Pasco, Hernando, and Citrus counties. The bill excludes privately-owned uplands unless the private landowner agrees to include those uplands in the preserve. The bill directs the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to maintain the preserve subject to restrictions on the following activities:

- Sales, transfers, or leases of the sovereign submerged lands.
- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks.
- Seaward relocation of bulkhead lines or further establishment of bulkhead lines.
- Construction, replacement, or relocation of a seawall.
- Dredging or filling of submerged lands, which is not allowed except for the maintenance of marinas, piers, or docks.

The bill also authorizes the Board of Trustees to:

- Enter into agreements for establishing lines delineating sovereign submerged lands and privately-owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately-owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill also specifies that the establishment and management of aquatic preserves may not infringe upon the riparian rights of upland property owners. The bill authorizes enforcement pursuant to the Environmental Protection Act, and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill. Lastly, the provisions in the bill are subject to the Florida Electrical Power Plant Siting Act.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sovereign Submerged Lands

Upon attaining statehood in 1845, “the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder.”¹ The title to lands under navigable waters passed from the United States to the state through operation of the federal “equal footing” doctrine,² and included the submerged bed up to the “ordinary high water mark” of navigable rivers and lakes.³

The Florida Constitution⁴ provides that:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).⁵ The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶

Aquatic Preserves

In 1975, Florida enacted the Aquatic Preserve Act with the intent that the state-owned submerged lands in areas that have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations. The Florida Statutes define an aquatic preserve as “an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.”⁷

The Department of Environmental Protection’s (DEP) Office of Coastal and Aquatic Managed Areas (CAMA) oversees the management of Florida’s 41 aquatic preserves, three National Estuarine Research Reserves (NERR), National Marine Sanctuary, and the Coral Reef Conservation Program. These protected areas comprise more than 2.2 million acres of the most valuable submerged lands and select coastal uplands in Florida. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, maintaining water quality, and providing habitat for shorebirds. The aquatic preserves are also valuable tourist destinations, providing a host of outdoor activities such as fishing, diving, snorkeling, swimming, bird watching, and boating.⁸

¹ Merrill-Stevens Co. v. Durkee, 62 Fla. 549, 57 So. 428, 432 (1912).

² Pollard v. Hagan, 44 U.S. 212 (1845).

³ Coastal Petroleum Co. v. American Cyanamid Co., 492 So. 2d 339, 342 (Fla 1986)

⁴ Art. X, s. 11 of the Florida Constitution.

⁵ DEP, Use of State-Owned Lands, <http://www.dep.state.fl.us/lands/submerged.htm>.

⁶ Section 253.03, F.S.

⁷ Section 258.37(1), F.S.

⁸ DEP, *Florida’s Aquatic Preserves, Protecting our most Values Resource: A Program Overview*, available at http://www.dep.state.fl.us/coastal/downloads/Aquatic_Preserve_Overview_Jun06.pdf.

Section 258.41, F.S., authorizes the Board of Trustees to establish areas to be included in the aquatic preserve system, subject to confirmation by the Legislature, and provides that an aquatic preserve cannot be withdrawn from the state aquatic preserve system except by an act of the Legislature.

The Legislature has also designated by law certain areas to be included in the aquatic preserve system. These include the following:

- Cockroach Bay Aquatic Preserve.
- Gasparilla Sound-Charlotte Harbor Aquatic Preserve.
- Lemon Bay Aquatic Preserve.
- Terra Ceia Aquatic Preserve.
- Guana River Marsh Aquatic Preserve.
- Big Bend Seagrasses Aquatic Preserve.
- Boca Ciega Bay Aquatic Preserve.
- Biscayne Bay Aquatic Preserve.
- Oklawaha River Aquatic Preserve.

Current law⁹ restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

DEP rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally. Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.¹⁰

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)¹¹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits. DEP along with local governments and state agencies within whose jurisdiction the power plant is to be built, participate in the certification process. The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the

⁹ Section 258.42, F.S.

¹⁰ Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria. However, every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code.

¹¹ Sections 403.501-403.518, F.S.

applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.

The Nature Coast

“The Nature Coast” is located along Florida’s Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla).¹² This area is a sanctuary for 19 endangered species¹³ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.¹⁴

There are two designated aquatic preserves within the Nature Coast: the Big Bend Seagrass Aquatic Preserve, which extends from St. Marks to Cedar Key, and the St. Martins Marsh Aquatic Preserve, which extends from Crystal Bay through Homosassa Bay. The Nature Coast is bordered to the south by the Pinellas County Aquatic Preserve. The area between the Big Bend Seagrass Aquatic Preserve and the Pinellas County Aquatic Preserve, with the exception of the St. Martins Marsh Aquatic Preserve, is an undesignated shoreline consisting of Pasco, Hernando, and Citrus Counties. The aquatic preserve proposed by this legislation would lie between the St. Martins Aquatic Preserve and the Pinellas County Aquatic Preserve.

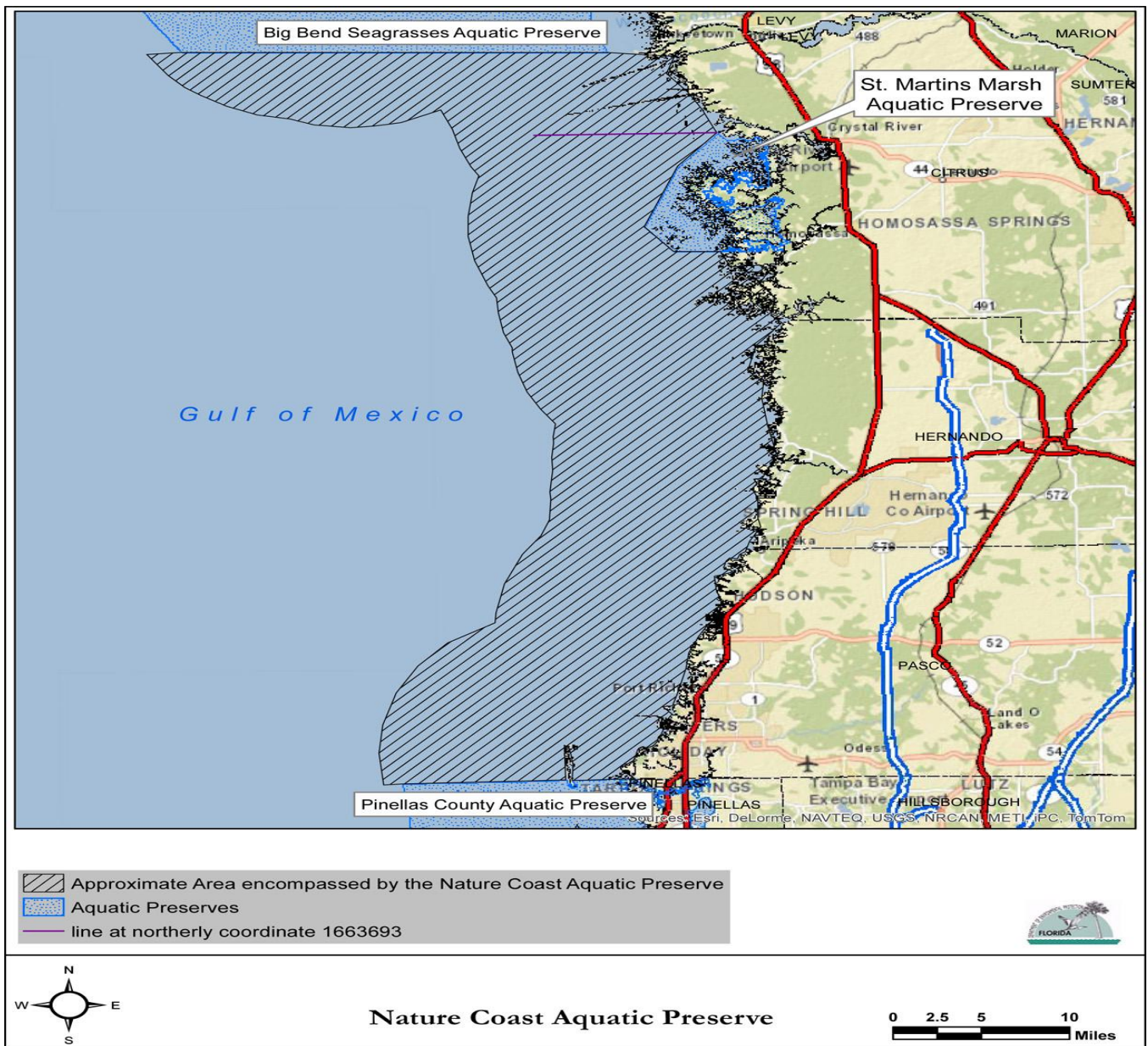
Effect of Proposed Changes

The bill establishes the Nature Coast Aquatic Preserve (preserve), and designates the boundaries of the preserve, which include state-owned submerged lands, the water column upon those lands, and all publicly-owned islands (see map below). The bill excludes privately-owned uplands unless the private landowner arranges to have his lands included in the preserve.

¹² Nature Coast Coalition, Nature Coast, <http://www.naturecoastcoalition.com/nchistory.htm>.

¹³ *Id.*

¹⁴ DEP, Senate Bill 1094 Agency Analysis.



The bill directs the Board of Trustees to maintain the preserve subject to the following:

- Further sales, transfers, or leases of the sovereign submerged lands may not be approved unless there is extreme hardship and the Board of Trustees determines that the sale, transfer, or lease is in the public interest.
- Further dredging or filling of submerged lands may not be approved except:
 - Minimal dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.
 - Other alterations of the physical conditions of submerged lands may be authorized as necessary to enhance the quality and utility of the preserve.
 - Minimum dredging and filling of submerged lands may be authorized for the creation and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads.
 - Dredging of submerged lands may be authorized if the Board of Trustees determines that such dredging is necessary for eliminating conditions hazardous to the public health or for eliminating stagnant waters, islands, and spoil banks and that such dredging would enhance the aesthetic and environmental quality and utility of the preserve.
- The Board of Trustees must give notice of dredging and filling before approving it.

- Drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve is prohibited.
- The Board of Trustees may not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline.
- Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, and may be granted only if riprap construction is used in the seawall. The Board of Trustees may grant approval through a letter of consent.

For lands lying within the preserve, the bill also authorizes the Board of Trustees to:

- Enter into agreements for and establish lines delineating sovereign submerged lands and privately owned lands.
- Enter into agreements for the exchange of sovereign submerged lands for privately owned lands.
- Accept gifts of land within or contiguous to the preserve.
- Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use.
- Conduct restoration and enhancement efforts in the preserve and its tributaries.
- Stabilize eroding shorelines of the preserve and its tributaries that are contributing to turbidity by planting natural vegetation and by the placement of riprap.¹⁵
- Take any action convenient for, or necessary to, the accomplishment of any of these authorized acts.

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions and establish additional management criteria as necessary to accommodate special circumstances. The rules must also regulate human activity within the preserve in such a manner as to not unreasonably interfere with traditional public uses, such as sport fishing, commercial fishing, boating, and swimming.¹⁶

The bill further provides that the establishment and management of the preserve may not infringe upon the riparian rights of upland property owners adjacent to or within the preserve. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,¹⁷ and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Creates s. 258.3991, F.S., establishing the Nature Coast Aquatic Preserve.

Section 2: Provides an effective date of July 1, 2014.

¹⁵ According to Merriam-Webster On-Line Dictionary, "riprap" means a foundation or sustaining wall of stones or chunks of concrete thrown together without order (as in deep water); also : a layer of this or similar material on an embankment slope to prevent erosion.

¹⁶ According to DEP, Chapters 18-20, F.A.C., already include these provisions. Therefore, further rulemaking is unnecessary.

¹⁷ Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By creating an aquatic preserve, the bill strengthens certain environmental requirements related to dredging and filling activities and the erection of structures other than docks, which may result in an indeterminate, negative fiscal impact to the private sector.

D. FISCAL COMMENTS:

The bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

The bill requires the Board of Trustees to adopt and enforce rules to implement the bill's provisions, provide additional preserve management criteria, and regulate human activity within the preserve. According to DEP, Chapters 18-20, F.A.C., already provide the Board of Trustees with rulemaking authority for these provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Agriculture and Natural Resources Subcommittee reported HB 1123 favorably as a committee substitute. There was one amendment to HB 1123, which removed the word "existing." DEP had raised concerns that the bill as previously drafted would prohibit the construction of new docks, piers, and marinas within the boundaries of the Nature Coast Aquatic Preserve, and would prohibit a private riparian owner of uplands within the proposed aquatic preserve from leasing SSL for the construction of a new dock.

This analysis is drafted to the committee substitute as passed by the Agriculture and Natural Resources Subcommittee.